



THE LAW SOCIETY
of SCOTLAND
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The Law Society Of Scotland

Civil Legal Aid Research

September 2007

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Introduction

This report presents an analysis of the responses that were received to a questionnaire on civil legal aid, which was issued in May 2007. The questionnaire was published on the Law Society of Scotland's website and advertised in the Ezine and the Journal. It was also sent by email directly to firms registered to carry out civil legal aid.

Background to the Research

Following anecdotal evidence of practitioners' dissatisfaction with the civil legal aid system and related access to justice issues, the Society made the decision at the beginning of 2007 to undertake a more formal evidence-gathering exercise. The importance of this undertaking was reinforced by a motion raised by the Family Law Association at the Society's AGM on 9th March 2007, calling for the Society to urge the Executive to carry out an immediate review of solicitors' rates and to effect an "actual and significant increase in fees". The Society agreed the motion on the understanding that practitioners would have to submit their views on the current system and its perceived failings so that the Society could make evidence-based proposals for reform.

The Research Process

The research took the form of a questionnaire comprising 14 questions, one of which had two parts. It was designed to be completed online but a printable version was also created to allow respondents to post, fax or email their responses. The questionnaire was published in May 2007 and responses were invited by 17th August.

Structure of Report

The report is comprised of a table that collates the responses received to questions 1 to 12 and two annexes that detail in full the responses received to questions 13 and 14. Due to the fact that the questionnaire was designed to be completed online, most of the questions were "closed" for ease of analysis. However, because the questionnaire provided an excellent opportunity to obtain the views of practitioners, it was felt that at least one open-ended question was necessary. A brief indication of the responses received to question 14, which sought practitioners' views and experiences of the civil legal aid system, is given below.

The Respondents

There were 105 responses to the questionnaire, with 62 submitted online and 43 received by post, fax or by email. Of the 105 responses, 88 (84%) were from practitioners of firms that offer civil legal aid service and 17 (16%) were from practitioners of firms that do not. The biggest percentage of respondents (45%) was from the largest catchment area (100,000 – 1m) but a considerable percentage (38%) represented more rural areas (1,000 – 50,000).

Summary of Views Expressed

The response to the questionnaire, while positive in terms of the number of participants, is negative overall in respect of practitioners' views of the current system. The majority of the responses received included very full and frank details of the problems faced by practitioners (as outlined in annexe 2), with 92% of those who currently offer civil legal aid stating that they envisage a time in the next four years when they will no longer offer this service. When asked their reasons for either giving up or considering giving up categories of legal aid work, 80% of practitioners said it was because they were "financially unviable" and 60% of respondents stated that it was also due to the bureaucracy involved.

A total of 42% of respondents have seen an increase in civil legal aid work. This can be explained by fewer providers having to cope with an unchanging, if not increasing, level of demand.

It is also worth noting that for 65% of the respondents, civil legal aid represents less than 20% of their business. This suggests that it would be relatively easy for them to stop doing civil legal aid work altogether.

From the open-ended responses, the most common themes that arose were:

- Poor remuneration
- Excessive bureaucracy
- Lack of leeway on the part of SLAB
- The creation of advice deserts

Other interesting points raised were:

- Unattractiveness of civil legal aid work to new lawyers
- Inappropriateness of block fees when it is impossible to estimate the volume of work that will be carried out
- Decrease of standard of work
- Financial liability of a legal aid practitioner within an otherwise non-legal aid firm
- Family law is the area of work most threatened by the problems

It must also be noted that some of the responses show a real pessimism for the future of legal aid. For example, one respondent said: "We also need to accept that no Government is going to win any votes by paying lawyers more and therefore any increase in legal aid rates will be relatively modest, and not enough to tempt sufficient lawyers back into a legal aid practice." Another claimed: "The abolition of civil legal aid is long overdue; it now creates serious unfairness when a legally aided party litigates against a non-legally aided party."

Conclusions

Based on the evidence gathered, it is clear that the demand for civil legal assistance is greater than the current level of supply. The overall number of registered practitioners is reducing year on year; many are limiting their provision (for example, only to existing clients) and the majority of respondents anticipate ceasing to offer civil legal work altogether in the near future.

The term "advice deserts" has been used to describe the current lack of good geographic coverage. It is evident that this situation exists and will worsen in the next few years. This is a particular concern because those requiring legal aid are often the more disadvantaged in society.

Amongst civil legal aid practitioners, there is a strong feeling of dissatisfaction and disillusionment with the legal aid system. Due to the number of practitioners contemplating giving up legal aid work and the indication that new solicitors are not attracted to this part of the profession, there is concern over the future quality of service provision.

Whilst it may be overstating matters to say that the current system is in crisis, this report would indicate that without change it will be extremely difficult to ensure acceptable levels of access to justice in Scotland in the future.

Breakdown of responses

Question	Total no of responses	Percentage of total response	Percentage of those who offer civil legal aid
1. What is the population in your catchment area?			
1-10,000	7	7	8
10,000 – 50,000	31	30	35
50,000 – 100,000	19	18	22
100,000 – 1,000,000	45	39	51
2. Does your firm offer civil legal aid?			
Yes	88	84	n/a
No	17	16	n/a
3. How has the volume of civil legal aid work undertaken by your firm changed over the last 10 years?			
50%+ increase	37		42
50-25% increase	17		19
25-1% increase	15		17
0	3		3
1-25% decrease	5		6
25-50% decrease	4		5
50%+ decrease	3		3
4a. Are there any categories of civil legal aid work that you previously offered but now no longer do?			
Divorce	18		20
Financial Provision	32		36
Residence Contact	15		17
Interdict	36		41
Reparation	24		27
Contract	27		31
Other	18		20
4b. Are there any categories of civil legal aid work that you currently offer but are considering stopping?			
Divorce	34		39
Financial Provision	32		36
Residence Contact	37		42
Interdict	35		40
Reparation	30		34
Contract	17		19
Other	17		19
5. Why did you cease offering this/these service(s)?			
Financially unviable	80		91
Hours involved	39		44
Risk management	27		31
Bureaucracy	63		72
Change of focus	5		6
6. Approx what percentage of your firm's total annual income does civil legal aid represent?			
0-20	57		65
20-40	14		16
40-60	9		10
60-80	3		3
80-100	1		1

7. In the current conditions, do you envisage a time when you will no longer accept any legal aid clients? Yes No	81 6		92 7
8. If yes, can you estimate how much longer you will offer a legal aid service? 0 – 6 months 6 months – 1 year 1 – 2 years 2 – 4 years	7 26 26 20		8 30 30 23
9. In general terms, do you think a change from time and line to a block fee structure has been a positive move? Yes No	7 74		8 84
10. What impact have the 2003 reforms had on your overall income from civil legal aid cases? Increase Decrease No change	3 62 19		3 70 22
11. If you answered no to question 2, has your firm ever offered civil legal aid? Yes No	13 4		*76 *24
12. When did you stop offering civil legal aid?	Please see annexe 1 for details		
13. What categories of work did you carry out?	Please see annexe 1 for details		
14. Please let us know your thoughts on the current legal aid situation, e.g. what your experiences are, your views on the recent reforms, or any suggestions you may have for improvement. Also, if you think there are other relevant points that this questionnaire does not address, please outline them.	Please see annexe 2 for responses to this question		

***These figures are a percentage of the total number of people who DO NOT offer civil legal aid.**

No of firms registered for civil legal assistance (taken from SLAB annual report 2005-6)

As at 31/03/2005	As at 31/03/2006	As at 31/03/2007
756	732	676

Annexe 1 – Practitioners who do not offer civil legal aid

Responses to question 12, “When did you stop offering civil legal aid?”:

- Already done so in certain categories as of 12 months ago and that list of exclusions increases in April 2007 as a result of the changes in the ‘a and a’ rules and admin
- In majority of cases, 12 months ago
- Earlier this year
- Five or more years ago
- We haven’t stopped completely. For existing clients and children we provide legal aid at our discretion. It means we lose money. We have one case where law accountants estimate our fee on private basis was £45,500 and we have a claim against the fund for less than £9,000, which will no doubt also be abated. It is financially unviable.
- Last year
- About 2002
- Only now provide legal aid to existing clients and do not take on new cases
- November 2006
- 2001
- 2004
- Over a year ago
- About 12 months ago
- 2000
- We have been offering it on steadily reducing basis. We offer a welfare rights service and for this reason continue to provide services under legal advice and assistance. In all other areas we have determined that the level of remuneration and sheer mind-blowing pettiness and bureaucracy of the system make legal aid unworkable. We are willing to incur outlays for clients who cannot afford to pay with possibility they will not be recovered if case does not proceed rather than go through rigmarole of LA&A.
- 2003

Responses to question 13, “What categories of work did you carry out?”:

- Virtually everything
- All areas of family law and child law/adoption
- Civil litigation, matrimonial
- Mostly divorce and family law proceedings
- Mainly family and reparation
- All family work
- All family law categories.
- All types of civil
- Divorce; all family matters; personal injury; debt; breach of contract & misc.
- Everything
- All categories
- Matrimonial and family; reparation; medical negligence
- Most civil law
- Reparation (in limited number of legally aided cases)/medical negligence
- Civil and criminal legal aid and advice and assistance

Annexe 2 – Responses to question 14

There was considerable strength of feeling in the responses to question 14. Below is a representative sample of what the respondents wrote.

- Complete frustration at the time it takes to complete forms, many of which require the same information again and again. Frustration at the volume of work carried out, time spent on it, and the pitiful return in terms of fees. Absolute frustration at the abatement of accounts, and refusal to pay outlays and the time spent struggling with the board trying to obtain payment.
- We often have people call reception and ask for legal aid advice; when we turn them away they are often upset and state that they have tried numerous other places without success. Many people in Edinburgh are struggling to secure legal representation, never mind quality legal representation.
- I am practising in a legal aid 'desert' at present, with none of the other firms in my town offering legal aid other than, on occasions, for legal advice and assistance. I receive referrals from other firms and act for clients from Braemar (60 miles away) Montrose (25 miles away) and Portlethen (10 miles away) on a regular basis. The sheer bureaucracy is a major disincentive to the provision of legal aid.
- We are regularly having clients telling us that they have been unable to find a solicitor to undertake civil legal aid cases for them.
- I now have a larger number of clients from outwith our immediate geographical area as firms in adjacent towns are stopping doing legal aid work and referring clients to us.
- All forms are now ridiculously complicated and put off solicitors and clients. Rate of pay has decreased notwithstanding the supposed increase. Suggest reversion to time and line with the supposed increased rates still in place if not increased further.
- I am a fairly newly qualified solicitor practising a mix of civil litigation, with an emphasis on family law, and a mix of private and legal aid clients. However, it is my intention, and the firm's intention, to stop offering a legal aid service in the near future. The pay you receive is dreadful and the forms are hugely time consuming. It is commercially non-viable.
- The current situation is terrible. I don't foresee anyone carrying out legal aid work in 10 years. It is unprofitable, unmanageable and time consuming. The bureaucracy has a strangling effect on the ability to provide the service properly.

At my stage (four years qualified) my friends are simply saying that they will not do legal aid work. I know very few who would continue with it if they had the choice. As and when they become partners and have control of the decisions they will do everything in their power to withdraw from it. 'Representation for all' will become a thing of the past.

- We anticipate that we will give up civil legal aid work within the next nine months, solely because of the poor rate of remuneration. We already turn away business because we limit the number of legal aid cases we take on.
- Bureaucracy in terms of form-filling, accounts process and, generally, financial non-viability have all contributed to the decline in legal aid work that we do as a firm. We cannot afford to offer legal aid but will in certain circumstances, although even this is declining. Whilst we wish to maintain access to justice, we are a business as well

and the legal aid rates are so poor that it does not make financial sense to do this type of work.

- The Scottish Child Law Centre frequently receives calls from parents who would not qualify for legal aid but wish to apply to court under s11 of the Children (Scotland) Act 1995. Without legal aid, unless the parent has a substantial amount of spare resources, access to justice is limited. Often we are also asked about the provision of legal advice in the Highlands, where there are a limited number of solicitors who provide legal aid. This can arise in family actions where the only two legal aid solicitors in the area are already representing other family members.
- Unless there was a very substantial increase in the rates, we would not envisage continuing with legal aid in the medium to long term.
- These issues need to be reviewed. It is thought that the legal aid board pays about a third or a quarter of the sums that can be obtained for the same work in a case where the client is paying privately. The responsibilities to the solicitor in providing legal aid have continued to grow, and there is no reason that a solicitor should not be remunerated properly for providing a quality service. If the legal aid fees are not substantially increased, solicitors will stop offering legal aid and the public will not have access to justice.
- The current situation re legal aid is dire. Many firms in this locality are considering not offering legal aid work. Where are people clearly in need of protection from (usually) domestic violence meant to turn? The standard advice from the police when called to an incident is to go to their lawyer and seek an interdict. I do not know of one firm in the area that still offers legal aid interdict work. Legal aid centres are not the answer. How will they remain free from conflict?
- For too long, the Executive has relied on the goodwill and professionalism of solicitors. That goodwill is rapidly dwindling and more of my colleagues are becoming totally disillusioned with being the 'poor relation' within the profession.
- We practice in a remote island area. There are now two practices remaining in the sheriff court district that operate civil legal aid. We see instances now where parties cannot obtain representation of any sort due to conflict of interest or sheer pressure of time/ lack of available resources.

The recent reforms are well-intentioned but don't appear to address the problem here. Only when the work pays enough to entice 'bright young things' to turn their backs on commercial practice and do civil legal aid work might the situation change. It's about market forces and I see no way in which any Scottish Executive of any political hue will ever be prepared to fund the civil legal aid system to the extent required to make it an attractive option for younger practitioners.

- I specialise in family law. The change to block fees has created a marked change in fee income from legal aid cases and leads to questions as to their viability in the overall costing structure of the firm.
- We previously offered a full civil legal aid service to all of our clients. However, we are now prepared to accept legal aid instructions only from our established local correspondents, and the numbers of those instructions are also reducing significantly.
- We now only offer legal aid to child clients and in 'adults with incapacity' cases. [The] reasons [are]: poor remuneration; not getting paid for some work done; dealing with abatements; having to pay someone to prepare accounts; excessive bureaucracy.
- There is now only one firm in the whole of north-east Fife offering civil legal aid, i.e. [*name of firm*], in Cupar. The three other firms including my own ([*name of firm*]),

[*name of firm*], and [*name of firm*], maintain our registration but are not taking new divorce, financial provision, residence/contact or interdict work, although we maintain our registration so that we can do a divorce for any client who may have substantial contact with the firm ... It does not sit comfortably with any of us in north-east Fife to cease offering legal aid because we are aware there are a lot of people being left without access to justice or who cannot get a solicitor without travelling outwith their geographical area.

- The recent reforms go only a small way to addressing the current problems. Efforts must be renewed so that the new Scottish Executive is made fully aware of the rapidly expanding legal aid 'desert' outwith the central belt. Even within central Scotland, more and more firms are withdrawing from legal aid due to the current levels of payment. The Executive has to realise that if the scheme is to work at all, it must be properly funded. This will involve the Executive in a large increase in funding to make the scheme even reasonably attractive from a financial point of view.

If the funding is not forthcoming, the scheme will simply wither away. That cannot be allowed to happen in a caring legal system.

- Red tape and constantly jumping through hoops for little reward.
- The online AA forms have been useful, although the online system has a huge number of flaws and is hugely slow. The expectations of SLAB in terms of paperwork for the application and thereafter throughout the case does not justify the rewards. The process of quality audit and peer review is ridiculous in terms of justifying the work which has been done for the client. Given the level of remuneration paid by SLAB, the additional paperwork, recording of work and assessing of work is not justified. You do not require to provide such justification to private clients or submit to any external assessment of work where you are remunerated per hour at a rate three times more than SLAB.
- Bureaucracy considerable but unremunerated. Block fees create a loss in anything but simple cases.
- The current legal aid position in civil cases is untenable and unsustainable. We will always consider each case carefully before deciding if we will act, if legal aid is required. We will rarely undertake any cases except in exceptional circumstances unless the client is a long-standing one. (Even then, we may decline to do so). Previously, we did virtually all types of legal aid cases. Now we are selective. We regularly turn away initial enquiries from prospective clients. Very few firms, if any, in our area take on any legal aid work.
- When it costs at least £60 or so an hour to pay qualified staff to undertake legal aid work, one would have to be prepared to regard it as pro bono to undertake it at the silly rates offered by SLAB.
- I gave up legal aid because I found that it involved doing almost twice as much work for less than half the recommended rate. It was unprofitable and contributed significantly to the break up of my firm; the other partners who did not do legal aid work found that I was a financial liability!
- Although there are substantial numbers registered to provide civil legal aid, my experience is that many of them in practice are doing less/ not taking as many cases on. The standard of ability is decreasing commensurately.
- Civil legal aid and advice and assistance are becoming/have become a bureaucratic and financial nightmare. More time is spent on the working of civil legal aid than in the preparation of initial writs etc.