



Press Release

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Research into reduction of civil legal aid applications published

A research report considering why applications for civil legal aid have fallen over the past eight years, "Legal aid in a changing world," was published today by the Scottish Legal Aid Board.

The Board had 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 – 21,000 in 2000/2001. This is around 15,000 lower than their peak year of 1992/93. 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 - the largest category of civil legal aid
- 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.

Jean Couper, Chairman of the Scottish Legal Aid Board said:

"The Board has been concerned to identify why civil legal applications have fallen over the past eight years. I believe our publication of this substantial piece of work will be welcomed by all who are concerned with improving access to justice and taking forward the debate on the future development of civil legal aid.

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“Our research finds that there are a number of reasons why applications have fallen, and that primarily it is due to external changes in the way dispute resolution is conducted. 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.”

The Report’s key findings are detailed in the attached appendix. The report also identifies measures the Board intends to take to improve the operation of the legal aid 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. The report also identifies further research work that may be undertaken, such as a more detailed analysis of the distribution of solicitor outlets.

Jean Couper added:

“We were delighted when Ministers recently announced their agreement to the Board’s proposals to make two significant changes to civil legal aid, to contributions and special urgency cases. The Board’s further research will improve our understanding of other aspects of legal aid and help to identify potential problem areas before they can impact negatively on access to civil legal aid services.”

The research was undertaken by the Board’s Policy Unit and by the David Hume Institute, which looked into changes in financial eligibility.

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APPENDIX – Key Findings

The most commonly suggested explanations for the drop in civil legal aid cannot themselves explain the size of the reduction in civil legal aid applications seen since 1992/3:

- 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

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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.

Notes to editors

1. Copies of the research report summary, the research report and eligibility research report are available from the Board and on the website www.slab.org.uk
2. In 2000/2001 there were 13,577 grants of civil legal aid with three-quarters of these being on family/ matrimonial proceedings. Gross expenditure on civil legal aid was £28.8 million. The amounts paid back to the Board by assisted persons and opponents was £9.3 million, which means that the net cost to the taxpayer for civil legal aid was £19.5 million. One fifth of civil legal aid grants were with a contribution payable (2,797 grants). Where a contribution was payable, the average value was £777.
3. In 2000/2001 425,281 advice and assistance and legal aid applications were granted and the total gross expenditure on legal aid was £130.5 million.
4. 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.
5. 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. The Board's main tasks are to consider and then grant or refuse applications for legal aid; to scrutinise accounts and pay solicitors and advocates for the legal aid work they do and to advise Scottish Ministers on legal aid matters.

6. The Board has two linked websites: www.slab.org.uk and www.slabpro.org.uk

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