



## **Civil Legal Aid- the Secret Legal Service (2)**

This is an up-dated version of the paper first published in September last year. It draws on the figures used in the first version of the paper and some new data which LAG has been able to obtain on the number of civil legal aid cases.

The Legal Aid Sentencing and Punishment of Offenders (LASPO) Act introduced sweeping cuts to scope in legal aid from April this year. What LAG's research shows is that for the cases which are still covered by legal aid there has been a large reduction in the take-up of legal aid services for these by public. We believe this has been caused by a combination of factors including, the reduction in the number of solicitors firms and charities, such as Citizens Advice Bureaux, offering legal aid, a perception amongst the public that they can no-longer get help with any civil law problems and the failure by the government to adequately advertise the availability of services. We also fear that legal aid providers are becoming increasingly risk averse to committing to provide legal aid services due to the bureaucracy involved in making applications.

### **Downward Trend in Cases**

Figures released by LAG last year show that the number of civil legal aid cases has been in decline for the last four years. It is in SWL category that the biggest falls have occurred. From just under half a million cases at their peak in 2009-10 the number of SWL cases had dropped to 293,319 last year.<sup>1</sup> The following table breaks down the figures for legal help and certificated cases for the five categories of SWL-

	2009/10	2010/11	2011/12	2012/13
Welfare benefits	143,865	120,042	110,771	88,618
Debt	147,194	128,179	109,427	82,117
Housing	153,106	127,840	118,909	100,253
Employment/Discrimination	31,796	25,330	20,324	16,148
Community Care	9,703	7,060	7,448	6,183
	485,664	408,451	366,879	293,319

The reducing number of SWL cases is surprising given the continuing difficult economic outlook and the numbers of cases reaching the courts and tribunals

system. For example in the quarter ending 31<sup>st</sup> Dec 2012 there had been a 48% increase in the number of cases brought to the Social Security and Child Support Tribunal.<sup>ii</sup>

Citizens Advice has also reported increasing numbers of enquiries in the first three quarters of 2012/13. However, in the final quarter Bureau capacity to deal with specialist cases was reduced as they prepared for the withdrawal of legal aid from much of SWL.<sup>iii</sup> We believe the reduction in the numbers of cases since 2010 has been caused by changes to the system, such as the reduction in the numbers of cases legal aid firms are permitted to commence, rather than a decrease in the numbers of people needing assistance.

## **Fewer Cases than Predicted**

The following table shows the percentage number of cases which the government predicted would remain in scope after the cuts were introduced in April.<sup>iv</sup>

Category of law	Remaining cases
Debt (mainly housing related)	26%
Education	42%
Discrimination	100%
Community care law	100%
Housing	60%

The table refers to legal help cases. Legal help cases involve initial advice and assistance to a client. Some cases go onto civil representation, but the bulk of cases referred to in this report remain at the legal help level. The numbers of civil legal help cases have always tended to be much greater, for example in 2012/13 there were 81,944 new matters started for legal help with debt problems, but only 353 cases went on to the next level, civil representation.<sup>v</sup>

The first version of this report was based on figures for the telephone service operated by the Legal Aid Agency.<sup>vi</sup> Most Debt, Special Education Needs and discrimination cases have to go through this service, Community Legal Advice (CLA), for initial advice prior to being referred on for face to face advice to a legal aid provider.

The table below shows the total number of CLA cases for each category of law for the three months of the last financial year (April 2013- March 2014), the projected number of cases is based on the government's estimates (see above) and the percentage shortfall in the number of cases has been calculated by LAG. LAG understands that the LAA will not be releasing any further figures as they are reviewing how the service operates.

	April	May	June	Total	Projected number of cases	%Shortfall in cases
Debt	173	146	157	476	1,467	68%
Education	91	69	121	281	318	12%
Discrimination	168	205	179	552	2,429	77%

Housing	806	631	705	2,142	3,238	34%
Welfare Benefits	45	48	42	135	0	0%
	<b>1,283</b>	<b>1,099</b>	<b>1,204</b>	<b>3,586</b>	<b>7,452</b>	

A total of 3,866 less people than predicted received advice from the CLA on matters eligible for civil legal aid. **This is a total shortfall of 52%.** The shortfalls do vary between the different categories of law, with the lowest being in education law at 12% and the highest being in discrimination law at 77% (see appendix table 1).

LAG believes that the very large shortfall in discrimination law can be explained by the 100% reduction in the availability of legal aid for employment law cases. In the employment law category the government projected that 78% of cases, out of a total of 24,000, would be taken from scope. The remaining 22% would be discrimination ones. However, most discrimination law cases usually stem from a dispute in the workplace, but as no legal aid is available for employment law advice people who have been discriminated against are less likely to seek help. LAG also understands that some practitioners are disputing how effective the CLA is in identifying cases.

### **New Figures**

The low take-up of the CLA service demonstrates that the government's insistence that the telephone based service was as accessible as face to face ones seems misplaced. The projected number of cases for the CLA, 7,452, is relatively small. The bulk of cases for SWL continue to be Legal Help in face to face services, but figures recently obtained by LAG from the LAA for new Legal Help cases opened from April last year, show equally dramatic reductions in take-up.

Out of a projected 207,029 cases we are predicting that only 148,062 will be started. This is an overall shortfall of 28% in the take-up of these cases (see appendix table 2). The number of cases does vary considerably between the different categories of law. For some areas of law such as mental health, the cases in the system are similar to what was predicted, but four areas of law show big shortfalls in take-up-

Category of law	Shortfall
Debt (mainly housing related)	97%
Special Educational Needs (SEN)	99%
Community care law	40%
Housing	19%

Legal Aid is still available for people in danger of losing their homes, homelessness cases and for some disrepair matters. Such cases can be covered by either the debt or housing law categories. Based on the government's figures LAG predicts that a total number of 15,955 legal help cases for debt should have been commenced between April 2013, when the cuts to scope were first introduced and the end of March this year. In January only 85 cases had commenced. In housing 42,319 cases are predicted to pass through the system, but by January only 28,736 had done so leading to the predicted shortfall.

It is unclear from the LAA figures how many of the predicted number of cases were meant to have been referred on from the CLA service. Legal aid providers can take-on some debt cases directly, but LAG had anticipated that the bulk would have been via referrals from the telephone service. Housing cases do not have to be referred from CLA.

## **Low take-up of cases**

Debt legal aid contracts were mainly concentrated among advice charities such as Citizens Advice Bureaux. These have seen the biggest reduction in the number of legal aid contract holders. According to the national charity, Citizen's Advice, there are now only just over 30 of its bureaux with legal aid contracts, down from a total of over 160 before the cuts were imposed in April.

Birmingham CAB held one of the largest legal aid contracts in the not for profit sector. The service operates out of four offices in Birmingham. Prior to April it employed 27 specialist caseworkers in debt and welfare benefits, but according to Emma Cook, acting Chief Executive of the Bureaux, all of these post holders have had to be made redundant or redeployed, "the loss of the £750,000 contract for legal aid meant a third of the service went from 31<sup>st</sup> March. These specialist services cannot be replaced by volunteers."

Russell Conway is an experienced housing law solicitor who recently won the Legal Aid Lawyer of the Year Award for his work in housing and other areas of social welfare law<sup>vii</sup>. He blames in part the unrelenting bad news on legal aid for the reduction in cases, "the public are quite good at picking-up on the grim stuff", but "find it difficult to know exactly what's happened." He says that "some local authorities and social landlords have been peddling the rumour that legal aid for housing cases has been abolished completely. Some of my clients have been pleasantly surprised when I've told them they can still get legal aid for their case."

Many practitioners have told LAG they believe that there is a problem over the identification of clients who are eligible for legal aid as the rules now are so complex. Vicky Ling is a management consultant and author of LAG's Legal Aid Handbook. She says that "the Legal Aid Agency is now so draconian in their audits that practitioners fear applying for legal aid unless they are absolutely certain it will fall within the rules." LAG fears that, clients with complex needs or, who are just unable to provide papers to prove their means due to disorganisation are being excluded from claiming legal aid.

LAG believes the lack of take-up of SEN cases is caused in the main by a shortage of suppliers around the country and the CLA telephone gateway service. The shortage of services, which pre-dates the LASPO Act changes, is now much worse since the legal cuts were introduced. This contributes to a general lack of awareness about the availability of legal aid for SEN cases. Potential clients are therefore unlikely to approach the CLA for advice. We believe that the same applies in community care cases.

While clients needing assistance challenging care needs assessments and other issues to do with their care, do not have to use the CLA service, the lack of providers specialising in this work feeds into a general lack of awareness of rights in this area of law. This combined with other factors such as practitioners' reluctance to commence all but the strongest of cases is leading to the shortfall in take-up.

Welfare benefits cases were cut by 100% from April, but 135 new cases were commenced in April, May and June last year through CLA and 57 legal help cases from April 2013 to January 2014. LAG believes that these cases are Higher Tribunal, Court of Appeal and Supreme Court cases which relate to an appeal on a point of law.<sup>viii</sup> This was a concession made at a late stage of the passage of the LASPO Bill through parliament.<sup>ix</sup>

## **Lack of Marketing**

Pam Kenworthy is the former Legal Director at the solicitors firm Howells LLP. The firm won one of the contracts for the telephone gateway service. Kenworthy believes that both lawyers and the public need to get the message that employment law discrimination cases are still covered by legal aid. "The CLA providers would obviously like the Ministry of Justice to consider raising the profile of the service with stakeholders as it seems daft to have a service that no one knows about."

The Legal Aid Practitioners Group (LAPG) has expressed concerns to the government about the adequacy of the marketing of legal aid services, "we believe it has been inadequate and in some cases unfortunately misleading" says Carol Storer, LAPG Director, "the information which is available does not provide clear guidance to the public about what is covered by legal aid."

## **Exceptional Cases**

In the second reading of the then LASPO Bill in the Lords, Lord McNally, the then Minister of State at MoJ stated that,

*"Although narrowing the scope of legal aid, we intend to provide a safety net. The exceptional funding scheme established in the Bill will provide funding for an excluded case where failure to do so would amount to a breach of a person's right to legal aid under the Human Rights Act or European Union law<sup>x</sup>."*

We believe that this safety net is not working to protect human rights in the way which parliament had been led to believe it would. The numbers of successful applications for exceptional funding has been very low- only 35 in the first nine months of the scheme's operation<sup>xi</sup> compared to the 5-7000 which had been predicted by the government<sup>xii</sup>.

Prior to the exceptional funding rule becoming operational it was believed that numbers might be higher than had been anticipated by the government. Research suggests that as 56.6% of family clients might have a treatable mental health problem, this would mean to give "practical effect" to European Convention Rights they would need access to legal aid.<sup>xiii</sup>

The Public Law Project (PLP) has expressed concerns about the very low take-up of exceptional funding cases compared to the original projections and believes there is evidence of poor quality decision making in the cases being rejected.<sup>xiv</sup>

LAG has spoken to many practitioners who are not prepared to apply for exceptional funding as they have no guarantee of payment for the work unless the application is successful. Chris Johnson of the Community Law Partnership in Birmingham has submitted a number of exceptional funding applications, but says "we cannot afford to keep on doing this work pro-bono."

## **Civil Legal Aid under threat**

The reduced take-up of civil legal aid has been caused by the combination of factors described above, dwindling numbers of firms and agencies undertaking legal aid, increased bureaucratic hurdles before legal aid is granted and a low profile, caused by lack of marketing and a public perception that legal aid is no-longer available for civil cases. We reiterate our main concern which was expressed in the first version of this report, either by accident or design, the government seems to be presiding over a secret legal service. The fear is if nothing is done to increase the take-up of civil legal aid, the remaining services will wither away as the lack of use will be used to justify their loss.

LAG calls on the government to-

- Urgently investigate the reasons for low up-take of civil legal aid,
- Increase the profile of civil legal aid services through better marketing via the web and other channels,
- urgently review the exceptional funding mechanism, as it is clearly not providing the human rights safety net it was intended to,
- Look at adopting the recommendations of the Low Commission, which includes provisions for new funding for these cases.

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<sup>i</sup> Legal Aid Statistics in England and Wales 2012-2013

<sup>ii</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/177045/quarterly-tribs-q3-2012-13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177045/quarterly-tribs-q3-2012-13.pdf)

<sup>iii</sup> See [Advice trends January - March 2013](#) (  0.52mb)

<sup>iv</sup> Based on Reform of Legal Aid in England and Wales: the Government Response, June 2011 Annex A Scope

<sup>v</sup> Legal Aid Statistics in England and Wales 2012-13, published June 2013

<sup>vi</sup> The new body which was established within the Ministry of Justice from April last year to administer legal aid

<sup>vii</sup> <http://www.lapg.co.uk/LALY-awards>

<sup>viii</sup> See Schedule 1 s8 (1) LASPO Act

<sup>ix</sup> See Austerity Justice p119 pub LAG

<sup>x</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111121-0001.htm#1111218000362>

<sup>xi</sup> [http://www.familylaw.co.uk/system/uploads/attachments/0008/3979/exceptional-case-funding-statistics-apr-13-dec\\_13.pdf](http://www.familylaw.co.uk/system/uploads/attachments/0008/3979/exceptional-case-funding-statistics-apr-13-dec_13.pdf)

<sup>xii</sup> [http://www.publiclawproject.org.uk/data/resources/10/exceptional\\_funding\\_blog.pdf](http://www.publiclawproject.org.uk/data/resources/10/exceptional_funding_blog.pdf)

<sup>xiii</sup> “When exceptional is the rule: mental health, family problems and the reform of legal aid in England and Wales” (2012 ) 24 Child and Family Law Quarterly Issue 3.

<sup>xiv</sup> [http://www.publiclawproject.org.uk/documents/exceptional\\_funding\\_blog.pdf](http://www.publiclawproject.org.uk/documents/exceptional_funding_blog.pdf)