

Legal aid in a changing world

Research into the reduction in civil legal aid applications in Scotland between 1992 and 2001

Research report summary

The Scottish Legal Aid Board has been concerned to establish the reasons behind the significant decrease in the volume of applications for civil legal aid. Applications are currently at their lowest level in almost twenty years – 21,018 in 2000/2001. This is around 15,000 lower than their peak year of 1992/93. The Board undertook research to try to explain this change.

The research findings suggest that:

- the fall in applications for civil legal aid is due primarily to external changes in the way dispute resolution is conducted, including a reduction in court business, particularly in family and matrimonial proceedings
- although overall financial eligibility has changed little, the 1993 eligibility changes moved a substantial number of people from being eligible with no contribution into contributory eligibility. The level of contributions also increased. These changes did have a significant effect on the number of applications in the following two years. Even so, over the period from 1992/93 to 2000/01 as a whole, the impact of changes in eligibility is outweighed by that of external changes. In particular, the impact of changes in eligibility *subsequent* to those made in 1993 has been relatively minor.
- overall numbers of solicitors' outlets – 1041 outlets in 2000/1 - are higher than in 1992, although there has been some reduction over the past three years. This, on the face of it, would not therefore explain a reduction in numbers of applications.

Nevertheless, the Board is concerned that the system can make access to civil legal aid more difficult for certain groups. The Board is continuing to improve the system to remove as many barriers as possible and it will undertake further research to identify potential problem areas.

About the Scottish Legal Aid Board

Legal aid allows people who would not otherwise be able to afford it to have the help of a solicitor, and in some circumstances an advocate, for their legal problems. To receive legal aid, applicants must consult a solicitor who will help them complete an application. The Board itself does not provide a legal aid service - it pays solicitors and advocates to do this.

The Scottish Legal Aid Board is responsible for managing legal aid in Scotland. It is a non-departmental public body set up under the Legal Aid (Scotland) Act 1986. The Board's Mission is to develop and deliver appropriate access to quality legal assistance for those eligible, in a cost effective manner.



Background

The Scottish Legal Aid Board has been concerned to establish the reasons behind the significant decrease in the volume of applications for civil legal aid. Applications are currently at their lowest level in almost twenty years and around 15,000 lower than their peak year of 1992/93. The report presents the results of various analyses undertaken to try to explain this drop in numbers.

These analyses explore:

- changes in the use of civil legal aid
- the impact of shifts in financial eligibility
- the possible deterrent effect of the contributions payable by some people towards the cost of their case
- the availability of solicitors' outlets providing a civil legal aid service
- changes in legal aid legislation and Board policy
- changes in the wider legal system.

The work was carried out by Board staff and by the David Hume Institute, which looked at the changes in eligibility.

Key Findings

The three most commonly suggested explanations for the drop in civil legal aid applications are that:

- fewer people are applying because fewer people are eligible
- those who are eligible are put off by the size of the contribution payable

- people find it difficult to access civil legal aid because fewer solicitors are offering the service.

However, the Board's analysis suggests that these factors cannot themselves explain a reduction of the size seen since 1992/93:

- Overall financial eligibility fell by 2 percentage points between 1992/3 and 1998/9, from 57% to 55% of the population. This means that around 110,000 fewer people were eligible in the later year, which in itself would account for around 650 applications per year.

Within the 2.8 million eligible population, there has been a major shift between eligibility with and without a contribution, with around half a million fewer people eligible without a contribution.

The analysis suggests that both the overall reduction in eligibility and the shift in balance to contributory eligibility will certainly have contributed to the reduction in applications. This is likely to account for around 30% of the overall reduction between 1992/93 and 2000/01.

- Perhaps of greater significance is that the bulk of these changes were the result of an explicit policy change in 1993, which had a very significant impact on both eligibility and, as a result, applications.

Any reductions in or movements within eligibility since 1993/94 will have been as a result of index-linked financial limits failing to keep pace with rising national income levels.

While most of the eligibility related reduction in applications was seen within two years of the 1993 changes, most of the overall drop in applications has actually occurred since then. Indeed, no more than 13% of the drop in applications seen between 1994/95 and 2000/01 can be explained by changes in eligibility.



Accordingly, changes in eligibility offer only a partial explanation for the *continuing* drop in applications.

- With regard to the deterrent effect of the contribution, the 1993 changes did affect the number of applications from people likely to be assessed with a contribution, and more of those who did apply turned down an offer of legal aid with a contribution.

Since then, the evidence suggests that people eligible with a contribution are, on the whole, only very slightly less likely to apply for civil legal aid than in the past.

However, take-up of offers has improved, particularly since the Board extended payment periods for those with contributions above a certain level.

- Although the number of solicitors' outlets making one or more application for legal aid fell between 1998/9 and 2000/1, there were still 1041 such outlets in 2000/1. This figure is actually higher than the 1029 recorded in 1992, the year in which civil applications were highest.

These analyses suggest that there must be other factors in the reduction in applications. In order to identify such factors, the Board examined in greater detail the changes that have occurred within civil legal aid.

This analysis showed that the past decade has seen substantial changes in the profile of applications for civil legal aid, which themselves suggest additional avenues for analysis:

- Although the balance between pursuers and defenders and males and females has remained broadly unchanged, there have been important shifts within these categories.

In the early 1990s females were far more likely than males to use legal aid to pursue a case, and less likely to use it to defend one. By 2000/1 there were more female defenders

than male defenders.

Although still greater in number than male pursuers, the proportion of female pursuers had also decreased, from 51% to 44%.

- The types of case for which applicants seek legal aid have also altered: although still the single most common category (accounting for over 20% of applications), 'fault' based divorce applications have fallen by half, whilst applications for contact have increased.

Applications for reparation have fallen, but less so than most other areas.

These changes reflect, to a large extent, a reduction in ordinary cause and summary cause court business, as well as wider societal changes:

- In particular, the number of divorces granted fell by 13% from 1993 to 2001. Grants of divorce on 'fault' grounds fell by 44% over the same period. It is, therefore, likely that fewer people will require legal aid for such cases.
- Alongside this apparent reduction in demand for legal aid in the largest category of applications, there is some evidence that there has been a change in the approach taken to the resolution of family disputes.

The less litigious approach of many family law practitioners, alongside a growth in mediation and legislative changes such as the non-interventionist approach embodied within the Children (Scotland) Act 1995, suggests a greater emphasis on resolving matters involving separation and the care of children without recourse to the courts.

- Further support for this suggestion comes from an analysis of advice and assistance.

The use of advice and assistance in relation to family matters has fallen less markedly than civil legal aid (and indeed use of advice



and assistance in civil matters as a whole has increased over the same period). The cost of advice and assistance in family cases has also increased rapidly over the period in question.

This suggests that advice and assistance may be used more often than in the past to resolve such matters without the need for civil legal aid.

Conclusions

Overall, it would appear that the fall in applications for civil legal aid:

- is due primarily to external changes in the way dispute resolution is conducted, including a reduction in court business, particularly in family and matrimonial proceedings
- although overall financial eligibility has changed little, the 1993 eligibility changes moved a substantial number of people from being eligible with no contribution into contributory eligibility. The level of contributions also increased. These changes did have a significant effect on the number of applications in the following two years.

Even so, over the period from 1992/93 to 2000/01 as a whole, the impact of changes in eligibility is outweighed by that of external changes. In particular, the impact of changes in eligibility *subsequent* to those made in 1993 has been relatively minor.

- Overall numbers of solicitors' outlets are higher than in 1992, although there has been some reduction over the past three years. This, on the face of it, would not therefore explain a reduction in numbers of applications.

The Board is nevertheless concerned that certain aspects of the system make access to civil legal aid more difficult for certain potential applicants.

The Board is seeking to improve the operation of the system to remove as many barriers as possible. For example, the Board has made proposals for changes to the operation of the special urgency provisions and the contributions system with the aim of making civil legal aid more accessible to the particular applicants - or potential applicants - affected by these parts of the system, as well as looking at ways of reducing the bureaucracy and complexity surrounding civil legal aid.

Further research will flow from the findings presented in this report. For example, this report suggests the need for a more detailed analysis of the distribution of solicitor outlets.

Although the overall picture perhaps suggests little cause for concern, we are keen to explore further possible variations between different parts of the country. In addition, the distribution of work within firms, particularly in light of the stagnation in fee levels, may also merit further examination.

Similarly, while eligibility has not been the strongest factor in the reduction in applications in recent years, we intend to extend the work already carried out to consider the interaction of the different eligibility rules for advice and assistance and civil legal aid.

Such further research will help improve our understanding of other aspects of legal aid and help ensure that potential problem areas are identified before they can impact negatively on access to civil legal aid services.

How to get further information

The full report, **Legal aid in a changing world**, is published by the Board, ISBN 1-902300-11-4. It is available by writing to: Secretariat, The Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW. Telephone: 0131 226 7061, E-mail: general@slab.org.uk, Web: www.slab.org.uk