

**LEGAL AID INQUIRY BY THE  
CONSTITUTIONAL AFFAIRS COMMITTEE  
OF THE HOUSE OF COMMONS**

Written evidence by the Law Society

# Contents

<b>SUMMARY</b>	<b>3</b>
<b>INTRODUCTION</b>	<b>5</b>
<b>SECTION 1: PROBLEMS IN THE CURRENT LEGAL AID SYSTEM AND THEIR CAUSES</b>	<b>7</b>
<b>SECTION 2: PROPOSALS FOR A NEW SYSTEM OF LEGAL AID</b>	<b>21</b>
<b>SECTION 3: QUESTIONS RAISED BY THE SELECT COMMITTEE</b>	

## Summary

The Law Society believes that an effective legal aid system should aim to provide equal access for all to high quality legal services, with a particular focus on combating social exclusion.

The Society is deeply concerned that provision of civil legal aid is falling far short of that objective. Unless this situation is addressed, the vision of the founders of the modern legal aid system will not be realised and we will be left with a situation where, for millions of people, the ability to enforce and defend their legal rights depends more on the depth of their wallet than on the merits of their case. In a society which prides itself on the excellence of its justice system, that is wholly unacceptable.

The legal aid system is suffering from a number of **problems**:

- a) Grossly inadequate financial eligibility limits: this mean that millions of people are unable to afford to pursue their rights while millions more are theoretically eligible for legal aid, but only on payment of a contribution they cannot realistically afford.
- b) The emergence of advice deserts – areas where there are few or no legal aid practitioners; this means people are being denied access to legal advice even when eligible for legal aid.
- c) Unmet need: Many people are unaware of their rights and therefore go without the legal advice that would solve their problems.
- d) A diminishing number of solicitors offering legal aid.

These problems have six main **causes**:

- e) Failure to treat access to justice as a high priority for public expenditure.
- f) Managing legal aid expenditure as a single budget; this mean that overspends on criminal legal aid are met by cutting civil legal aid.
- g) Poor forecasting of demands on the criminal legal aid budget has led to erosion of the civil legal aid budget.

- h) Rationing of legal aid; restrictions on 'matter starts' (the number of cases a legal aid solicitor is allocated by the Legal Service Commission), means some eligible clients are being turned away.
- i) The high cost of complex cases
- j) Too much bureaucracy is diverting resources from the front line.

The Government should commit itself to restoring the legal aid system so that it can meet its original objectives. Now that the introduction of conditional fees ensures that legal aid need not be spent on cases for which other methods of funding are available, that should be achievable at an affordable cost.

The Law Society proposes the following **solutions**:

- a) A renewed government commitment – expressed in deed rather than just words – to the goal of equal access to justice for all.
- b) An alternative approach to managing the legal aid budget which ring-fences the civil legal aid fund, and improved forecasting of the impact of justice initiatives
- c) A new contract for legal aid providers which reduces bureaucracy and enhances the quality of delivery.
- d) Appropriate use of new methods of delivery, for example video conferencing, Internet, telephony.
- e) A scheme aimed at encouraging enough new entrants to the profession to pursue a career in legal aid.
- f) A scheme that would enable equality and diversity responsibilities to be fulfilled by purchaser and providers of the Community Legal Service.

## **Introduction**

The legal aid system today falls far short of the system envisaged by the post-war Attlee Government, which aimed to provide justice for all. Established in 1949, the scope was limited at first to High Court cases, but the scheme was extended to County Court cases in the early 1960's. Public funding for legal advice was introduced in the late 1950s and greatly extended in 1973. Financial eligibility was originally set at a level where around 80% of households were eligible, either free or on payment of a contribution. Failure to upgrade the eligibility limits meant that that proportion declined steadily until the 1970s. In 1979 – with all-Party support – the then Government raised the financial limits substantially so that the free income limit was set about 40% above the level of income support, and around 70% of households were eligible either free or on payment of a contribution.

From that high point, the system has suffered a serious decline. There has been a very sharp drop in financial eligibility; there are increasing difficulties in some areas of the country in finding legal help (especially in housing law); and rationing through limits on the number of cases solicitors can taken on has further damaged the service. There have also been some modest improvements, especially in representation in asylum appeals – but the significance of these is far outweighed by the reductions in service.

The combined effect is leaving many vulnerable people without a means of solving their problems, thereby creating an expanding population of the socially excluded. The Society believes that any 'saving' is significantly offset by calls on other public sector budgets, e.g., social welfare and health, as clusters of social problems develop.

In this evidence, the Society attempts to identify the major flaws in the current system and outlines proposals for a new system that would revive the Attlee Government's vision, whilst recognising that the world has moved on dramatically. The Society's proposals are set out very fully in a document entitled 'Protecting Rights and Tackling Social Exclusion', which was produced following wide consultation with legal aid providers and other key stakeholders, and is appended to this evidence, at Annex A.

The Society welcomes indications from both the Department for Constitutional Affairs and the Legal Services Commission that they recognise the need to design a better system of legal aid. The Society looks forward to working with both to achieve a system that meets the Government's need to achieve best value in legal aid services whilst ensuring that individuals' rights are protected and problems of social exclusion are effectively tackled.

The Society also welcome Ministers' recent public recognition of the value of legal aid, but it stresses the importance of giving this practical effect through the design of a much improved system of legal aid.

# Section 1: Problems in the current system and their causes

## Evidence of how the current system is failing

The system is suffering from a number of **problems**:

- a) Inadequate financial eligibility limits: this means that millions of people are unable to afford to pursue their rights while millions more are theoretically eligible for legal aid, but only on payment of a contribution they cannot realistically afford.
- b) The emergence of advice deserts – areas where there are few or no legal aid practitioners; this means people are being denied access to legal advice even when eligible for legal aid.
- c) Unmet need: Many people are unaware of their rights and therefore go without the legal advice that would solve their problems.
- d) A diminishing number of solicitors offering legal aid

### a) Inadequate financial eligibility limits

Following the reduction in the financial eligibility limits for legal aid in 1993, only applicants with incomes at or below the level of income support were eligible for legal aid without payment of a contribution. Legal aid was available to others only on payment of a contribution of one-third of income above the income support level towards the costs of legal aid, for as long as these cases lasted. Many commentators – including the Law Society – argued that this was tantamount to abolishing legal aid above the free limit, because those with income just above the income support level simply would not be able to afford their contribution – it was all they could do to make ends meet on a day to day basis. Indeed it was recognition of that fact which led the then Government to raise the free income limit to around 40% above the supplementary benefit level in 1979.

Figures from the Legal Aid Board showed that few applicants accepted offers of legal aid where a contribution was required – in 1994-95 only 14% of legal aid certificates issued were contributory. Many of those eligible for contributory legal aid did not apply at all – many others did apply, but did not take up the offer of legal aid.

Research published by the Legal Aid Board in 1996 showed that by far the most common reason given for failing to take up an offer was the applicant's inability to pay the contribution. People on State benefits, such as family credit, took the view that the granting of these benefits was acknowledgement that their income needed supplementing and it was therefore unreasonable to expect them to contribute to their legal aid costs.

Despite changes in the method of assessment, the level of the free limit and the degree to which contributions are required, are essentially unchanged since the mid-1990s. It therefore remains the case that millions of people are technically eligible for legal aid yet unable to afford the contribution required; whilst millions more are ineligible for legal aid yet unable to afford the cost of legal action. No society can claim to afford its citizens equal protection under the law whilst that remains the case.

The Law Society believes that financial eligibility for legal aid must be increased significantly. The Government should increase the lower limit so that those with incomes close to the level of income support are not required to contribute. They should ensure that contributions above the free limit are affordable, and that the upper eligibility limit is not set at a level which excludes from help people who cannot afford to litigate without assistance. The impact of the current capital limits also needs re-examination.

#### **b) The emergence of advice deserts**

Even where eligible for legal aid, people are being denied access to legal advice due to the emergence of "advice deserts" – areas where there are few or no legal aid practitioners.

The Law Society, with the help of Citizens Advice, has compiled a range of evidence that paints a worrying picture of unmet need around the country.

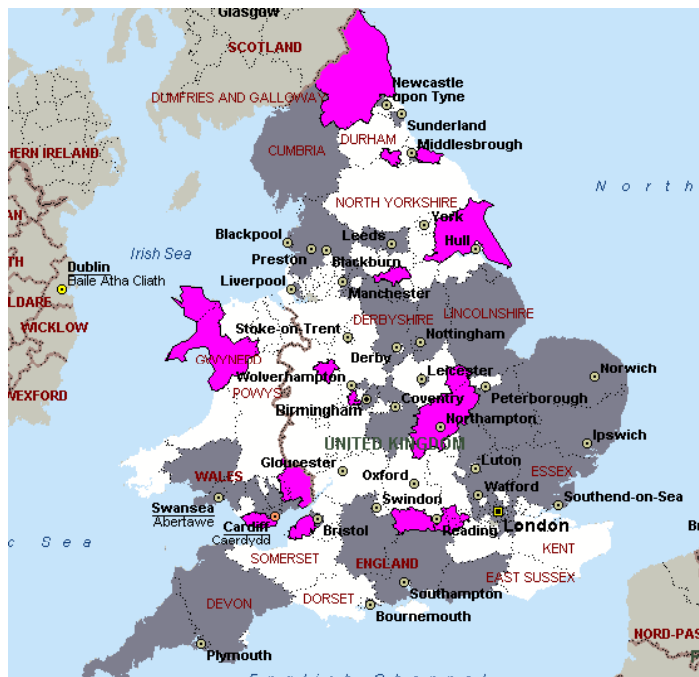
Of particular concern is the growth of advice deserts in key areas of law such as housing and social welfare. This is not just a serious matter for the individual struggling to find the legal help he or she needs, it is costly for society as a whole. Failure to receive timely legal advice to resolve a housing problem, for example, can cause a cluster of social problems to develop, with potentially expensive impact on other public sector budgets such as health and social welfare.

## HOUSING LEGAL AID PROVIDERS:

## DENSITY OF PROVISION BY COUNTY

KEY:  
NUMBER OF PROVIDERS  
BY COUNTY

- No providers
- 1 – 3 providers
- 4 – 20 providers



0 km 50 100 150 200 250

**Map 1: Housing legal aid providers – England and Wales**

Advice deserts have developed where there are no, or too few legal aid providers in areas. For example, map 1 shows there is no housing lawyer in the whole of Northumberland.

**WELFARE  
BENEFIT  
LEGAL AID  
PROVIDERS:**

**FOCUS ON  
AREAS OF  
LOW DENSITY  
OF PROVISION**

**KEY:  
NUMBER OF PROVIDERS  
BY COUNTY**

- No providers
- 1 – 3 providers
- 4 – 35 providers
- Location of providers



**Map 2: Welfare benefits legal aid providers**

Map 2 shows there are no welfare benefits providers in Calderdale, Sheffield, or Rotherham; and only one provider in each of the white shaded areas.

There is not a single solicitors firm carrying out legal aid housing work in the whole of Kent, and there are only three family practitioners carrying out publicly funded work in Tunbridge Wells. As a result of this under-supply people subject to domestic violence are coming to court to represent themselves, thereby imposing significant pressures on court resources.

Map 1 shows provision of legal aid housing advisors throughout the country, and indicates that there are large areas that are not covered. Many of those most in need of legal services simply do not have the money to travel long distances.

Research findings due to be published by Citizens Advice<sup>1</sup> will show that 68% of bureaux report difficulties in finding legal aid solicitors to deal with immigration cases; 58% with family cases; 60% with housing cases; 27% with employment cases and 10% with welfare benefit law cases.

<sup>1</sup> The Geography of Advice, January 2004

Set out below are some examples of problems in providing the help the public need as reported to the Law Society by legal aid solicitors between November and December 2003.

- A mother of four children (aged 3, 6, 8, 9) from Preston, has suffered problems for nine months since moving into local authority housing. For six months there was no hot water, for a time there was no heating because the boiler broke and took six weeks to repair. She claims her fire is dangerous as the front fender bars are hanging loose. The house has mice and the previous tenants left metal rubbish in the garden – making it dangerous for children. The local authority has so far been unwilling to resolve the problems. She wants to move but has been unable to find a solicitor to help her take the Local Authority to court. There is only one law firm offering housing advice in the whole of Preston. The firm recently ran out of ‘matter starts’ and so, unable to take on any cases, is referring people to Shelter in Fleetwood, 12 miles away, for phone advice. Shelter has just three face to face interviews in Preston on a weekly basis, with a three-week wait for an appointment. The Legal Services Commission has now agreed that the firm can take on more cases, but has not specified how many.
- There is only one firm providing housing, welfare benefits, debt, employment and consumer legal aid advice in a local area near Sunderland. The firm has however decided to give up this work considering that it is not profitable and there is too much bureaucracy in the system. This will leave nearly half a million people without access to a legal aid housing solicitor north of Sunderland, south of the Tyne and east to west from Washington to South Shields. People may seek help in advice agencies but there will be no one to do court work.
- A solicitor in Brixton, has to turn away on average eight to ten people a week with housing disrepair claims, homeless problems, or issues relating to eviction or possession proceedings. The firm is turning clients away due to a drop in the number of cases the firm is permitted to take on each year under its housing contract. Huge numbers of these people are therefore being made homeless and destitute, with no access to the limited number of solicitors who are able to help them.

The Gazette's 2004 Survey found that 74% of firms have turned clients away in the last year. They cited the following reasons:

- did not have a contract in that area (47%)
- lacked the physical capacity (45%)
- being selective about the cases they took on (42%)
- run out of matter starts (36%)
- could not see the client in time (24%)

Further examples are available 'The Geography of Advice' which has been submitted as evidence by Citizen's Advice.

#### **c) Unmet need for legal services**

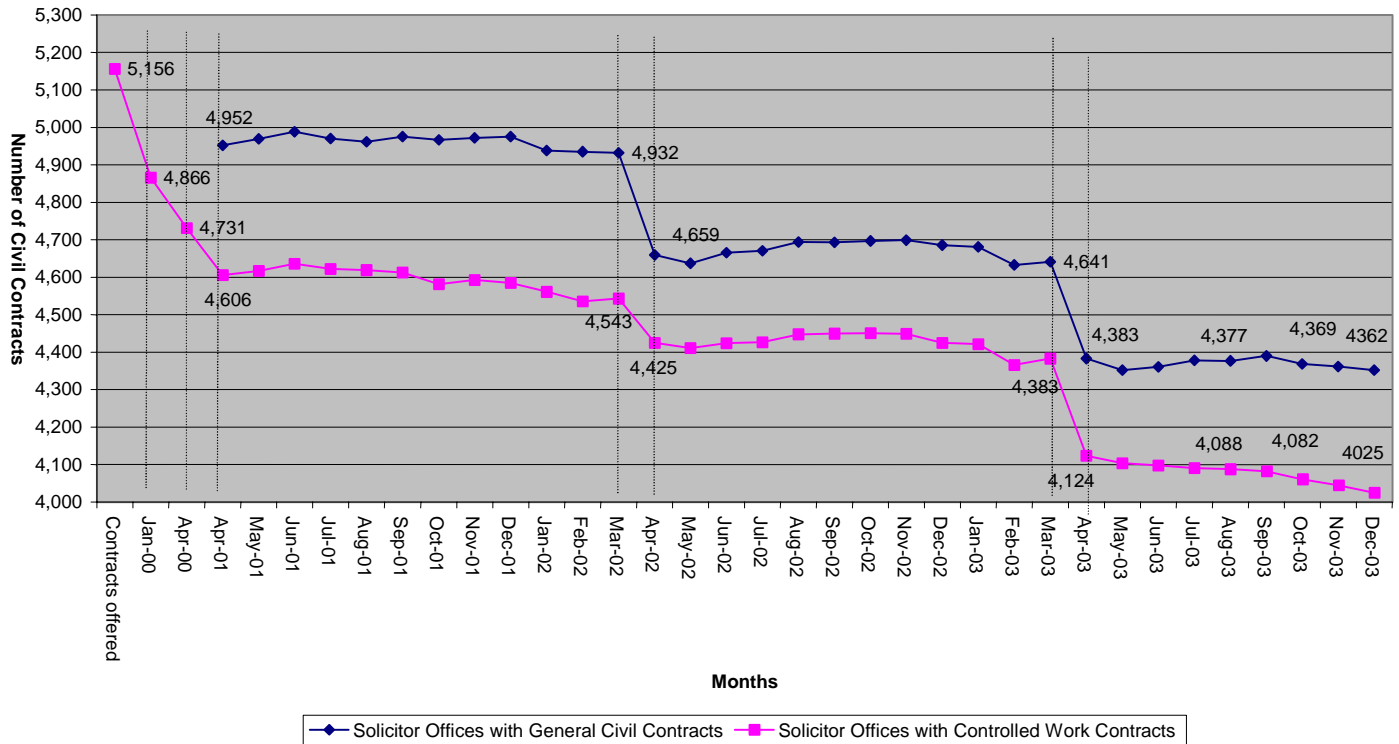
The select committee's attention is also drawn to the findings of research by the Legal Services Research Centre, which highlights significant unmet need for legal advice. In an interim report to the then LCD and LSC in December 2002, the LSRC indicated that 36% of the 5,611 respondents to the main survey reported experiencing one or more justiciable matters, excluding trivial problems. In 19% of matters, no action was taken to deal with the problem(s). However, this figure rose to 40% in five categories of problem: mental health, medical negligence, police treatment, personal injury and domestic violence.

The report shows that: *"no action is taken to resolve in excess of one million [legal] problems because it is either not known what can be done or believed that nothing can be done"*

#### **d) A diminishing number of solicitors offering legal aid**

The Legal Services Commission's January 2004 Civil Contracting Report shows that the number of solicitors with controlled work contracts has fallen by 17% since January 2000, as graph 1 'Total number of solicitor offices with General Civil Contracts,' taken from the Legal Services Commission's January 2004 Civil Contracting Report, shows.

**Total number of solicitor offices with General Civil Contracts**



Legal Services Commission Civil Contracting Report, Jan 2004

Table 1 below shows the change in the number of contracts in Family and Non Family civil categories between March 2003 and December 2003. The trend is sharply downward in all but three categories.

**Table 1: Solicitor contracts awarded by category**

Solicitor Contracts Awarded by Category			
Contract Categories	March 2003	December 2003	% Change
Family	3,591	3,281	-9.4
Mental Health	346	316	-9.4
Debt	242	192	-26
Employment	212	188	-12.7
Consumer	92	67	-37.3
Housing	531	470	-12.9
Welfare Benefits	266	223	-19.2
Education	50	48	-4.1
Community Care	55	50	-10
Actions Against the Police	75	78	4
Public Law	36	33	-9

Tolerance	3,187	2,888	-10.3
Immigration	555	501	-10.7
Personal Injury	1,368	1,316	-3.9
Clinical Negligence	295	316	7.1
Solicitor Offices with Controlled Work Contracts	<b>4,383</b>	<b>4,025</b>	<b>-8.9</b>
Additional Licence Only Contracts	<b>258</b>	<b>327</b>	<b>26.7</b>
Solicitor Offices with General Civil Contracts	<b>4,641</b>	<b>4,352</b>	<b>-6.6</b>

Research by the Society and the Law Society's Gazette also indicates that many legal aid practitioners are gradually phasing out legal aid work. The Gazette's 2004 Survey of firms undertaking legal aid work found that 74% of firms surveyed did not anticipate undertaking the same amount of legal aid work in five years time.

The Law Society Gazette's 2004 survey found that 20% of firms questioned had dropped at least one contract area in the last year. 17% of firms surveyed by the Gazette indicated that they were prepared to drop at least one contract area this year, either because they have not put in a bid for 2004 agreements or because they do not intend to take up offers of new contracts.

There has also been a marked decline in the morale of legal aid providers. In 2003, the Society embarked on a nationwide consultation with legal aid practitioners as part of developing the proposals set out in 'Protecting Rights and Tackling Social Exclusion'. The Society held 16 roadshows in order to hear directly from legal aid practitioners about their assessment of problems on the ground and their ideas for an improved system. What emerged was a picture of great dissatisfaction with the way the system was operating. The predominant feeling was that the government was running the legal aid system into the ground and legal aid practitioners expressed great doubts about being able to continue to provide a service for their clients.

#### Recruitment and retention problems

Qualitative research conducted by the Society has confirmed the existence of serious recruitment and retention problems in high street firms, many of which are legal aid providers. The Gazette's 2004 survey shows that 60% of respondents had

experienced problems recruiting lawyers in the last year. The Society is concerned by growing evidence that legal aid is no longer viewed as a viable career by those entering the profession. Preliminary findings of research conducted by the Law Society in January 2004 show that although, all things being equal\*, about half of first year trainee solicitors would have been likely to pursue a career in legal aid, in fact, only about one in twelve are now likely to do so.

Few legal aid firms are able to afford to take on trainees and therefore the potential to create a corps of legal aid lawyers for the future is seriously at risk.

On current trends, the prospects for the future of publicly funded legal services are bleak. Those providing legal aid are a comparatively elderly cohort of the profession. The enormous gulf in earnings prospects between those in commercial firms and those doing publicly funded work means that despite their social conscience few newly qualified solicitors feel able to pursue a career in legal aid firms or the not-for-profit sector.

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\* for example salaries, hours of work, working conditions etc.

The problems in the system have six main **causes**:

- e) Failure to treat access to justice as a high priority for public expenditure.
- f) Managing legal aid expenditure as a single budget; this mean that overspends on criminal legal aid are met by cutting civil legal aid.
- g) Poor forecasting of demands on the criminal legal aid budget has led to erosion of the civil legal aid budget.
- h) Rationing of legal aid; restrictions on 'matter starts' (the number of cases a legal aid solicitor is allocated by the Legal Service Commission), means some eligible clients are being turned away.
- i) The high cost of complex cases
- j) Too much bureaucracy is diverting resources from the front line.

**e) Failure to treat access to justice as a high priority for public expenditure**

We have already outlined at Section 1a) the problems of inadequate financial eligibility limits, which mean that millions are being denied the means of pursuing their rights.

An attempt in April 2002 by the then Lord Chancellor's Department to extend legal aid to a greater proportion of low-income families, has been undermined by failure to commit corresponding funds. In order to achieve the increase in scope without increasing the legal aid budget, caps on gross income and capital were imposed. However, as the value of an individual's home is taken into account in the calculations, many homeowners have found themselves excluded from eligibility. During a period of rising property values the problem is exacerbated.

The Law Society accepts that those with substantial equity in a house should be required to contribute part or all of the cost, but people cannot always afford to borrow more, or to sell their house. In those circumstances, they should be entitled to legal aid, with the cost being repaid subsequently through an interest-bearing charge on the house.

**f) Managing legal aid expenditure as a single budget; this mean that overspends on criminal legal aid are met by cutting civil legal aid.**

Within a legal aid budget, which is effectively cash-limited, civil legal aid is not ring-fenced from the demand-led criminal legal aid budget. The civil legal aid budget has been cut to pay for poorly anticipated demand on the criminal legal aid budget, due to

new criminal justice policies. It is nonsensical for the demand-led criminal legal aid - essential to underpin a fair criminal process – to be managed as part of the same fixed pot as civil legal aid, which serves two quite different purposes – promoting equal access to justice and combating social exclusion.

Table 2 shows how the criminal legal aid budget is rising at the expense of the civil legal aid budget.

**Table 2: Criminal Defence Service and Crown Court Payments as a percentage of total Net Spend on Legal Aid**

Year	CDS Payments Net £M (1)	Crown Court & Higher Courts Representation Net £M (2)	Total Net Spend on Legal Aid £ M	(1)+(2) as % of Total Payments
1999/00	411	374	1,552	50.6
2000/01	450.4	422.0	1,664.4	52.4
2001/02	508.3	474.1	1,716.9	57.2
2002/03	526.4	569.3	1,908.6	57.4

**g) Poor forecasting of demands on the criminal legal aid budget has led to erosion of the civil legal aid budget**

Criminal justice policy initiatives introduced by the Government are a principal cause of the increase in the criminal legal aid budget. The claims concerning the increase in the amount of work in the system as a result are not conjecture or anecdotal. In its latest Annual Report the Kent CPS reported a 17% increase in the number of cases passed to them by the police in the past year and they report an expectation for this rise in work to continue.

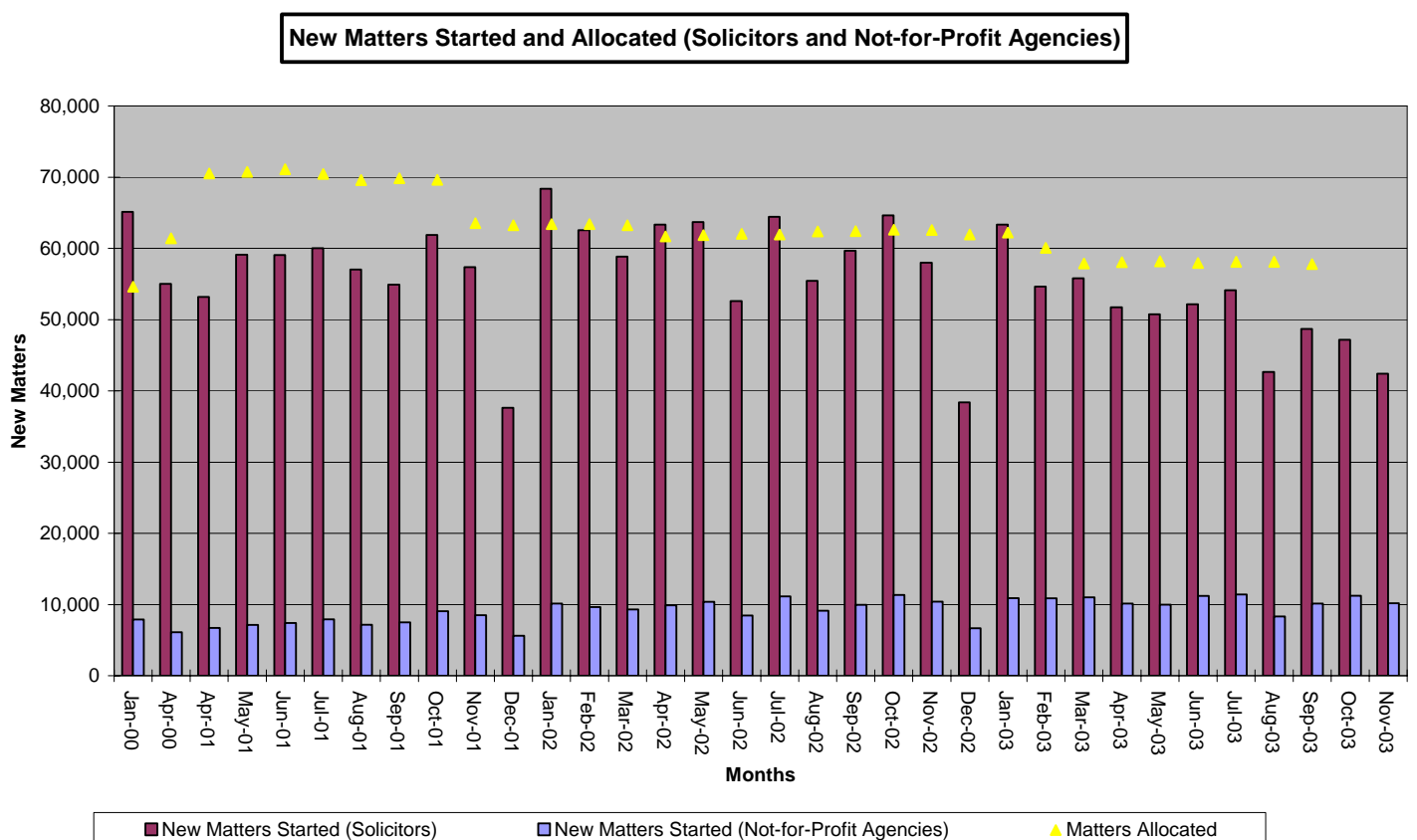
The Society is concerned that little thought appears to have been given to the true cost of criminal justice changes. Complicated law costs money - cases last longer and more people need representation in the interests of justice.

**h) Rationing of legal aid**

Advice deserts have developed partly as a consequence of the way the Legal Services Commission operates contracts with providers. Under a contract a provider is issued with a set number of ‘matter starts’ (i.e. the provider can take on a set number of cases). However, if a provider exhausts the matter starts allocation before the end of the financial year, no further cases may be taken on, even when clients are requesting help. This form of rationing is contributing to social exclusion.

Most recent figures on 'matter starts' from the LSC's January 2004 Civil Contracting Report, show that the number of matters started in November 2003 fell sharply from the same month in previous years. In November 2003, 42,405 new matter starts were issued to solicitors, compared with 57,968 in November 2002 and 57,363 in November 2001. As the graph below shows, there is a general downward trend in the number of solicitors taking on new cases.

Graph 2 New matters started and allocated (Solicitor and Not for Profit Agencies)



Legal Services Commission Civil Contracting Report, Jan 2004

Matter starts for solicitors have fallen from 364,728 to 326,482 in the first 8 months of this financial year compared to the same period last year, a reduction of 10%.

Although not-for-profit matter starts have increased, the increase has been far too small to offset the drop in solicitor matter starts. Overall there has been a 17.5% reduction in solicitor matter starts since contracting was introduced.

The Law Society's Gazette's 2004 survey also shows that of the civil legal aid firms questioned, 56% said they had experienced a shortage of matter starts in the last year, with 36% saying they had requested more matter starts but had been turned down.

**i) The high cost of complex cases**

The Society has long been concerned about the disproportionate costs of very high cost cases which are largely responsible for the top 1% of Crown Court Cases accounting for around 49% of legal aid expenditure in the Crown Court. The Society agrees that these costs need to be brought under control and supports the efforts of the Department for Constitutional Affairs and the Commission to achieve this aim.

**j) Too much bureaucracy diverting resources from the front line**

The Society believes that the current legal aid system has become unnecessarily bureaucratic. Under the terms of their contracts, providers of legal aid services are audited on costs and quality. Each claim for costs is subject to assessment by the LSC and providers are required to submit a number of files for assessment against amounts claimed. Providers are also audited against the Legal Services Commission's quality standards (SQM).

The original vision for contracting assumed that quality assurance would supersede case-by-case checking. Instead we have a system that has simply loaded one check onto another – a system which has proved very expensive; a recent report by the Public Accounts Committee commented that there were 1000 LSC staff monitoring 5000 contractors.

The Legal Services Commission's administration costs have increased by 17.6% over 3 years, as the table below indicates.

Table 3: Administrative costs of the Legal Services Commission

1999/2000	£62.4 M	(Last year of the Legal Aid Board)
2000/2001	£72.4M	
2001/2002	£71.6 M	
2002/2003	£73.4 M	

Despite this heavy commitment of resources the system is hardly effective in assessing the quality of services offered. The procedure for auditing costs is a continuous cause of friction between the LSC and providers, and fails to meet the needs of either. The LSC has not succeeded in its aim of reducing the unit cost of cases using the system – indeed, the reason why case costs have risen remain unclear. From the provider's point of view, the cost audits are intrusive and there is a lack of confidence in the skill of the auditors. This in turn increases costs on firms, as they need to keep excessively detailed notes justifying actions to satisfy auditors. Auditing of solicitor's work is obviously necessary – but unless it is carried out by appropriately skilled personnel, in a way which provides constructive feedback and criticism, the cost of the process will be unnecessarily high.

## **Section 2: The Law Society believes the legal aid system can be restored and proposes the following solutions:**

- a) A renewed government commitment – expressed in deed rather than just words – to the goal of equal access to justice for all.
- b) An alternative approach to managing the legal aid budget which ring-fences the civil legal aid fund and improve forecasting of the impact of justice initiatives
- c) A new contract for legal aid providers which reduces bureaucracy and enhances the quality of delivery.
- d) Appropriate use of new methods of delivery, for example video conferencing, Internet, telephony.
- e) A scheme aimed at encouraging enough new entrants to the profession to pursue a career in legal aid.
- f) A scheme that would enable equality and diversity responsibilities to be fulfilled by purchaser and providers of the Community Legal Service.

### **a) A renewed government commitment – expressed in deed rather than just words – to the goal of equal access to justice for all**

The Law Society calls on the government to renew its commitment to the goal of equal access to justice for all through:

#### 1. improvements in eligibility

The Law Society believes that financial eligibility for legal aid must be increased significantly. The Government should increase the lower limit so that those with incomes close to the level of income support are not required to contribute. They should ensure that contributions above the free limit are affordable, and that the upper eligibility limit is not set at a level which excludes from help people who cannot afford to litigate without assistance. The impact of the current capital limits also needs re-examination.

#### 2. a public information campaign to make people aware of their rights

To tackle the kind of unmet need identified in the research conducted by the LSRC (indicated in section 1c)), the Law Society urges the government to launch a campaign of public information on legal rights.

**b) An alternative approach to budget management and improved financial impact assessment.**

The Society believes that the civil legal aid budget must be ring fenced from the criminal legal aid budget to protect it from being used to pay for increasing demand for criminal legal aid. This could be achieved by separating out criminal legal aid and treating it as Annually Managed Expenditure (AME), rather than as Department Expenditure Limits (DEL) which is planned and managed on a three-yearly basis. This approach would recognise that the criminal legal aid budget – in common with the social security budget – is demand-led. There is precedent for treating parts of the legal aid budget separately; the government have already ring-fenced the asylum and immigration legal aid budget.

Improved financial impact assessment

The Society also believes that government departments must be much more rigorous in discharging their responsibility to assess the financial impact of policy initiatives and legislation on the legal aid budget. Experience has shown that there has been inadequate impact assessment in the past; we have already referred to the impact of successive criminal justice initiatives on the legal aid budget. In a cash-limited single legal aid pot, it is inevitable that the civil legal aid budget will be eroded, with worrying implications for equal access to justice and social exclusion. Vulnerable people will go without the legal advice that could not only solve the immediate problem, but also prevent a range of related social problems developing.

The Society believes that the financial impact assessment of legislation in the future must be much more robust. Experience shows that costs are routinely underestimated. To counter that, arrangements should be introduced under which, in the first three years of operation of the legislation, the Department of Constitutional Affairs should receive a transfer of funds from the legislating department to cover the actual court and legal aid costs, rather than relying on an estimate. Subsequently, the costs should be built into the legal aid budget.

The Society would also like to see evidence of an 'holistic' approach being taken by government, one that recognises that investment in civil legal aid has the potential to save public expenditure overall.

**c) A new contract for legal aid providers which reduces bureaucracy and enhances the quality of delivery.**

The Society believes the time has come to negotiate a new contract that reflects an effective partnership between government and the Legal Services Commission as purchasers, and solicitors and the not-for-profit sector as providers with the aim of securing a system which meets the needs of the public. The Society also believes that a new deal for providers along the lines outlined below could provide the key incentives to legal aid practitioners to continue with legally aided work.

A new contract would have the following essential features:

- Reflect a true partnership between supplier and purchaser
- Provide for alternative means of funding, e.g. salary, block funding, taking into account the catchment area served by the supplier
- Provide for 'earned autonomy' - providers who could demonstrate high quality services and sound management would be given significant devolved powers to operate the system.
- Provide for capital investment in the infrastructure of suppliers' practices. e.g. IT and management information systems
- Provide for funding to enable supplier's practices to train new advisors, thereby ensuring a corps of suppliers for the future.
- Provide for an annual uprating at least in line with the Retail Price Index
- Provide incentives for suppliers offering 'outreach' services e.g. services aimed at early 'preventive' legal advice to avoid clusters of problems developing.
- Provide for fluctuations in the profile of demand e.g. surge in asylum applications.
- Enable suppliers and purchaser to fulfil legal responsibilities and commitments in relation to equality and diversity.

The new contract could be modelled to an extent on the one applying to medical general practitioners working within the National Health Service. Relevant elements of this contract include investment in infrastructure such as premises and IT; and a

new system of remuneration, involving a basic salary with incentives for 'preventive' services.

**d) Appropriate use of new methods of delivery, for example video-conferencing, Internet, telephony.**

The Society believes that a key to guaranteeing access to justice is to explore effective, alternative means of delivering legal aid services. In its document, 'Protecting Rights and Tackling Social Exclusion', the Society proposes not only a range of alternative channels of delivery e.g., telephony, video-conferencing and the Internet but also greater use of alternative dispute resolution methods, e.g., mediation, early neutral evaluation. The Society believes that alternative channels offer opportunities to tackle problems of access in rural areas in particular. For example, video-conferencing may be used to provide access to specialist advice without the need for the individual to travel long distances.

The Society applauds effective moves by the Community Legal Service Partnerships (CLSPs) to bridge gaps in provision have emerged, in particular through the use of video-conferencing and Internet access. One good example is that pioneered by the East Riding of Yorkshire Council called "Citizen Link". This is a network of video link access points, which enables clients to get advice or help easily, so removing the need to travel great distances yet allowing them to speak to an advisor face-to-face.

The Society suggests that a range of alternative means of delivery should be carefully piloted to test their effectiveness.

Salaried Service

The Society also acknowledges that in circumstances where supply of legal services is incapable of being secured by current providers – i.e. law firms, law centres and advice agencies, the government should consider a salaried service. A salaried element in criminal legal aid - Public Defender Service - is currently being piloted.

Although there could potentially be cases, which are in conflict with the state, we are confident that the LSC, underpinned by the Law Society regulation, could ensure employed solicitors were able to work as effectively as those in private practice.

Another means of ensuring access, short of setting up a salaried service, would be to place legal aid lawyers in private practice law firms on terms that would ensure that the legal aid needs of a particular catchment area were met.

**e) A scheme aimed at encouraging enough new entrants to the profession to pursue a career in legal aid.**

For the reasons outlined in section 1d) in this paper, the Society is concerned that the current legal aid system presents an unattractive career option for new entrants to the profession. Other factors – such as the burden of student debt and the scarcity of training opportunities afforded by legal aid practices, militate strongly against the creation of a corps of legal aid lawyers for the future.

The solicitors' qualification requires a post graduate higher education course for which there is no public funding and no student loan availability.

The Legal Services Commission has introduced a worthwhile scheme to finance vocational course fees and training for students. There are 916 firms that have an active LSC contract and one or more trainees in place. Of these 139 have benefited under the LSC's scheme. However, the scheme would have to be significantly expanded in order to achieve a sufficient number of legal aid providers for the future.

The Society proposes the following:

- An extension of the support scheme currently being run by the LSC.
- Access to student loans for solicitors' post-graduate training.
- Write-off of part of student debt for any period spent in legal aid practice.

**f) A scheme that would enable equality and diversity responsibilities to be fulfilled by purchaser and providers of the Community Legal Service.**

The Legal Services Commission, as a public authority has responsibilities under the Race Relations (Amendment) Act. Similarly the Law Society has a statutory responsibility under that Act to 'promote equality and diversity in all its public functions'. The Society also sets itself the target of promoting equality and diversity across all areas of potential discrimination.

The Society is aware that legal aid services are capable of having an enormous impact on the quality of life of minority individuals e.g. those with disability; individuals with special educational needs; immigrants and asylum seekers; and those suffering racial discrimination. Groups such as minority ethnic groups, disabled groups, and lone parents are more likely to be in poverty and therefore more likely to need assistance to enable them to use legal services.

In light of these facts, the Society believes all legal aid policies, including approaches to budgeting, the analysis of supply and demand, and the negotiation of a new contract for legal aid providers, must be carefully analysed for their impact on minority groups.

## **Section 3: Questions raised by the Constitutional Affairs Committee**

Listed below are the terms of reference/questions asked by the select committee.

### **1. What evidence is there of the emergence of ‘advice deserts’?**

We set out our knowledge on this in section 1b. Our overall view is that there is evidence of advice deserts emerging for some areas of law – especially housing – in some areas of the country, and that recruitment trends and the career intentions of newly qualifying solicitors suggest that unless action is taken, this problem is likely to escalate.

### **2. What action is being taken to ensure that there is access to legally aided advice in all legal specialisms?**

This is a question best answered by the Legal Services Commission. The Society has highlighted problems of access to justice caused when providers' allocation of 'matter starts' runs out before the end of the financial year (see page 11). The LSC recently announced an additional 20,000 matter starts 'in priority areas of law, for example, mental health and family'. However, the Society is still receiving reports from legal aid solicitors of restrictions on their ability to meet public needs.

### **3. How can the DCA and the LSC provide incentives for legal aid practitioners to continue legally aided work?**

In Section 2, the Society sets out a range of solutions to the problems in the current system. Action on these fronts would go a long way towards restoring the system and create the kind of incentives to legal aid practitioners to continue the work. Further action to provide higher payment rates for legal aid lawyers who can show particular skills through membership of appropriate accreditation schemes is important in order to show aspiring lawyers that legal aid work provides a reasonable career path. The Society believes that a key element will be the negotiation of a new deal for legal aid providers which reflects a true partnership between purchaser and provider. Another key element will be a more developed scheme for encouraging new entrants to the profession to take up a career in legal aid.

**4. Is the perception that practitioners are moving out of legally aided work correct?**

See Section 1c: setting out evidence from a range of sources that the number of solicitors offering legal aid is diminishing. Trends for the future are very discouraging.

**5. Can the requirement for legal aid be reduced by the resolution of some legal aid issues on a more informal basis, through the CAB, long distance services or otherwise?**

The Law Society strongly supports alternative dispute resolution and the development of innovative means of delivering advice. Appropriate use of new methods of delivery, for example video conferencing, Internet, telephony can ensure that people who might otherwise go without legal aid, are afforded access. (See Section 3d). However it is important to be realistic about what can be achieved through that. Many cases can only be resolved in court. In many circumstances advice can much more effectively be provided face-to-face; and a commitment to providing the necessary resources will be essential to achieve equal access to justice, whatever new methods of delivery are developed.

**6. Would a salaried service or the provision of law centres be a viable solution to lack of provision, either in areas without sufficient practitioners or elsewhere?**

The Society believes that there may be a role for a salaried element of provision, especially where there are not sufficient private practice providers to guarantee access to justice. (See Section 3d)

**7. What would be the comparative funding costs of a salaried service?**

The Society is not in a position to answer this question. The current pilot of salaried provision in criminal legal aid - the Public Defender Service - has not been running for long enough to be able to compare costs accurately. Preliminary findings would suggest that the salaried service is considerably more expensive. The Society believes that high quality legal aid services delivered through well run private practices offers excellent value for money but it has no objection to a salaried service as part of overall provision so long as effective arrangements are made to ensure that independence of advice and quality of service are maintained.