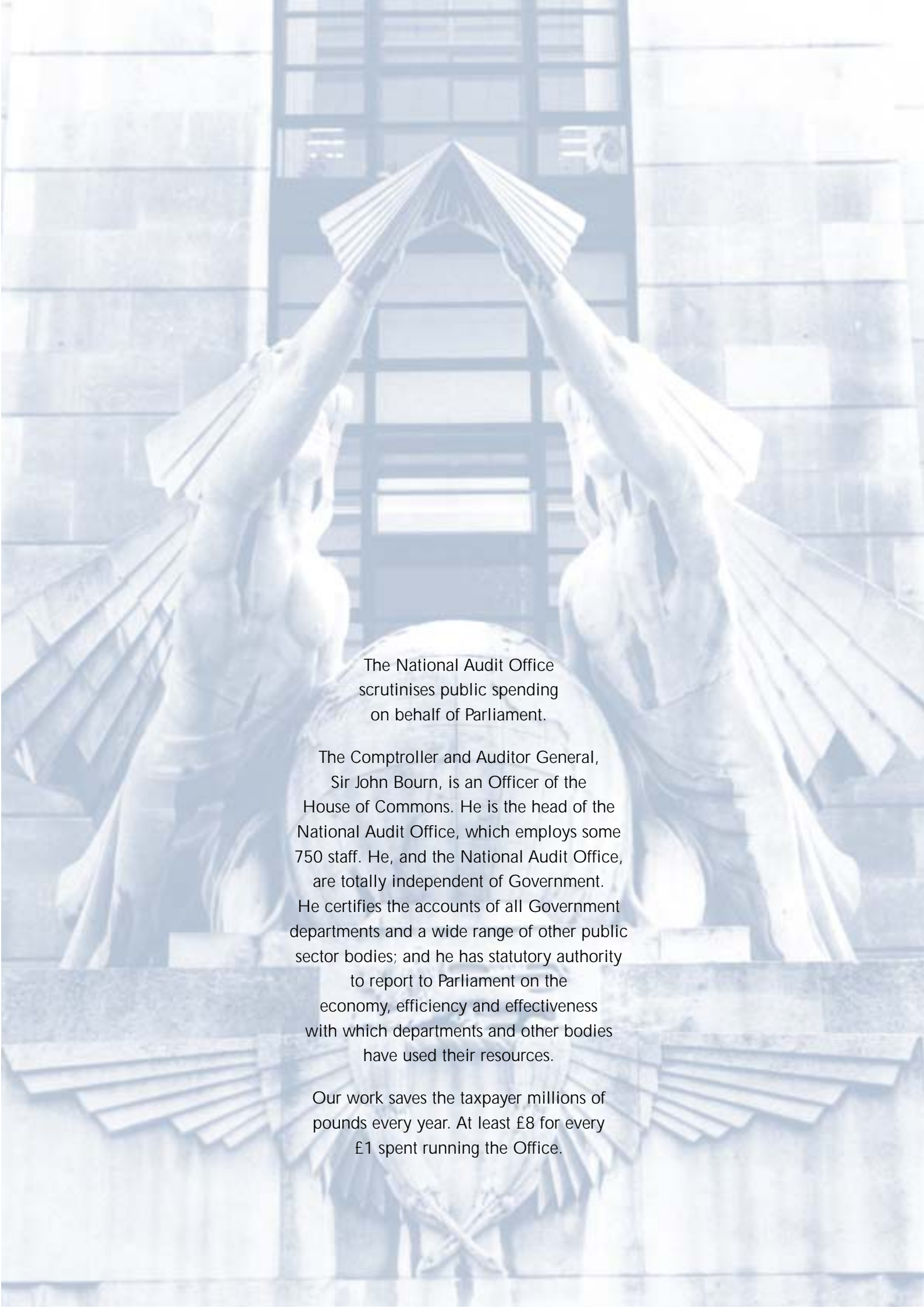


Community Legal Service: the introduction of contracting

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 89 Session 2002-2003: 28 November 2002





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This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

John Bourn National Audit Office
Comptroller and Auditor General 22 November 2002

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executive summary

- 1 In April 2000, the Legal Services Commission (the Commission) replaced the Legal Aid Board as the body responsible for administering civil legal aid in England and Wales. The Commission was also given responsibility for establishing and maintaining the Community Legal Service which incorporates the old civil legal aid scheme, renamed Community Legal Service Funding. The Government's aim for the Community Legal Service is to encourage easy access to quality assured services that provide information, advice and representation mainly, but not exclusively, to the most disadvantaged.
- 2 In 1996, the Committee of Public Accounts expressed concern about the growth of expenditure in civil legal aid and, in particular, the growing number of applicants with complex legal affairs typically associated with expensive litigation (Civil Legal Aid Means Testing, 25th Report, Session 1995-96, HC314). This report looks at the current administration of the Community Legal Service Fund by the Commission in the light of the Committee's earlier recommendations.
- 3 In 2001-02, net expenditure borne by the Community Legal Service Fund totalled £734 million. Most applicants for civil legal aid are required to undergo a means test and any assistance provided must fall within the scope of the scheme. Civil legal services are funded in accordance with the merits tests set out in the Funding Code approved by Parliament. Funded services fall under the headings of controlled work and licensed work:



- *controlled work* consists of all legal help, and legal representation before, for example certain tribunals. The decision about whether to provide services in a particular case is made by the supplier, under a contract that limits the number of cases. Under the old scheme, cases were funded provided the client met the means test criteria and the assistance sought fell within the scope of the scheme. Expenditure on controlled work totalled £258 million in 2001-02.
- *licensed work* covers all legal representation before the Courts, including all very expensive cases which, additionally, are managed under individual contracts with the Commission. Expenditure on licensed work is controlled through a certification process requiring the Commission's initial approval of the cost, timing and scope of each case. The administration of licensed work was unchanged by the introduction of the Community Legal Service. Expenditure on licensed work totalled £476 million in 2001-02.

- 4 Our examination suggests that the introduction of contracts for legal help has led to better scrutiny by the Commission of the work of its suppliers and, in a number of respects, a greater degree of control over this element of the civil legal aid budget. The Commission has strengthened its scrutiny of the cost of expensive cases and has successfully challenged the eligibility of some applicants. However, the number of solicitor's firms providing services has dropped, partly offset by a rise in the number of participating not-for-profit organisations. There are some gaps in the provision of services in specific areas of law, for example social welfare. As the new arrangements bed down, the Commission needs to do more to tackle poor performing suppliers, target resources at areas where unmet need is greatest and working with its suppliers, communicate a clearer vision for developing the supplier base.
- 5 Our main findings are:
 - Overall expenditure on civil legal aid has decreased. Expenditure on civil legal help is increasing largely due to the demands of work on immigration and asylum. But this is more than offset by reduced expenditure on licensed work. The average cost of individual cases across categories (excluding immigration) increased by around 20 per cent in 2001-02. The reasons for this increase are not completely clear but the Commission had expected contracting to lead to a shift away from high volume, low value cases and therefore some increase in average costs. The Commission is conducting further research to examine the correlation between the work done and the quality of advice and outcome for the client.
 - The Commission has, in some cases, disallowed a significant proportion of the costs claimed on help and advice work, although in some cases these amounts have been reinstated after mediation with the supplier. Audits conducted by the Commission of case files kept by suppliers suggest that 35 per cent of suppliers were in the lowest category, that is overclaiming at a rate in excess of 20 per cent. The 2001-02 audit results suggest that there has been some improvement in suppliers' performance over the previous year, and possibly the reliability of the audit process. However, a significant minority of suppliers have not improved. The Commission told us it intends to remove suppliers who persistently overclaim on controlled work but the removal process is long and drawn out, taking a minimum of around 18 months. The Commission told us that a small number of suppliers had withdrawn in anticipation of being removed.
 - The Commission's Special Investigation Unit reviews whether the means of claimants referred to it do indeed qualify for publicly funded support. Of the 150 civil cases it investigated in 2001-02, 85 per cent led either to the refusal or withdrawal of funding or to an increase in the contributions payable. The Unit estimates that it achieved savings of £750,000 in 2001-02. The Special Cases Unit manages the funding of the highest value cases with gross costs in excess of £25,000. In individual cases the Unit's intervention can save significant costs. The Unit comprises 20 people overseeing cases costing, in net terms, over £75 million (2002-03). This compares with around 460 staff engaged in the administration of civil and criminal contracts involving expenditure of around £880 million. There may therefore be scope for the Commission to review its targeting of resources across controlled and licensed work, and expensive cases.
 - The Commission has outstanding debts of around £320 million, of which £255 million is charges on the property of clients from which legal aid costs will be recovered when the property is sold. Although the debt can be repaid voluntarily at any time earlier than this, debtors may be unaware of this option.
 - Since the introduction of new contracting arrangements, there has been a decline in the number of solicitor firms providing legal aid services. There is increasing use of the not-for-profit sector, currently accounting for about eight per cent of the total supplier base. However, these bodies work mostly in providing legal help. The reduction in the supplier base is partly a deliberate move away from reliance on a large number of generalist support firms towards a smaller number of specialist quality-assured providers. However, the reduction also reflects concern amongst some firms about the level of remuneration offered on civil legal aid work. The Commission has identified gaps in provision in some parts of the country and in some areas of law, for example family law but has had some success in attracting suppliers to immigration work.

- As part of the establishment of the Community Legal Service, the Commission has helped create a network of local Community Legal Service Partnerships bringing together suppliers and other funders of advice and information services, including local authorities. These partnerships have the potential to play a significant role in identifying local needs and in helping to match services to meet those needs. Most of the organisations we spoke to welcomed the creation of these partnerships, but some suppliers expressed concern about a perceived lack of progress in helping to shape local services in some areas.



Recommendations

We recommend:

- (i) The Commission should introduce arrangements to ensure greater consistency in the approaches adopted by the Commission's auditors in different regions.
- (ii) The Commission should reduce the minimum time needed, from serving the initial notification, to removal of suppliers who persistently and significantly overclaim.
- (iii) The Commission should review whether resources employed on examining controlled and licensed work, including the Special Investigation and Cases Units, reflect the relative risks associated with these activities, and allocate resources accordingly.
- (iv) The Commission should introduce measures to help it assess the impact of the work of the Special Cases Unit.
- (v) The Commission should raise awareness amongst debtors of its voluntary system for the early repayment of debt currently held as a statutory charge on property.
- (vi) The Commission should periodically seek direct feedback from the users of services on the quality of services funded through legal aid.
- (vii) We support the Commission's initiative to bring together all information about contract holders for the purpose of its audits and recommend it evaluates the new approach after one year.
- (viii) The Commission should review the size and composition of its supplier base and communicate its priorities for developing the supplier base in the medium term - taking account of changing patterns of need, the impact on the likely outcome for the client, the efficiency and effectiveness of different types of supplier, and the need to ensure adequate access to services across the country.
- (ix) The Lord Chancellor's Department and the Commission should review whether there is scope to reduce future demands on the Fund by encouraging improved feedback, particularly to public bodies, on the lessons to be learned from cases.
- (x) The Lord Chancellor's Department and the Commission should examine the work undertaken by the Community Legal Service Partnerships to date and consider whether effective use is being made of their ability to shape local services.

Part 1

Introduction

1.1 In April 2000, the Legal Services Commission (the Commission) replaced the Legal Aid Board as the body responsible for administering civil legal aid in England and Wales. The Commission was also given responsibility for establishing and maintaining the Community Legal Service which incorporates the old civil legal aid scheme, renamed Community Legal Service Funding. The Service has been designed to encourage easy access to quality assured services that provide information, advice and representation mainly, but not exclusively, to the most disadvantaged. Through the Community Legal Service the Commission funds directly the provision of legal help and representation for suppliers meeting its quality standards and also works in local partnership with other funders and suppliers to promote quality of advice and access to

services (**Figure 1**). The new Service is part of a wider Government programme of reforms to provide a modern and efficient system of justice, aimed at creating a fair and inclusive society in which communities are healthy and secure. The Government expects that education, timely information and advice, including legal advice, can help individuals deal with problems and also reduce expensive claims on other public bodies.

1.2 In April 2001, the Commission also assumed responsibility for running the Criminal Defence Service. The aims of the Service include swift access to consistently high quality services throughout England and Wales and better control over expenditure on criminal legal aid. This report focuses on the introduction of the Community Legal Service.

1 The Commission plays a key role as part of the wider Community Legal Service

The Commission works with funders and suppliers at local level to secure a pattern of service that best meets local needs. Collectively, suppliers and funders make up the Community Legal Service.



Source: Legal Services Commission

The Community Legal Service provides advice and assistance on issues ranging from family law to help with asylum applications

1.3 The Legal Services Commission is accountable to the Lord Chancellor's Department and is expected to contribute to the achievement of the Department's wider strategic objectives. The Commission's vision is for the Community Legal Service is to:

- help people get quality legal services that tackle real needs; and thereby
- contribute to making a justice system fair, accessible and affordable for all; and
- combat social exclusion.

The Community Legal Service is expected to contribute to the achievement of the Lord Chancellor's Public Service Agreement targets: to secure year on year improvements in the value for money in the delivery of the Community Legal Service; by March 2004, to reduce the proportion of disputes which are resolved by resort to the courts and to increase by 5 per cent the number of people who receive suitable assistance in priority areas of law involving issues of fundamental rights or social exclusion.

1.4 Ministers are responsible for determining the broad scope of the scheme and for providing guidance on the relative priority to be attached to different areas of law. Currently, the support provided through the Community Legal Service Fund is classified by the Commission under 14 areas of law, ranging from family law, including advice in support of family mediation, to social welfare issues, and advice on asylum applications. In April 2000, some areas of law including personal injury casework were taken out of the scope of legal representation and treated on a conditional fee - "no win no pay" - basis. As well as providing legal help and representation at court, the Community Legal Service provides general information about the law, the legal system and the availability of legal services.

1.5 Eligibility on the merits for legal aid services is determined by a Funding Code, approved by Parliament, which came into effect in April 2000 and provides guidance on which services are eligible for support. Under the old legal aid scheme, entitlement to support was satisfied if the applicant passed a means test and a merits test. Provided the means test was met, the old scheme granted entitlement in any case satisfying the relevant merit criteria, without reference to resources or any broader assessment of priorities. The new Code is intended to provide a more flexible set of rules and seeks to direct resources where needs and priorities are greatest. Subject to Parliamentary approval,

the Code's criteria can be varied to control overall expenditure or reflect changing priorities. The main provisions of the Code are outlined at Appendix 2.

1.6 Most applicants for civil legal aid are required to undergo a means assessment. In most cases, applicants with a gross income of less than £2,250 a month, and disposable income of less than £611 a month and capital of less than £3,000 (£ 8,000 in the case of Mediation, Help with Mediation and Civil Representation) are entitled to legal aid. However, applicants with a monthly disposable income of greater than £263 are liable to pay a contribution to costs for legal representation. Applicants in receipt of income support or income based job seekers' allowance are not required to have their means assessed.

Advice is provided through a network of solicitors and not-for-profit organisations working under contract to the Commission

1.7 The Commission administers the civil legal help component of the Community Legal Service through contracts with firms of solicitors and not-for-profit bodies, such as Citizens Advice Bureaux. At 31 March 2002, 4,543 solicitors' firms and 389 not-for-profit agencies had contracts with the Commission and a further 389 solicitor's firms were licenced to carry out legal representation work.

1.8 Civil legal services are funded in accordance with the merits tests set out in the Funding Code approved by Parliament. Funded services fall under the headings of work Controlled in accordance with the General Civil Contract and Licensed Work:

- **Controlled Work** consists of all legal help and legal representation before, for example Mental Health Review Tribunals, the Immigration Appeal Tribunal and immigration adjudicators. The decision about whether to provide services in a case is made by the supplier, under a contract that limits the number of cases that may be taken and limits expenditure on individual cases to specified approval thresholds. Expenditure on controlled work totalled £258 million in 2001-02.

- **Licensed Work** covers all legal representation before the Courts, including all very expensive cases which, additionally, are managed under individual contracts with the Commission. The administration of licensed work was unchanged by the introduction of the Community Legal Service. Most work on representation follows on from previous advice cases. Expenditure on licensed work totalled £476 million in 2001-02.

1.9 Under the old civil legal aid scheme there was no ready match of suppliers to need. Generally, suppliers concentrated on personal injuries, family and crime, as there was sufficient work in these areas, and it was almost all certificated work, which paid higher rates. If suppliers did high volumes of work in areas of social welfare law, for example, housing, welfare benefits, the Commission believed this was usually because either they were committed to social welfare work, or they could generate income through a high volume of low quality work. The new arrangements were intended to bring spending under control; match supply more closely with real needs and priorities; eliminate work done solely for the purpose of generating income and encourage work likely to be of real benefit to the client; increase advice sector involvement by funding expansion of those agencies demonstrably expert in social welfare law; eliminate from the licensed scheme work that could be funded in other ways and use the savings to increase funding in social welfare law; focus resources on priority areas of law; and make quality standards mandatory for all suppliers.

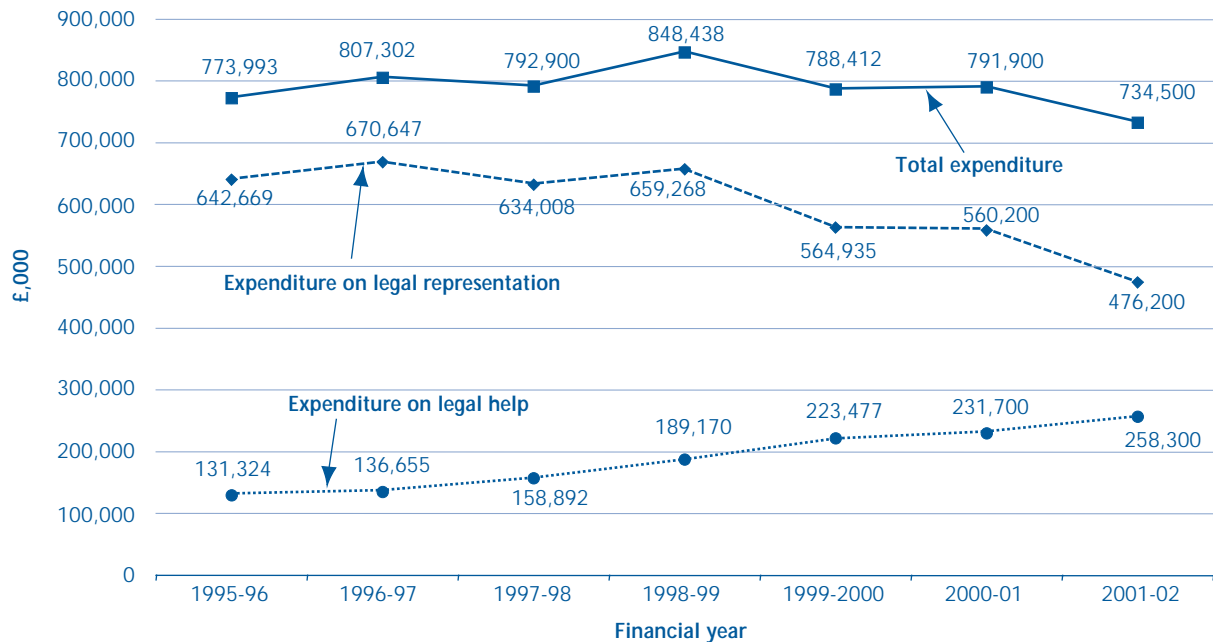
The recent changes to civil legal aid have introduced additional controls over expenditure

1.10 Expenditure on civil legal aid rose rapidly during the 1990s, reaching a peak of £848 million in 1999. Recent trends, shown in **Figure 2**, suggest that overall expenditure has declined.

1.11 Within these totals, expenditure on controlled legal help has increased steadily over the last three years, continuing the earlier trend for work under the "green form" scheme. Within the overall profile, amounts claimed for completed work on immigration have increased rapidly from £58 million in 2000-01 to £138 million in 2001-02 (**Figure 3**), and are estimated to be £160 million in 2002-03.

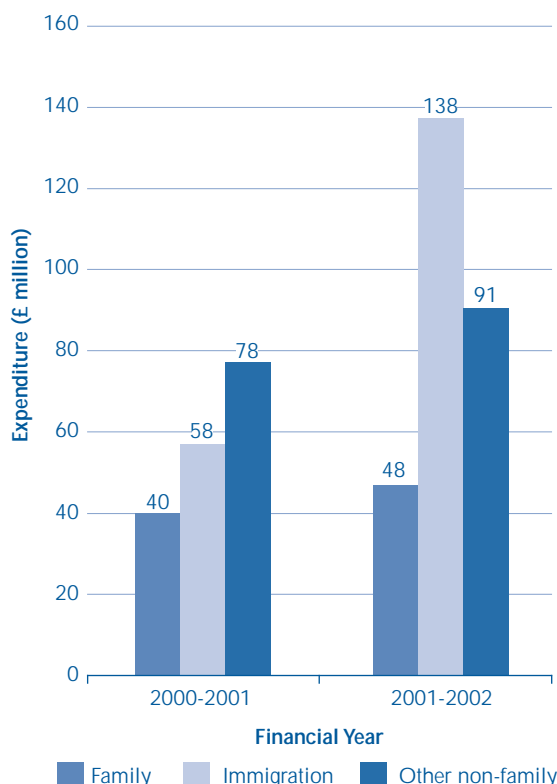
2 Summary of expenditure on civil legal aid between 1995-96 and 2001-02

Overall, expenditure on civil legal aid has decreased over the last six years. While expenditure on legal help has increased over this period, expenditure on legal representation has reduced.



Source: National Audit Office analysis of Legal Services Commission data

3 Expenditure on Legal Help analysed by category of law



NOTE

Figure 3 is based on the value of claims received. Figure 2 includes grant payments and residual payments under the old "green form" scheme. For these reasons the total values for legal help in Figures 2 and 3 differ.

Source: National Audit Office analysis of Legal Services Commission data

1.12 For controlled work, suppliers are authorised to start up to an agreed number of cases - "matter starts" - during the financial year within specified categories of law. Suppliers receive monthly contract payments based on the estimated cost of completed work in the year, thereby providing a regular cash flow. The Commission monitors the level of claims for completed work against the monthly instalments. The Commission undertakes contract compliance audits to validate the amounts claimed by suppliers.

1.13 Expenditure on licensed work has declined over recent years from £659 million in 1999 to £476 million in 2002. The key factors in this downward trend are changes in the law and increases in the small claims limit together with structural changes such as the reclassification of personal injury and some commercial disputes onto a conditional fee basis. Significant, but declining expenditure is still incurred on categories of law such as personal injury, due to the time lag involved in completing cases.

1.14 On licensed work, expenditure is controlled through a certification process requiring the Commission's initial approval of the cost, timing and scope of each case. Subsequent claims where no court proceedings are commenced are assessed by the Commission. When court proceedings are involved claims less than £500 are assessed by the Commission and by the courts if they are greater than £1,000. For claims between £500 and £1,000 the supplier can choose assessment to be made by either the Commission or the courts.

1.15 The Commission manages particularly expensive cases - defined by the Access to Justice Act 1999 as cases where costs are likely to exceed £25,000 - through individual contracts administered by a Special Cases Unit.

1.16 A Special Investigations Unit within the Commission is responsible for reviewing cases where it might be inappropriate for public funds to be used, for example where the basis of means is complex, or the recipient of legal aid may have misstated their means.

All suppliers are required to meet Quality Mark standards set by the Legal Services Commission

1.17 As part of the launch of the Community Legal Service in April 2000, the Legal Services Commission introduced a set of quality assurance standards governing the provision of information and general help. A specialist quality mark was published in April 2002 replacing previous franchise specifications which were introduced in 1994 and revised as the Legal Aid Franchise Quality Assurance Standard (LAFQAS) in 1998. All suppliers of controlled and licensed work are required to comply with the new Quality Mark standard.

The Commission has developed partnerships with a range of public, private and voluntary organisations to help plan and develop services

1.18 The Community Legal Service encompasses the broader maintenance of a network of legal advice, some of which may be funded from other sources. Since 1998-99, the Commission has begun to develop a network of over 200 Community Legal Service Partnerships with other funders and providers of legal services and advice, such as local authorities and Citizens Advice Bureaux. The main aims of the partnerships are to carry out local needs assessments, to map the supplier base in the area and create referral mechanisms between providers. Each partnership decides on its own structure and composition with different models existing throughout the country. Whilst each partnership will determine internal policy, the policy of the Community Legal Service is set by the Lord

Chancellor's Department and the Legal Services Commission. The partnerships are usually funded from a variety of sources, but most of the funding comes from the Commission and the participating local authority. In October 2001, the Commission was awarded Government Beacon status for its partnership and joined-up working.

The Community Legal Service is administered through the Commission's network of regional offices

1.19 The Legal Services Commission is an executive Non Departmental Public Body accountable to the Lord Chancellor's Department. It has over 1,400 permanent staff based in its London head office and in twelve regional offices across England and Wales, of which around 1,000 are involved in managing the Community Legal Service (Figure 4). In 2001-02, the Commission spent £71.7 million on administrative costs, around £60.4 million was attributable to running the Community Legal Service.

Previous examinations by the Committee of Public Accounts and National Audit Office

1.20 The Committee of Public Accounts last examined the provision of civil legal aid in 1995-96 (Civil Legal Aid Means Testing, 25th Report, Session 1995-96, HC314). The Committee's report expressed concern about the growth of expenditure in civil legal aid and, in particular, the growing number of applicants with complex legal affairs typically associated with expensive litigation. The Committee endorsed efforts being made to improve the arrangements for verifying the means of applicants for civil legal aid. These arrangements were further enhanced in 1997-98 when the Commission took means assessment in-house from the Benefits Agency. The Agency still provides confirmation of an applicant's income support status under the terms of a service level agreement with the Commission. Where applicants may have misstated their circumstances, the Committee urged a stronger line be taken with those who do not cooperate with investigations. The Committee stressed the importance of the Special Investigations Unit having suitably qualified staff and the resources necessary for it to handle efficiently and in a timely fashion the cases referred to it. A summary of the Committee's recommendations and the action taken to date are at Appendix 1.

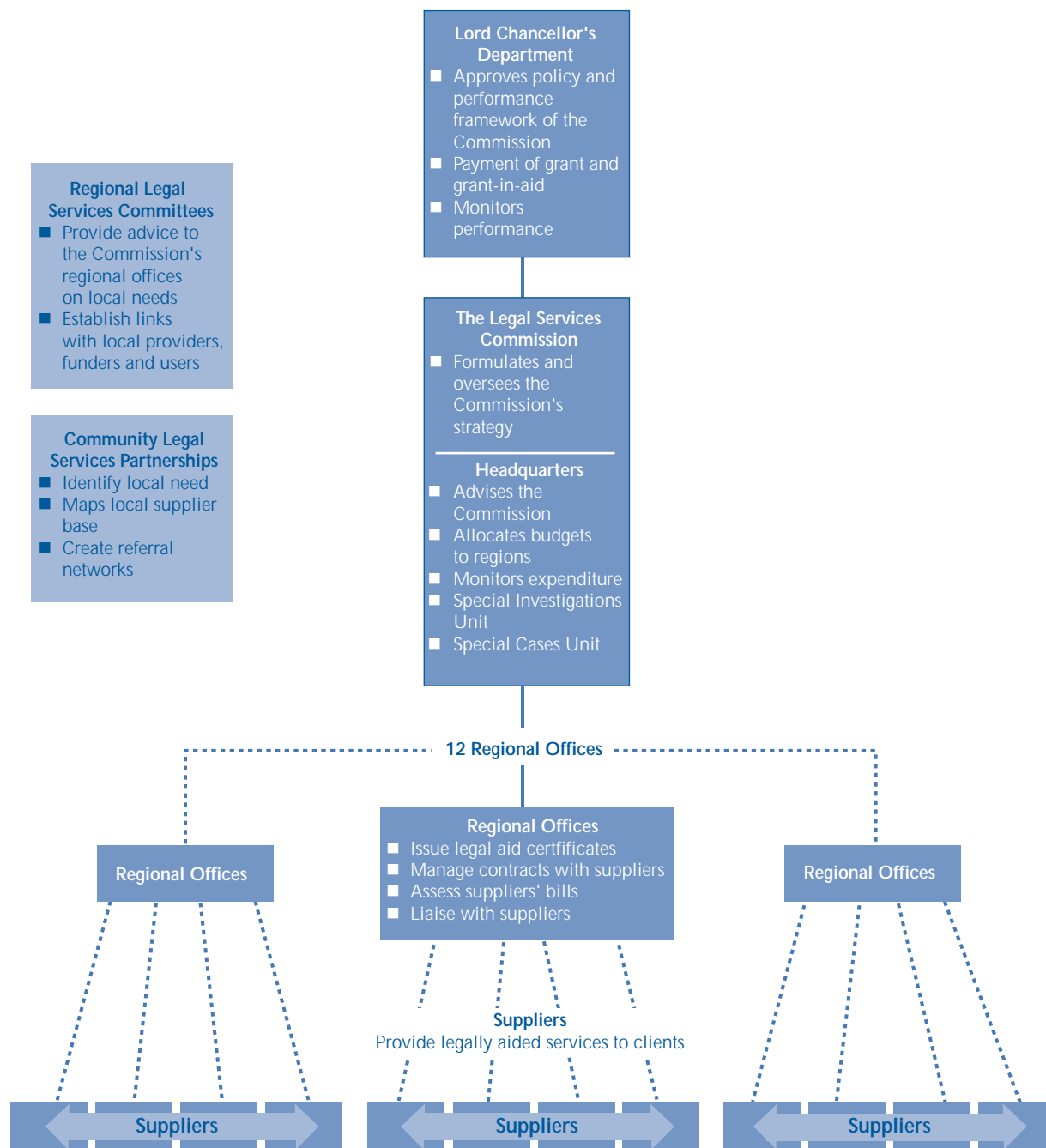
Scope and methods

1.21 This report examines progress made by the Legal Services Commission in setting up the Community Legal Service, in particular:

- (i) whether the establishment of the new Service has facilitated improved control over costs; and
- (ii) whether the Community Legal Service has helped facilitate improved quality and access to advice.

1.22 This report draws upon evidence collected between July 2002 and October 2002. The examination included visits by National Audit Office staff to the Commission's headquarters and three regional offices, in Birmingham, Cardiff and London. The team interviewed Commission staff, including staff in the Special Cases and Special Investigations Units, reviewed contract files and analysed data kept by the Commission. The wider operational context of the Commission was also reviewed with staff in the Lord Chancellor's Department. In each of the three regions, the National Audit Office team interviewed local suppliers. The team reviewed the basis of the Commission's understanding of client satisfaction with services provided and looked at the Commission's survey of supplier satisfaction with their own administrative performance. The team also sought views on the performance of Community Legal Service Partnerships from representative organisations and individuals involved in their work. Appendix 3 outlines the examination methods in more detail.

4 The Legal Services Commission



Source: Legal Services Commission

Part 2

Maintaining control over costs

Introduction

2.1 This Part examines:

- (i) whether the Commission has introduced appropriate arrangements for scrutinising the cost of providing help and advice;
- (ii) whether the Commission has exerted effective control over the costs of licensed work, including checks on the eligibility of applicants and the cost of expensive cases; and
- (iii) whether the Commission has effective arrangements for pursuing outstanding debts.

(i) Controlling the costs of help and advice work

Contracting brings closer scrutiny of suppliers work than under the green form scheme

2.2 Under the green form scheme the focus of control was on the scrutiny of completed forms and did not include, for example, questioning the basis of the amount of time claimed for the work undertaken. Therefore, any solicitor could make a claim as long as the procedural requirements of the scheme were met. This led to a large population of small claims made on an ad hoc basis and scrutiny by the Commission was desk-based without the benefit of review of the relevant supplier case files. Under the new arrangements, suppliers must work within their particular contract conditions on specified categories of law for which they meet the requirements of the Commission's specialist Quality Mark. In addition, all suppliers may carry out a limited amount of work in other categories of law, in what is termed "tolerances". This is designed to allow for a holistic service to be provided to clients and for new categories of law to emerge. Suppliers must also provide a sample of case files supporting claims made to enable the Commission to review their performance in greater depth. This may involve a visit to a supplier's office.

The average cost of completed legal help cases has increased

2.3 The cost of individual legal help cases is subject to approval thresholds set at different levels depending the type of case involved. Suppliers are expected to seek permission from the Commission if they wish to exceed these thresholds. However, the average cost of legal help cases across all categories (excluding immigration) increased by around 20 per cent in 2001-02. The Commission estimated that the average cost of family cases increased by over 15 per cent in 12 months, while that for social welfare law was around 21 per cent. Research by the Commission has suggested that although the life span of cases has not changed since the introduction of contracting, the billable time has increased. The Commission's figures suggest that a debt case took on average 240 minutes to complete in January 2002 compared to 155 minutes in January 2000; a family case took 147 minutes in January 2002 compared to 127 minutes two years earlier. The Commission believes that these trends represent a shift from routine processing of simple cases of little added value to a profile of higher quality more significant work. The Commission is conducting further research to examine the correlation between the work done and the quality of advice and outcome for the client.

The Commission's audits have, in some cases, disallowed a significant proportion of the costs claimed on help and advice work

2.4 The Commission has introduced compliance audits to validate the claims it receives from suppliers on controlled work. Suppliers receive monthly contract payments based on the estimated cost of work likely to be completed in the year. The Commission monitors the level of claims for completed work and may decide to adjust the size of the monthly instalments if completed work begins to fall short of the expected levels. To validate the claims, Commission staff ask suppliers to submit case files to support a randomly selected sample of claims.

2.5 In 2001-02, the Commission's auditors examined a sample of 20 claims from each of 2,571 suppliers - 52 per cent of those participating. The objective of the compliance audit is to ensure a pattern of work in line with contract funding and to ensure that only eligible expenditure is claimed. The results of each audit are categorised depending on the extent of downward assessment discovered. Currently, Categories 1 to 3 are used, corresponding to levels of downward assessment of 1 to 10 per cent, 11 to 20 per cent and over 20 per cent respectively.

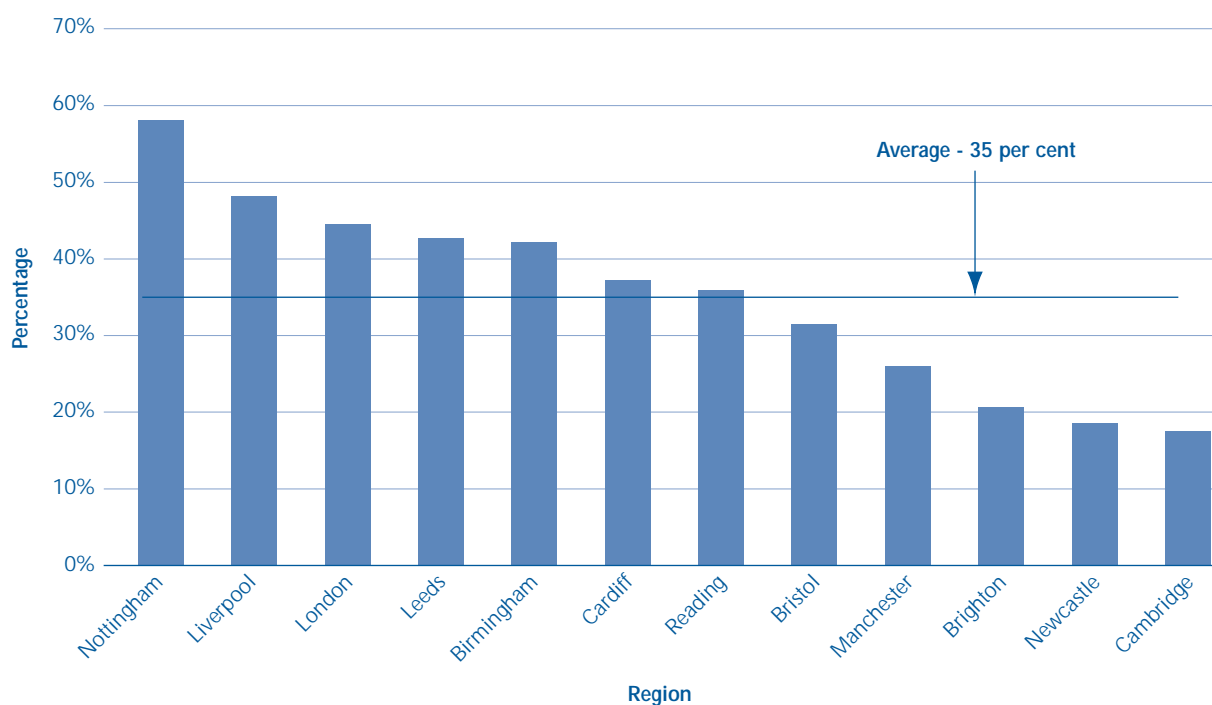
2.6 **Figure 5** is based on data maintained by the Commission to record the results of their compliance audits. The amounts of downward assessments recorded may be, in some cases, subsequently adjusted following mediation discussions between local account managers and suppliers or ultimately formal appeal to the local Cost Appeals Committee. Figure 5 shows that the Commission's records indicate that prior to mediation and appeal 35 per cent of suppliers were assessed to be in the worst category in 2001-02. The results suggested that there were considerable variations between regions, ranging from 58 per cent in the Nottingham region in Category 3 to 18 per cent in the Cambridge region. In the London region, which accounts for a large proportion of all suppliers, 45 per cent of suppliers were placed in Category 3.

2.7 The overall average level of downward assessment in 2001-02 was, prior to mediation and appeal, 24 per cent, amounting to £2.5 million amongst the cases examined, with a range between 42 per cent in the Brighton region to 14 per cent in the Cambridge region. Forty of the 2,571 suppliers subject to audit experienced downward assessments in excess of 70 per cent of the costs claimed in the sample. Amongst the better performers, 877 suppliers were subject to assessments of 10 per cent or less. The Commission told us that because the audit assessment relies, to some extent, on subjective judgements about the work carried out, it allows for possible error of up to 10 per cent in its assessment. Suppliers falling into this Category are therefore deemed to fall within an acceptable margin of "error".

2.8 Our examination of 87 downward assessments by the Commission's auditors suggested a range of contributory factors for cancelling costs. Of these, nine were assessed as nil entitlement because the client had not been entitled to legal aid, for example because the client had received previous legal help on the same matter or because the area of law concerned was outside the scope of the scheme. Of the rest, almost 90 per cent were downward assessed because the solicitor was adjudged to have overclaimed on the attendance or preparation time - in many cases this was due to insufficient information on the file. Reductions

5 Regional analysis of 2001-02 incidence of Category 3 Suppliers

On average 35% of audits carried out in 2001-02 resulted in suppliers being classified as Category 3. This included regional variation ranging from 58% in Nottingham to 18% in Cambridge region.



Source: National Audit Office analysis of Legal Services Commission data

were also made because the Commission's auditors considered the work could be carried out more economically, most significantly in relation to case preparation and attendance at court or tribunals. Other reductions were made because auditors considered that suppliers could have sent one letter instead of two.

Some suppliers have challenged the assessments made by the Commission's auditors

- 2.9 Suppliers interviewed by us were dissatisfied with some of these decisions. In their view, the Commission's auditors did not always understand how they worked. The Legal Aid Practitioners' Group told us, for example, that a frequent complaint from its members was that auditors would only allow solicitors to claim for one letter a day. The Group told us that many firms work on the basis of an initial letter and a client care letter on the same day and some send a separate case plan as a third letter. In their view, such letters would be too complex to amalgamate into one. They also suggested that a lot of reductions were for work actually done, even if it had not been recorded in a way transparent to the audit process.
- 2.10 Discussions between the supplier and the Commission usually centre on whether a further sample of cases should be examined or whether particular errors should be extrapolated to calculate the amount to be repaid. Some errors are clear cut, for example work not encompassed within the scope of legal aid, but others, such as judgements about a suppliers' efficiency, are less straightforward. Discussions between the Commission and suppliers usually result in some reduction of the initial assessment. Generally, the mediation process in all regions had provided some assurance to suppliers. Although expensive - the London Regional Office alone estimated that it will cost £100,000 in 2002-03 - managers in the regional offices told us that this approach was likely to be more economical and supplier-friendly than allowing assessments to go to formal appeal. In 2001-02, 10 firms appealed to the Cost Appeals Committees, one of which was accepted, four partly upheld and five rejected.
- 2.11 The regional offices have adopted their own arrangements for reviewing the quality of their own audits. Different approaches adopted by different offices may account for some of the wide variation in downward assessments across the country. The Commission's London office had formed an in-house team to review all Category 3 assessments and employed a team of solicitors on a consultancy basis to peer review Category 3 assessments. The Commission will continue to monitor the consistency of its audit approach between regions through internal review based on test examination of standard case study material.

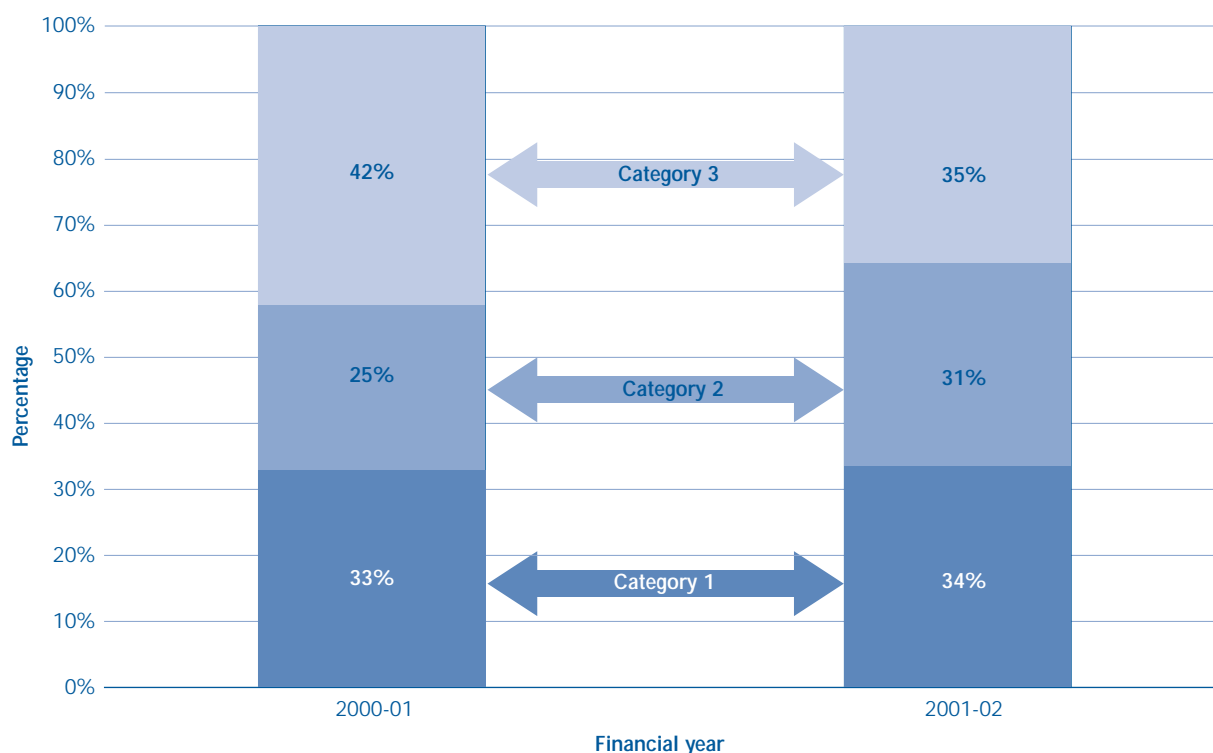
The Commission's longer term strategy for managing suppliers who persistently overclaim on controlled work

- 2.12 The 2001-02 audit results suggested that there had been some improvement in suppliers' performance over the previous year, suggesting a better understanding of the Commission's requirements on the recording of work done (Figure 6). Where suppliers will not respond to a warning of the need for improvement, the Commission told us that it intends to issue formal notice of contract termination. The Commission is only reaching this position in the current round of audits and the termination process itself is subject to appeal and likely to take around 18 months to reach a conclusion. Therefore, the Commission anticipate that any such contract terminations will not start to take effect until the 2003-04 financial year.

The Commission's regional offices have adopted differing policies towards reclaiming assessed overpayments on controlled work

- 2.13 For the first year of contracting, 2000-01, the Commission took the view that compliance audits were undertaken primarily to help suppliers become familiar with the new contracting regime. As a result, the Commission informed suppliers of the results of the audits but actual recovery was exceptional. For this reason, the Commission has retained no information centrally from which the financial value of downward assessments identified during the first round of audits could be readily collated.
- 2.14 For 2001-02, the Commission decided that recovery of money should be sought in accordance with guidelines established by headquarters. This guidance treated London as a special case with recovery concentrated on Category 3 suppliers who represented a greater problem in London compared to other regions. We found that London and Wales had followed headquarters guidance, but that West Midlands had followed an approach similar to the exceptional practice set out for London with no recoveries being pursued for category 2 suppliers. The Commission told us it had taken action to bring practice in West Midlands into line with other regions. Where recovery was effected by the regions, it was through deduction from the monthly contract payments.
- 2.15 In 2001-02, the Commission recovered £2.1 million from suppliers. The amounts recovered by the different regions in 2001-02 are shown in Figure 7. Recoveries made by the London office included £700,000 from one supplier (see case study). The balance of £1.1 million recovered in London was paid over by 18 suppliers.

6 Results of contract compliance audit, showing the percentage falling into each category, 2000-01 and 2001-02



NOTE

Five categories were in use in 2000-01, these have been translated to three in the above chart on the basis of, old categories 2 and 3 equal new category 2 and old categories 4 and 5 equal new category 3.

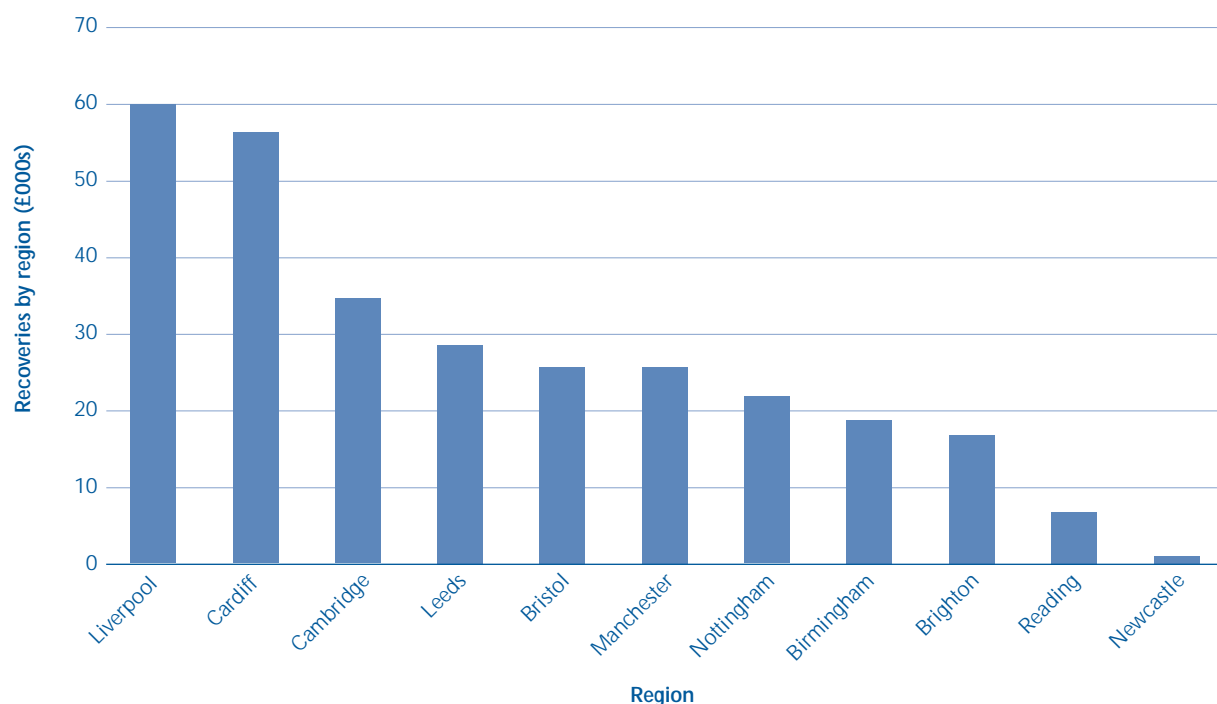
Source: National Audit Office analysis of Legal Services Commission data

RECOVERY OF DOWNWARD ASSESSMENT: CASE STUDY

- In 2001, the London regional office carried out a contract compliance and cost assessment audit at a firm of solicitors contracted to provide legal help in four categories of civil legal aid. All the cases examined in the audit related to immigration work.
- The Commission's auditors examined a sample of 152 files and initially disallowed in total £88,535, an average reduction of 51% of costs claimed. After discussion with the firm the Commission accepted that for some of the cases disallowed, claims were in fact justified. However, the firm had on many occasions claimed for ineligible work or had claimed for too many hours. Also there had been considerable duplication of work, for example, detailed questionnaires had been filled in to elicit information that had already largely been collected. There were also numerous occasions when there was no explanation on the file about why work had been carried out. In other instances, key information was missing from the file such as evidence of income and capital.
- The Commission assessed the firm as a Category 3 performer and gave it six month's notice to improve performance or face further sanctions, including possible termination of the contract.
- Most of the auditors' assessments were confirmed by one of the Commission's lawyers under the peer review process. The firm initially took the matter to a Cost Appeals Committee but withdrew the appeal after further discussion with the Commission during which agreement was reached on the amount to be recovered based on an extrapolation of the agreed assessment on the files examined to immigration work as a whole. Almost £700,000 was recovered by the Commission.
- Two members of the firm, who were responsible for the assessed work, were subsequently bought out or left when the firm was restructured. A new partner assumed lead responsibility for the firm's legally aided work and took steps to improve performance. At the next contract compliance and cost assessment audit, the firm received a Category 1 assessment.

7 Recovery of downward assessments made in 2001-02, by region, excluding London

The level of recoveries outside London was relatively modest ranging from £60,000 in Liverpool to £1,000 in Newcastle. Total recovered outside London was £300,000.



Source: National Audit Office analysis of Legal Services Commission data

(ii) Controlling the cost of licensed work

The cost of licensed work is certified by the Commission before going ahead and is subject to scrutiny when claims are submitted

2.16 As with controlled work all licensed suppliers are required to comply with the Commission's quality standards and the majority of suppliers are engaged in both controlled and licensed work. For licensed work, the Commission approves the cost, timing and scope of work through a certification process administered by the Commission's regional offices. Each completed subsequent claim against the certificate is scrutinised by either the Commission or the courts, depending on the amounts involved. Whilst there is a broad limit on the volume of work through the available capacity of participating suppliers, much of this work remains essentially demand led. The principal means of control are the criteria detailed in the Funding Code (Appendix 2) and the eligibility criteria applied to the means test. For the ten year period from 1991-92 to 2001-02 the Commission has compared the average

increase in costs of bills it has paid with those where costs have been agreed between the parties. This suggests that the cost of bills paid by the Commission has increased, on average, at 7.6 per cent per year, compared with 15.3 per cent for costs agreed between the parties.

2.17 With the assistance of the Commission's Audit Services, we tested a sample of 185 civil cases as part of our audit of the 2001-02 financial statements. The test results showed that overall the Commission was properly assessing applications for civil legal aid and that certificates were being promptly issued.

2.18 At present, the Commission makes no link between the compliance audits carried out for controlled work and the certification and scrutiny of claims made for licensed work. Since many suppliers carry out both types of work, Commission staff operating the certification arrangements may not be aware of weaknesses identified through the contractual arrangements, and vice versa. A stronger link between the two systems could allow the Commission to better target its scrutiny of claims for licensed work at Category 3 suppliers. A more integrated approach to supplier audit is currently being put in place by the Commission, to become fully effective from April 2003.

2.19 Some suppliers we spoke to were concerned about the time it took for the Commission to pay final bills. The Commission's overall performance on paying civil bills in 2001-2002 was to pay 93 per cent in eight weeks against a target of 100 per cent. This was subject to regional variations, the London regional office paying 84 per cent in eight weeks. At the time of our visits, two regional offices (London and Wales) were experiencing difficulties in bill payments which were causing them to miss their targets. All suppliers, however, appreciated the payments on account the Commission made during the course of a case.

2.20 The Commission has established procedures for handling all complaints. Regional offices have a nominated person with overall responsibility for overseeing complaints. Many complaints are from suppliers and concern delays, particularly in paying bills. There are also a significant number of complaints about the decisions which regional offices make on the issue of certificates and bill assessment. In 2001-02, there was a 34 per cent reduction in the number of new complaints received by the regional offices concerning all the Commission's activities (down from 5,935 to 3,889). Of these, 44 per cent were considered justified, the same percentage as the previous year. The annual number of queries received from members of the public, including solicitors questioning claimants means or merits has reduced from a peak of 18,000 in 1996-97 to 5,800 in 2001-02 and 2,400 in the first six months of 2002-03.

The Special Investigations Unit has successfully challenged the eligibility of applicants in a high proportion of targeted cases

2.21 In its 1996 report, the Committee of Public Accounts expressed concern at the threat posed to the then legal aid scheme by the growing number of high risk applicants with complex legal affairs typically associated with expensive litigation.

2.22 The Commission's Special Investigations Unit, comprising 13 staff - with recourse to the specialist skills of a professional accountancy firm - is responsible for investigating the eligibility of applicants for legal aid, particularly in cases likely to involve significant cost to the public purse and involving claimants with complex financial affairs. The main focus of the Unit's work is investigating targeted cases at an early stage to avoid certificates being issued in instances where this would be inappropriate. In 2001-02, the Unit concluded full investigations into 150 civil cases of which 85 per cent (84 per cent in 2000-01) led to either the refusal or withdrawal of funding or to an increase in contributions payable. In addition, the Unit assisted regional offices with means assessment in a further

199 complex cases. In 91 per cent of these cases (93 per cent in 2000-01), the additional enquiries led to a change in the previous decision.

2.23 The Unit uses a number of inquiry techniques and applicants are required to give permission for the Commission to contact relevant third parties directly. Common sources of information are banks, building societies, Companies House, the Land Registry, the Driver and Vehicle Licensing Authority and foreign equivalents of these organisations. The Unit and their forensic accountancy consultants have built up contacts abroad for investigations involving foreign assets to assist in unravelling the real income of certain applicants for legal aid. Examples of the Unit's work are given in the following case studies. The Unit's running costs in 2001-02 were £400,000. The Unit estimates that it saved the Fund £750,000 in 2001-02 although it considers this figure to be a conservative estimate.

The Commission's Special Cases Unit has introduced greater rigour to the scrutiny of expensive cases

2.24 In its 1996 report, the Committee of Public Accounts urged the Commission to pay particular attention to long-running and high-cost cases as well as initial applications. In 1999, the Commission set up the Special Cases Unit to reduce the proportion of money spent on the most expensive cases. The focus of attention, set by the Lord Chancellor, was the top 1 per cent of cases and cases costing in excess of £25,000. Currently, the Unit is dealing with older cases initiated under the Legal Aid Act 1988 and new cases covered by the Access to Justice Act 1999. Cases under the 1999 Act are administered through individual contracts. The contracts specify the cost per hour and include a case plan that specifies the expected time to be taken for each stage of the case. The Unit pays differential rates to suppliers depending on a number of factors such as the likelihood of recovering costs. To help inform its judgements the Unit may also obtain independent legal and accountancy advice. Cases in progress under the 1988 Act are not managed under contracts, but the Unit applies the other methods of control noted above. The Commission's own estimates suggest that cases with gross costs exceeding £25,000, the focus of Special Cases Unit control, represent around 1.6 per cent of total cases and 22 per cent of the gross cost of cases.

2.25 The different approaches adopted by the Unit to controlling costs can be illustrated with reference to cases involving clinical negligence claims, cases involving children brought under public law and large multiparty action cases. Under the first, the Commission seeks to support only those cases with a reasonable

SPECIAL INVESTIGATIONS UNIT: CASE STUDY 1

- The client (Ms B) was in receipt of income support and so was given a funded certificate as a "passport" client. Representations about the client were received from a third party and the matter was referred to the Unit.
- During the Unit's investigation, it became apparent that the client had access to considerable assets held by other parties. It was further established that the client owned an expensive sports car, held directorships and had enjoyed holidays in exclusive locations. None of this information had been disclosed to the Unit by the applicant.
- To progress the case, the Unit needed to inform the Benefits Agency of its findings. The Unit drafted a letter to the Benefits Agency and asked the client to forward the letter so that the Agency could comment on its contents.
- The client failed to co-operate with the investigation by refusing to forward the letter and her certificate was revoked. She appealed against the decision to a Funding Review Committee which did not allow the appeal.

SPECIAL INVESTIGATIONS UNIT: CASE STUDY 2

- The client (Ms A) was referred to the Unit as she had received over £200,000 from a win at bingo. She claimed her boyfriend had spent a significant amount of the prize money, that she had purchased a vehicle for her brother as a present and that she had repaid family loans.
- The Unit found that the client had tried to confuse the investigation by stating she had cashed in funds and repaid family loans with the same monies. After enquiries with her bank, it was possible for the Unit to follow a trail which showed that the client had re-invested the funds in an undisclosed account held in her name. The client's certificate was revoked. She appealed against the decision to a Funding Review Committee which did not allow the appeal.

SPECIAL INVESTIGATIONS UNIT: CASE STUDY 3

- The clients, a married couple, ran a "swingers" holiday business, which advertised for business on the Internet. The clients' solicitors provided the Commission with information regarding the applicants' properties abroad and their financial circumstances.
- The Unit had to ascertain what property the clients actually owned and to establish the level of income that was received from the lettings business. It also had to establish if any capital had been retained from the sale of their property in the UK.
- The Unit was able to establish that the business was profitable and that extensive renovation work had been carried out to the property and outbuildings. The Unit also established that a property, described as a derelict building, was actually being let as a holiday home.
- The clients stated that they did not have any supporting documentation and were unable to provide confirmation of the movement of the funds from the sale of the property in the UK. They also refused to supply any information or documentation concerning their business income. As the clients had refused to co-operate with the investigation, their certificate was revoked. They appealed against the decision to a Funding Review Committee which did not allow the appeal.

chance of success, whereas for some children cases it is under a statutory obligation to provide support, for example to help guardians opposing applications to take children into care.

- **For clinical negligence claims**, the Commission judges the merits of cases and assesses the quality of its suppliers' work. A report from the Committee of Public Accounts in 2000-01 found that legal costs exceeded damages paid to patients in more than half of all claims for several of the most common categories of injury. The role of solicitors had a key bearing on whether worthwhile cases were brought and on how long a case takes to complete. The Committee noted the steps taken by the Commission to improve the situation including restricting clinical negligence cases to solicitors with the appropriate Quality Mark. Currently, only around 25 per cent of funded clinical negligence actions are successful.

However, larger specialist firms have success rates of around 70 per cent. The Commission told us that the different success rates were partly due to more sophisticated initial screening of applications in larger firms and highly specialised levels of expertise. The Unit is disseminating best practice amongst the 200 or so suppliers involved in this work and seeking to identify the factors that suppliers should have addressed in their case preparations.

- **In public law Children Act cases**, public funding is guaranteed to applicants who meet the means criteria. Most of these cases are unsuccessful against the local authority and costs are not recovered by the Commission. Thus, unlike clinical negligence cases, there is no opportunity for managing the net exposure of the Community Legal Service fund. The issue here is therefore controlling the costs incurred by suppliers - there are potentially around 3,000 suppliers in this area of law.
- **For large multiparty action cases**, tendering was introduced by the Commission in 1992 but its procedures were revised in 1999. Under current arrangements, the tendering selection is based primarily on the quality of the bid, not the cost. Each firm has to bid within specific pricing terms, for example solicitors fees must be tendered at £70 per hour or less. Only if there are two bids of equal quality does pricing become the defining factor. A specialist panel of 30 to 40 suppliers has been established for this purpose. At present, tendering is only used in multi-party actions. Cases are selected for tender where the Unit considers that there is realistic competition or the Unit has a concern about the present team on a case or where there are disputes between several teams working on a case. Whilst the Commission regards tendering as effective - six actions have been tendered under the 1999 arrangements - it is regarded by the Commission as

expensive. High cost individual cases are not subject to tendering and the Commission has as yet no plans to extend it into this area.

2.26 Whilst the Commission can cite particular examples of the outcome of the Special Cases Unit's work, there are no overall measures yet available of the Unit's performance. There are no measures available to assess, for example its success in keeping cases within their initial budgets, and its ability to forecast the likely success of individual cases. However, individual examples do illustrate its potential value, for example, in one case potential net costs of £900,000 were avoided by the Unit's refusal to approve a request to fund speculative forensic work and by obtaining independent confirmation that a settlement on offer was reasonable. The Commission told us that they are in the process of specifying targets for the Unit's success where it has discretion over taking cases on.

2.27 Without better information on the Unit's impact, the Commission may not be in a position to fully assess whether it is allocating its own administrative resources in the best way. The Special Cases Unit currently comprises 20 staff overseeing cases costing, in net terms, over £75 million (2002-03). The running costs of the Unit are expected to total £870,000 in 2002-03. This compares with around 460 staff engaged in the administration of civil and criminal contracts involving expenditure of around £880 million. Many of the cases overseen by the Special Cases Unit represent a sizeable financial risk for the Commission. Some of these are handled on a multi-party basis in which a number of clients have causes of action which involve common issues of fact or law arising out of the same cause or event. Even where a case is won, costs may sometimes have to be borne by the fund, for example a recent successful multi-party action case cost the taxpayer £2.5 million.

(iii) Whether the Commission has effective arrangements for pursuing outstanding debts

The costs awarded to the Commission by the courts may not, in some cases, be paid for some years

2.28 At the end of March 2002, the Commission was owed almost £371 million from three main sources: clients required to make contributions to legal costs; court orders awarding costs to the Commission; and statutory charges on the property of funded clients (**Figure 8**). During the year, debts totalling £20 million were written off, comprising £11.7 million irrecoverable costs and £8.2 million contributions from funded clients. Between

1999-00 and 2001-02, debt from contributions to costs fell by 23 per cent, debt from costs rose by 6 per cent and debt from statutory charges rose by 8 per cent.

2.29 The Commission's most significant source of debts relate to statutory charges, usually arising from marital cases. These debts represent a charge on the property of a client from which legal aid costs will be recovered when the property is sold. Whilst these charges will usually be recouped, this can take many years. As at 31 March 2002, there were 80,834 cases outstanding, 41 per cent of which were over ten years old (**Figure 9**). The debt is protected for the benefit of the Commission by way of the registration of a charge at the Land Registry. The debt is normally repaid when the client seeks to sell their property and requires the discharge of the charge prior to the sale. Most pay simple interest on the debt at a rate of 1 per cent higher than the Bank of England base rate. The Commission has, however, established a voluntary system whereby clients can repay the debt earlier by instalments. It may be in the interests of some clients to achieve early settlement of the debt. Currently, only a relatively small proportion of people have taken advantage of this arrangement. It is possible that some debtors are not aware of this option although, for those who would have to borrow money to pay off the debt, it is likely to be cheaper to keep the statutory charge.

2.30 Outstanding amounts are referred to the Commission's Debt Recovery Unit once an initial request for payment has not been met. The Unit had a target to recover debt totalling £10 million in 2001-02 against which they recovered £9.2 million. The Unit was also given additional responsibility and resources to recover outstanding payments on account to solicitors now due back to the Commission. These debts arise where the solicitor's costs are recovered in successful cases, but where there is no basis to offset amounts due back to the Commission against further payments due to the solicitor. For example, where the supplier is no longer engaged in legal aid work. During 2001-02 the Unit collected £17.4 million related to payments on account and anticipates similar receipts of up to £25 million during 2002-03. The administrative cost of the Unit of 32 staff was £867,000 with a further £77,000 being spent using external agencies. It is likely that additional resources would result in increased recoveries but at a diminished rate of return. In April 2002, the age profile of the 15,900 live debts being pursued was approximately 40% less than a year old, 20% between 1 and 2 years old and 40% older than 2 years.

8 Debts owed to the Commission 31 March 2002 compared to 31 March 2001

Type of Debtor	2001 £000	2002 £000
Contributions from clients	57,319	48,912
Costs to be recovered	35,918	42,095
Statutory charges	258,056	254,475
Other	22,391	25,770
Total gross	373,684	371,252
Provision	(51,406)	(52,018)
Total net	322,278	319,234

Source: Legal Service Commission figures

9 Over 40 per cent of statutory charges have been in place for over 10 years

Range	Volume	%
Less than five years	23,064	28
Between five and ten years	25,000	31
Between eleven and fifteen years	19,068	24
Between sixteen and twenty years	11,416	14
Greater than twenty years	2,286	3
Total	80,834	100

Source: Legal Service Commission data

2.31 The Unit starts the debt collection process by writing to the debtor to ask for settlement. This is followed up, if necessary, by further correspondence or telephone enquiry. If the debt still remains unpaid the Unit will consider all other methods of enforcement open to it including the obtaining of an attachment of earnings order or the registration of a charge on the debtor's property. The Unit also employs four external agencies to assist in the tracing and recovery of debt although the agencies are only allowed to proceed by way of letter and telephone enquiry and do not issue any court proceedings. An Internal Audit review in 2000-01 concluded that the debt collection system in place operated well and there was a high level of assurance with respect to the level of management control operating over the system. However, the review found that the Commission's computer systems were not capable of providing an accurate figure for recoverable debt without considerable effort by the finance department.



Part 3

Improving Quality of Service

Introduction

3.1 This Part considers:

- (i) whether the Commission has appropriate arrangements for assessing the quality of service provided to clients; and
- (ii) whether the Commission has secured appropriate access to services across the country.

(i) Assessing quality of service

The Commission has introduced a series of Quality Marks to encourage suppliers to meet minimum service standards

3.2 Since April 2000, providers of legal and advice services have been able to apply to the Commission for a Quality Mark. Providers must apply for the Quality Mark at a level which best fits their service:

- **self-help information** - for services that rely on the public accessing information themselves;
- **assisted information** - for organisations that have a dedicated information service;
- **general help** - for organisations that diagnose clients' problems and give basic assistance;
- **general help with casework** - for organisations taking action on behalf of clients to move the case on;
- **specialist help** - for providers of complex legal advice in specific areas of law. Here, organisations are expected to carry out the full range of legal services including representation where this is permitted.

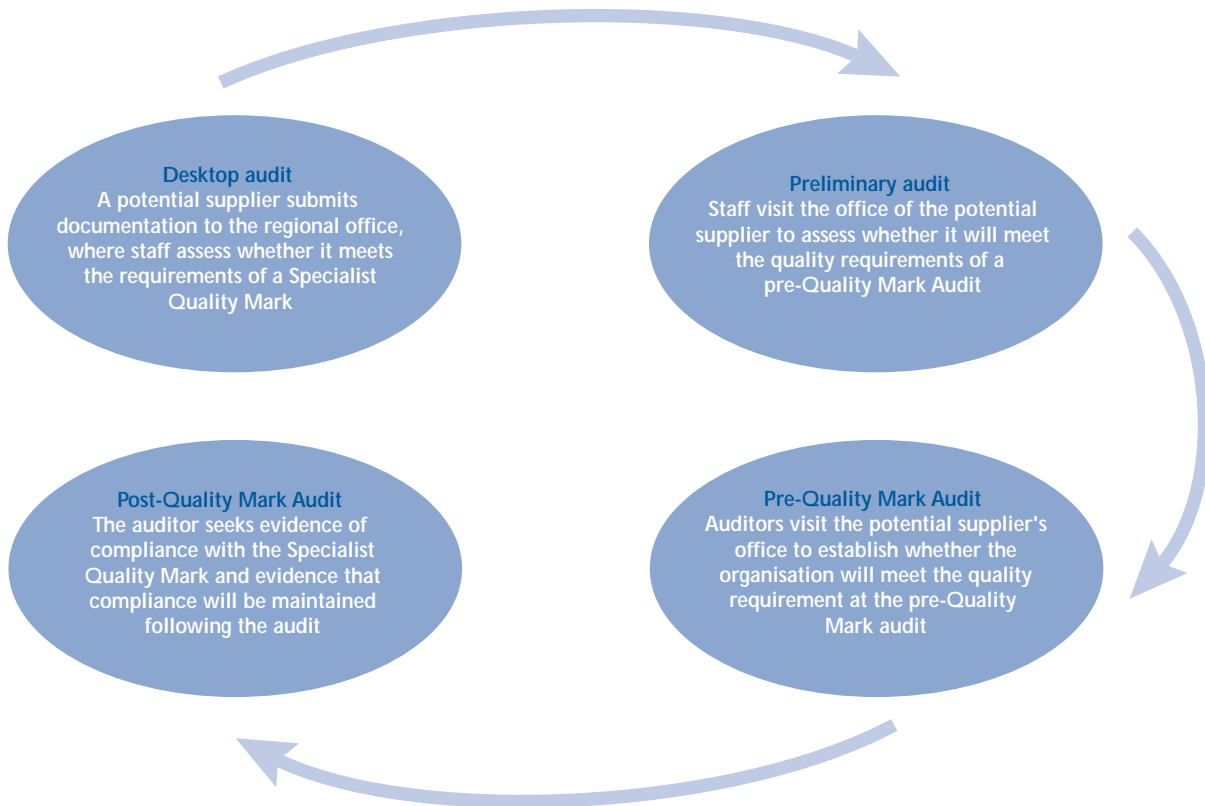
Potential suppliers of civil legal aid must obtain a Specialist Help Quality Mark. Other providers of legal advice services who do not attract funding from the Commission are increasingly required to comply with the Commission's general help Quality Mark in order to obtain funding from other sources, in particular, local authorities.

3.3 To attain a Specialist Help Quality Mark, the Commission requires suppliers to meet standards that cover seven key quality areas known as the Quality Mark Framework. These are access to service; seamless service; running the organisation; people management; running the services; meeting the clients' needs; and commitment to quality. Because the Commission's suppliers operate under a contract from which they are free to withdraw, a significant part of the audit process is aimed at building a constructive relationship between Commission and supplier. In the first instance, the audit results are used by the Commission to help it decide on how much work it will allow a new supplier to do. By April 2002, there were around 5,000 suppliers approved under specialist Quality Marks in England and Wales. A further 5,000 organisations not funded directly by the Commission were also approved to a non-specialist Quality Mark standard. [Figure 10](#) illustrates the steps involved in awarding a specialist Quality Mark.

3.4 Suppliers have not in general failed to pass the Quality Mark standards, instead applicants have tended not to proceed with being approved. The Commission told us that for some applicants, particularly smaller firms, the extra investment required to attain a Quality Mark, for example in extra supervision and training, would not be matched by the potential pay-back from publicly funded business. This may partly explain the reduction in the number of suppliers eligible to provide help and representation from 11,000 immediately before the introduction of the Quality Mark and contracting, to around 5,000 quality approved suppliers in April 2002. Many of the former had only been involved in very small amounts of publicly-funded business.

3.5 Suppliers we spoke to commended the constructive attitude of the auditors who visited them during the Quality Mark audits. One supplier complained about the amount of paperwork involved in the process and two commented that the process did not measure outcomes to clients. However, most agreed that the Quality Mark and the contracting initiatives had helped suppliers to improve the running of their businesses.

10 The steps involved in awarding a Quality Mark



Source: National Audit Office

The Commission requires suppliers to collect data on client satisfaction but does not itself seek direct evidence of client views

3.6 Since April 2002, the Commission has placed a new requirement on suppliers to complete customer satisfaction data for each case they handle. The Commission sees this as a supplier matter relating to customer satisfaction and consider that clients are only able to judge client care, rather than real quality of delivered service. For this reason, the Commission does not, as part of its Quality Mark audits, routinely seek its own evidence on the quality of service received by clients, either from individual suppliers or by suppliers collectively. In order to assess quality of service the Commission is developing a system of peer review. However, direct client feedback could provide useful information on the issues of chief concern to clients and ensure that the development of the Quality Mark meets the concerns of those who use these services. If the Commission receives a complaint about a solicitor it refers the matter to the Law Society's Office for the Supervision of Solicitors, unless the matter relates directly to a contract in which case it is dealt with by the Commission.

At present, there is no direct link between the quality assessments and the results of the Commission's scrutiny of costs

3.7 To date, the Commission's Quality Mark and cost compliance audits have been carried out separately, but the same staff that carry out cost compliance work also review transactions in support of Quality Mark work. Through the work of lead auditors and account managers the results of both lines of work are taken account of in liaison with the supplier. However, weaknesses identified by cost compliance auditors, for example amongst the large number of Category 3 suppliers, do not necessarily disqualify suppliers from keeping their specialist Quality Mark.

3.8 The Commission has recently looked at the work of its supplier audits by benchmarking it against the work of other organisations using the Public Sector Benchmarking Service. The review endorsed the risk based approach involved in the current moves to implement a more integrated approach to supplier audit. On the basis of a pilot programme in a number of its regional offices the Commission is to launch a more integrated approach to Quality Mark assurance and compliance audit as from April 2003. Under these arrangements Category 1 suppliers will be Quality Mark

assured on a three year rolling basis and Category 2 and 3 suppliers will be audited to varying degrees based on an overview of risk obtained from compliance work, their Quality Mark assurance and their performance on more general matters of contract administration. Under these arrangements compliance audit file examination and Quality Mark assessments will be carried out on a more integrated basis under the supervision of account managers.

(ii) Securing access to services

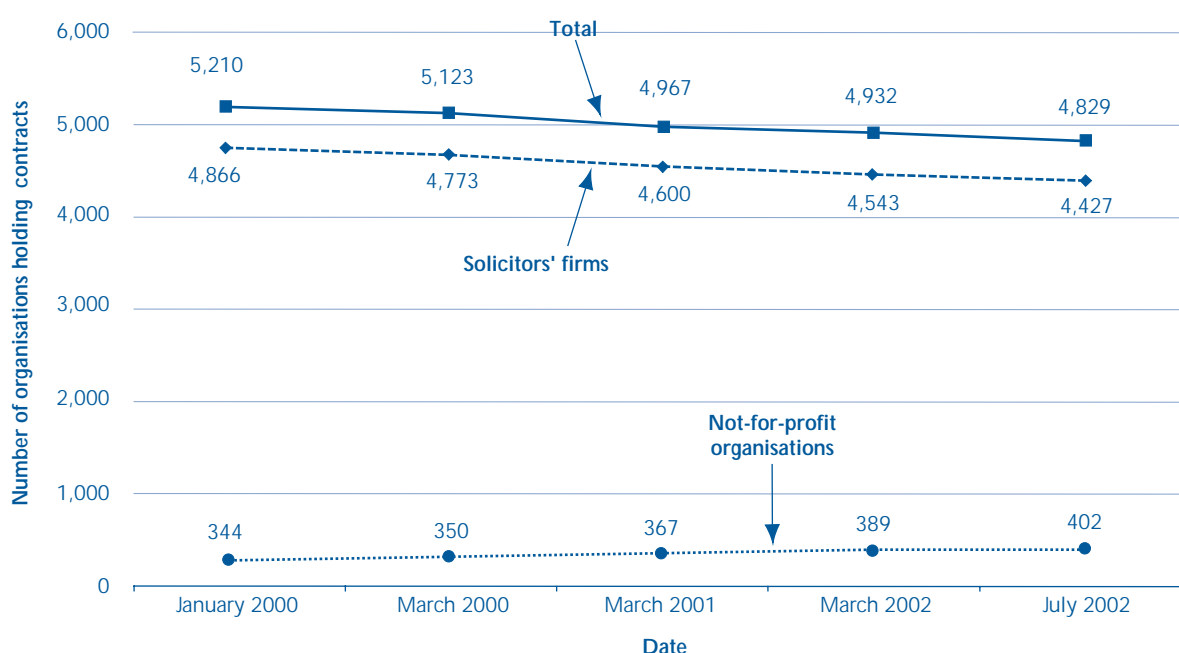
Since April 2000, there has been a decline in the number of solicitor firms providing legal aid, but an increase in the number of suppliers from the not-for-profit sector

3.9 The Commission has no predetermined national quota for the number of suppliers or type of supplier it will contract with. The number of suppliers, their size, location and the range of contracts held should depend on local needs. Some shift in the supplier base may be expected reflecting changes within the sector, for example changing economies of scale, new ways of providing services and new areas of demand, such as immigration work. A key objective of the new Community Legal Service has been to secure a more coherent and coordinated network of advice and legal services with different funding bodies working alongside each other at local level.

3.10 Since the introduction of contracting, the number of solicitors' firms involved in providing legal aid services has fallen. In January 2000, when contracting was first introduced, 4,866 solicitors' firms were awarded contracts. By July 2002, the number of solicitors' firms holding contracts had declined to 4,427, a fall of 439, or almost nine per cent (Figure 11). In addition, some firms are contracted to work only on licensed work - these numbers rose from 346 in March 2001 to 389 in March 2002 but had declined to 243 by July 2002. The data kept by the Commission does not allow us to assess the impact of these changes across different regions. Solicitors' firms we spoke to were committed to legal aid but raised concerns over their levels of remuneration - remuneration rates were increased by around 10 per cent for licensed work and 5 per cent for controlled work in April 2001 but had previously been held constant for six years. Those suppliers we spoke to with least dependence on legal aid work suggested that they may further reduce the volume of work they take on.

3.11 The Commission believes that many of the solicitors' firms who have left have opted out of contracting for a number of reasons: the cost of meeting the Quality Mark standard, including the need to have experienced staff who could act as supervisors, may have been thought too onerous, particularly amongst smaller firms; the very small proportion of total business represented by legal aid for many firms has made it uneconomic below a certain volume of work; and the removal of personal injury work from the scope of licensed work. Additionally, the Commission told us, a lesser number of

11 The number of solicitors' firms with contracts has declined, partly compensated for by an increase in the involvement of not-for-profit bodies



Source: National Audit Office and Legal Service's Commission data

firms may have opted out because they failed to meet the requirements of the Quality Mark standards when assessed by the Commission's staff.

3.12 The Commission has sought to attract the involvement of the not-for-profit sector in the provision of help and advice. By July 2002, not-for-profit organisations accounted for eight per cent of the supplier base. The Commission told us that a key advantage of these organisations was their ability to direct clients towards a broad range of advice services. Most of the not-for-profit bodies are paid by the Commission to perform an agreed number of hours work per category, rather than start a specified number of cases. Independent research suggests that, on average, not-for-profit bodies take longer to complete cases, but generally achieve a higher standard of service. The Commission told us that, from April 2003, it intends to extend its compliance audit work within the not-for-profit sector so as to bring it more in line with controls adopted for solicitors.

3.13 We examined the trend in the overall number of cases dealt with. **Figure 12** suggests that the overall number of claims made in help work fell sharply in the year to March 2001 compared to the previous year. This was partly due to a catch-up exercise by suppliers to clear outstanding green forms before the new contracting arrangements were introduced in January 2000. The number of claims increased by seven per cent in the year to March 2002. The Commission told us that, during 2001-02, the overall number of matters that could have been started under contract exceeded the

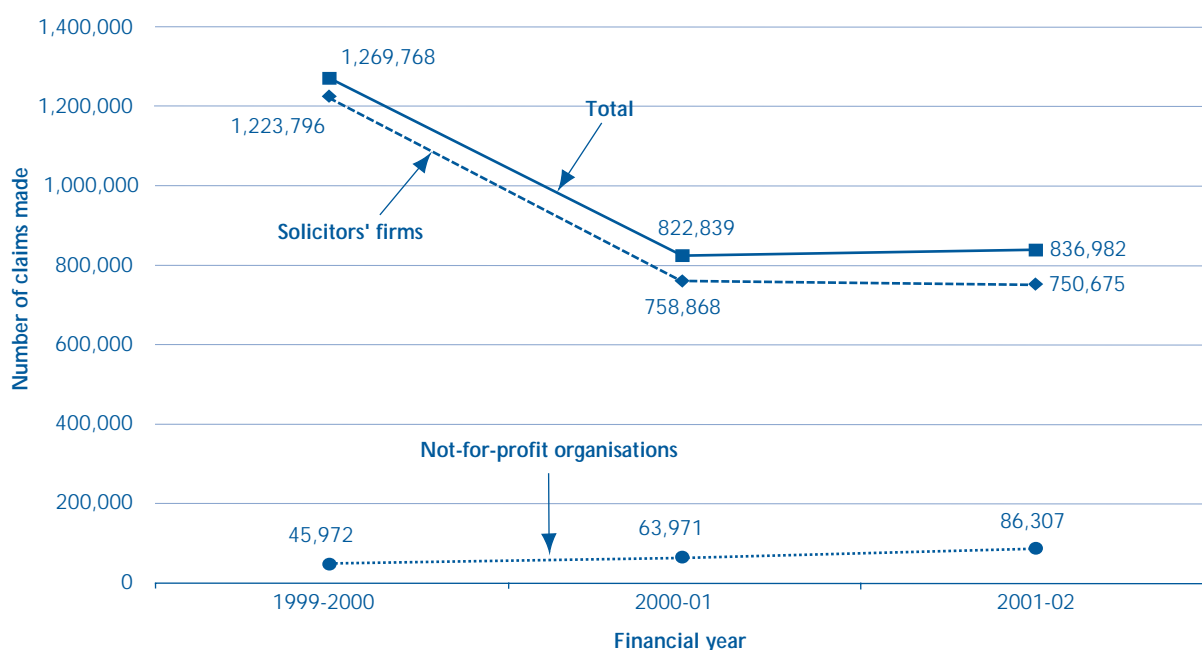
numbers required by either solicitors' firms or not-for-profit organisations. Staff in the regional offices told us that some requests for additional starts were refused, for example, in the area of social welfare.

3.14 Work on legal representation showed a similar downward trend in the number of cases being handled which fell overall by 15.4 per cent between 2000-01 and 2001-02. This included a decline of 12.1 per cent in family cases and 24.4 per cent in personal injury cases, which represents the closure of older cases ongoing before this category of law was removed from eligibility for legal aid. The overall average gross cost of cases rose by 16 per cent.

The Commission has had some success in expanding the provision of help on immigration issues but has identified gaps in service provision in some areas of law in parts of the country

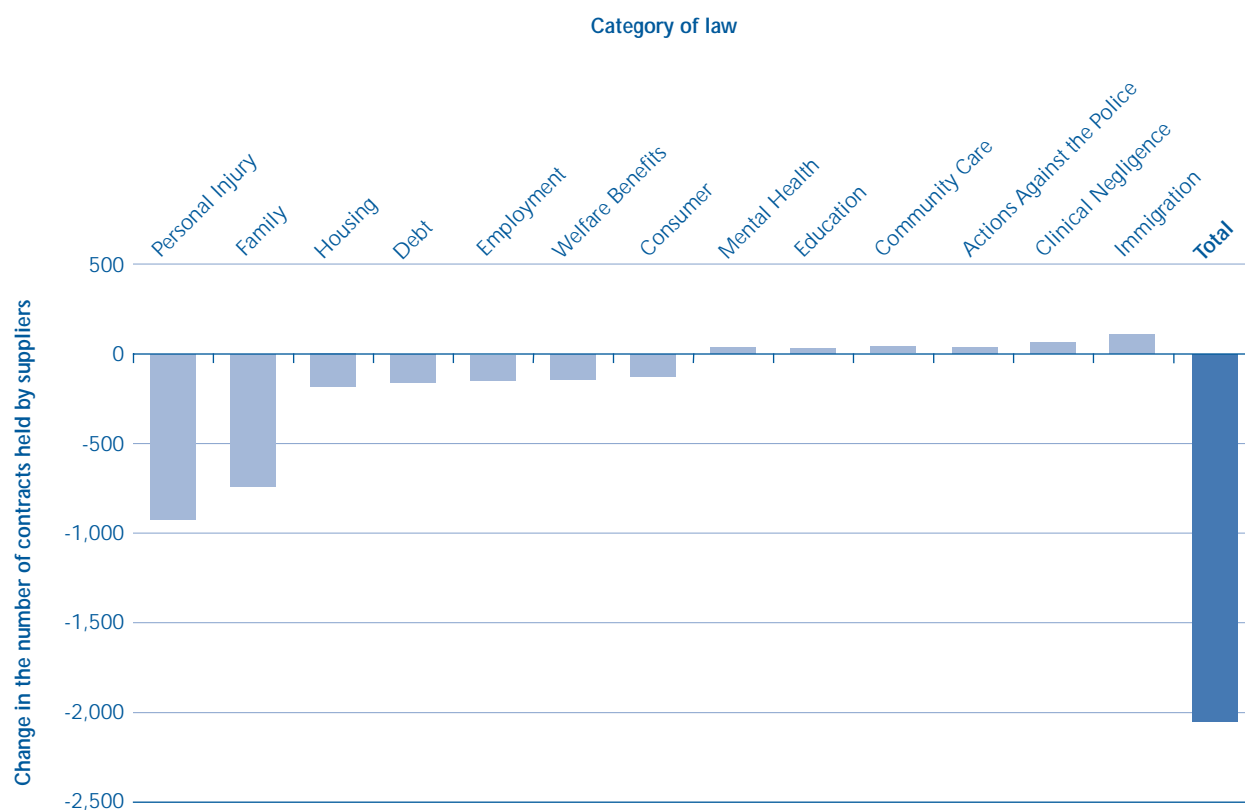
3.15 **Figure 13** suggests that the Commission has had some success in increasing the number of contracts for immigration work. In London in particular the number of suppliers approved for immigration work rose from 280 in January 2000 to 394 in October 2002. More generally, the Commission introduced a package of measures (including funding recruitment and supervision and a guaranteed income) to encourage suppliers to expand in immigration. Seventy-seven of these special contracts have been let for 203 caseworkers in 8 regions.

12 The number of legal help claims from suppliers initially dropped but increased during 2001-02



Source: National Audit Office analysis of Legal Services Commission data

13 The number of contracts held by suppliers has increased on immigration but has dropped across a number of other areas of law



Source: National Audit Office analysis of Legal Services Commission data

3.16 The number of contracts held by suppliers in a number of other areas of law fell between March 2000 and March 2002 (Figure 13). The largest numerical decline lay with family law, a priority area, with 735 fewer contracts (16.8 per cent), however over the same period there was an increase of 240 in the number of suppliers licenced to carry out legal representation in family law. By March 2002, three regions, Birmingham, Bristol and London had contracts covering all categories of law within the scheme; the remaining nine had at least one category for which no contracts were in place. Commission staff within the regional offices visited by us cited geographical areas in their regions where there were little or no suppliers for advice on housing, employment or debt.

3.17 There is a significant difference in supply issues between rural and urban areas. The Commission believes that supply in urban areas, with the exception of immigration, is broadly meeting needs. However, the Commission has identified supply problems in rural areas, particularly amongst some social welfare categories of law. The Commission has taken a number of measures to fill gaps in the supplier base, through direct services, alternative methods of delivery and support services. These include contracts to provide advice through telephone services. There are now 17 of these contracts in a number of categories of law, but focusing particularly on debt and

housing; duty schemes to provide housing advice and advocacy at 13 county court centres; support services for suppliers -such as specialist advice lines (and the ability to refer complex cases) in human rights, public law, employment and a number of other categories of law; and funding suppliers to provide outreach services. The growth in the provision of services by the not-for-profit sector has also helped to improve accessibility. There are, for example, very few solicitors providing housing advice in Wales and the regional office has, as a result, entered into an agreement with Shelter to provide advice in all parts of Wales.

3.18 The Commission's Legal Services Research Centre is charged with helping it to assess need. In carrying out its work the Centre makes no assumption that the involvement of lawyers is necessarily appropriate in the resolution of all law-related problems. In 1998-99, prior to the introduction of the Community Legal Service and contracting, an analysis by the Centre found that out of a total of 9,527 wards in England and Wales 6,800 saw no delivery of legally aided advice of any description. Furthermore, these 6,800 wards were not all in remote rural areas, and together contained 60 per cent of the population. However, the Centre's work at a number of local areas suggested that the assessment of need was inherently much more complex

SUPPLY OF LEGAL ADVICE: CENTRAL NORFOLK CASE STUDY (1998-99)

- The area had 3 district councils: Broadland, South Norfolk and Norwich, the principal population, transport and commercial centre in Norfolk. The resident population of Norwich was 119,900, which increased to around 180,000 during the working day. Broadland and South Norfolk have similar populations to Norwich, unevenly distributed, with around half of each population living immediately outside the Norwich city boundary. Their populations are therefore a mix between Norwich suburban and rural. Together the three district councils contain 92 wards with an aggregate population of around 340,000.
- Broadland District Council only funds its own in-house Housing Advice Team in its own area, but contributed to the cost of advice agencies in Norwich. South Norfolk District Council did likewise. In 1998-9 this resulted in legally aided advice being delivered in 1 in every 11 of Broadland's and South Norfolk's wards, but in 1 in every 2.5 of Norwich's wards. However other agencies, some funded by the City Council, for example the Citizens Advice Bureau, provide non-legally aided advice.
- The wards where legally aided advice was delivered in Broadland and South Norfolk, were not those with the greatest population densities, but were all some distance from Norwich. Most importantly, though, the wards in Norwich where legal services were delivered are all in the centre or abutting the centre of the city. (Norwich City Council told us that more non-legally aided advice services now offer advice and information on an outreach basis across the City and beyond).
- Therefore, the legal services supply pattern in central Norfolk is strongly influenced by day to day population movements and the local transport infrastructure.

and had to rely on local assessments of need and provision. The case study opposite taken from the Centre's work, illustrates some of the issues. A key role for the new Community Legal Service Partnerships, discussed in the next section, is to undertake these more detailed assessments.

- 3.19 The Commission has funded several research projects to examine the availability of its funded services to different sections of society. This work has identified a number of priorities for developing services. The Commission's Research Centre's Equal Opportunities Survey 2000 found that in general minority ethnic firms did not report any greater difficulty with the contracting process than non-minority ethnic firms.

The creation of Community Legal Service Partnerships has been welcomed by partner organisations, but some suppliers have expressed concern about a perceived lack of progress

- 3.20 The Community Legal Service relies upon forging local partnerships between local funding bodies, suppliers and the users of services to promote the coordinated planning and delivery of information, advice and legal services. In 1998, the Commission began to develop such links, through its Regional Legal Services Committees, by establishing Community Legal Service Partnerships. **Figure 14** outlines the main functions of these new partnerships.

- 3.21 Only York and three Welsh local authorities do not yet have a Community Legal Services Partnership. Of the 202 Community Legal Service Partnerships established by the end of 2001-02, 74 had published their first strategic plans. The main driver in the progress of the partnerships seems to be the commitment of local authorities. Some local authorities have been supportive and have played a key role in making progress. Staff at the Commission told us that other local authorities had been less enthusiastic, or had to contend with other priorities.

- 3.22 Our discussions with suppliers revealed some disillusionment with the Partnerships after the initial impetus. Suppliers spoke of frustration with what they regarded as slow progress in helping to shape local services. Some solicitors were reluctant to commit time to their Partnership, particularly as they obtained no remuneration for attending meetings. One supplier said that he was the only solicitor in his area who now attended meetings. However, the solicitors we spoke to were appreciative of the providers' forums which they considered to be a useful mechanism for finding out about, and discussing, new developments.

14 Community Legal Service Partnerships

Location	Partnerships are part of a group of other partnerships that come within the boundary of one of the Commission's regional offices. The boundaries of Partnerships themselves vary.
Membership	The core membership of partnerships is the Legal Services Commission, local authorities, other funders, legal service providers, and representatives from user groups.
Functions	The main functions of partnerships are to carry out local needs assessments, to map the supplier base in the area and to agree referral arrangements between providers and develop the supplier base and coordinate funding to ensure priority needs are being met.
Procedures	Some Partnerships will have separate forums for providers, funders and users but also have executive meetings of the partnership. The executive meetings may take the form of a steering group composed of representatives from the key forums but which invites other relevant participants to its meetings. The Commission acts as the facilitator for each partnership.
Funding	Partnerships are expected to look for funding from a number of sources but most would normally come from the Commission and the participating local authority.
Outputs	After producing a needs assessment, a partnership will produce a strategic plan. The strategic plan will normally be followed by an action plan which will form the basis of consideration by potential funders.

Source: Legal Services Commission

- 3.23 Where a local assessment of needs had been made, we found the local strategic plan was being used to inform the Commission's priorities. The best local plans examined by us had identified scope to remove some overlap between existing services and develop new services in areas of unmet need but the rate of progress towards these goals was dependent upon the availability of funding.
- 3.24 In an associated initiative the Commission has set up Partnership Innovation Budgets (PIBs) to encourage the provision of innovative services at a local level. The Commission invited bids in May 2001 and received 228 proposals of which 76 have been successful. One example of a project funded in Wales is at [Figure 15](#).

15 Partnership Innovation Budget - Successful Bids from Wales

Caerphilly County Citizens' Advice Bureau

This project aims to provide a welfare benefits and debt advice service targeted specifically at young people. It builds on an existing information shop and mobile unit run through a Youth Access project based in Blackwood, South Wales. The Bureau will employ and train two youth workers who will undertake casework in the identified categories of law, and would make referrals to other Bureau staff and private practice solicitors in other categories of law. In addition, the workers will be trained to undertake advocacy on behalf of clients before benefits tribunals. The project also includes an element of training for young people themselves to become advice workers.

Source: Legal Services Commission

Appendix 1

Action to address previous recommendations of the Public Accounts Committee

25th Report 1995-96	Treasury minute response and action taken
Main Findings and Recommendations	
<p>General</p> <p>We note that the cost of the civil legal aid scheme has increased from £255 million in 1990-91 to £601 million in 1994-95; and that the Department considers that the increase is due to the demand led nature of the scheme and to the fact that the legal aid cases assisted are now more complex with more disputes relating to personal injury.</p>	<p>Treasury Minute: The open ended approach to resources should be replaced with pre-determined budgets.</p> <p>Post Treasury Minute: New contractual arrangements were put in place (Part 2).</p> <p>The expenditure referred to by the Committee, which did not include legal help, continued to grow until 1996-97 when it reached a peak of £670 million. Thereafter, it started to decline (Part 1) particularly when certain areas of the law such as personal injury were taken out of scope in 2000-01.</p>
<p>We are concerned at the Department's evidence that a great threat is posed to the legal aid scheme by the growing number of high risk applicants with complex legal affairs typically associated with expensive litigation.</p>	<p>Treasury Minute: The Special Investigations Unit has been set up to deal with these types of case.</p> <p>Post Treasury Minute: The Special Investigations Unit's role has been expanded since 1995-96 (Part 2). A Special Cases Unit has also been established to manage high cost cases (Part 2).</p>
<p>The verification of means</p> <p>We endorse the measures now being adopted by the Lord Chancellor's Department and the Assessment Office to improve the arrangements for verifying the means of applicants for civil legal aid and to confirm, where appropriate, the income support status of applicants. We look to the Lord Chancellor's Department to monitor the effectiveness of these measures and to reinforce them as necessary.</p>	<p>Treasury Minute: The effectiveness of the measures will be monitored and reinforced as necessary.</p> <p>Post Treasury Minute: The Lord Chancellor's Department has helped the Commission improve the eligibility test by introducing a requirement on employers to confirm an applicant's salary details. The Benefits Agency still provides confirmation of an applicant's income support status under the terms of a service level agreement between the Agency and the Commission. The National Audit Office examined the arrangements as part of the 2000-01 audit of the Commission's financial statements and found them to be satisfactory.</p>

25th Report 1995-96	Treasury minute response and action taken
Main Findings and Recommendations	
<p>We consider that the Assessment Office should continue with its programme of seeking full verification of applicants' means in representative samples of cases and that a stronger line will need to be taken with those applicants who do not co-operate with any investigation. In this connection, we note that the Legal Aid Board is considering the introduction of an automatic time limit for embargoing work under a legal aid certificate where the applicant is not co-operating.</p>	<p>Treasury Minute: Full verification in a sample of cases will continue. The Legal Aid Board were re-examining their criteria for imposing embargoes on work being carried out including the option of an automatic time limit in cases of non-cooperation. The Legal Aid Board were seeking to place embargoes on work in appropriate circumstances, one option being to introduce an automatic time limit in cases of non-cooperation.</p> <p>Post Treasury Minute: Means are verified fully on all certificates. If the applicant is assessed as high risk, the case is referred to the Special Investigations Unit. Each certificate is given an expiry date, a scope limit and a cost limit. An emergency certificate is revoked after six weeks where there is non-cooperation.</p>
<p>We note that the Department receives an increasing number of allegations from third parties to the effect that applicants for legal aid have mis-stated their financial circumstances. The Assessment Office will need to ensure that its investigative teams have sufficient resources to ensure that such allegations from third parties are thoroughly examined.</p>	<p>Treasury Minute: The work of Assessment Office investigative teams is covered by the Benefits Agency's Integrated Complementing System which takes account of appropriate factors, including workloads, in calculating staffing requirements.</p> <p>Post Treasury Minute: The Legal Aid Board took the work in-house in 1997. A nominated officer in each Regional Office is responsible for checking allegations. Complex matters are referred to the Special Investigations Unit. Allegations have reduced significantly, see paragraph 2.20 of the main report.</p>
<p>We note that the application form is to be revised to remind applicants of the penalties for false disclosure. We recommend that the Lord Chancellor's Department use this opportunity to improve the form so as to collect and analyse data from applicants in a more systematic way, with appropriate cross-checks to identify any inconsistencies in the information provided.</p>	<p>Treasury Minute: A new financial application form is to be reprinted with an additional warning about false disclosure. The ability to cross check information will be enhanced in 1997-98 when means assessment will taken in-house to enable systematic cross-checking of means and merits application forms.</p> <p>Post Treasury Minute: There have been further changes to the application form which enable the Commission, amongst other things, to check gross salaries, tax and National Insurance Contributions.</p>
<p>The checking of high risk cases</p> <p>We note the various measures set in hand by the Lord Chancellor's Department to combat the threat posed to the legal aid fund by the growing number of high risk applicants with complex legal and financial affairs. These measures include developing criteria to identify high risk applicants; an increased focus on applicants who hold assets overseas; undertaking personal interviews and home visits; and, most important, the setting up of a high profile Special Investigations Unit.</p>	<p>Treasury Minute: The Department will continue their effort to tighten controls.</p> <p>Post Treasury Minute: All identified measures were actioned (Part 2).</p>

25th Report 1995-96	Treasury minute response and action taken
Main Findings and Recommendations	
<p>We consider it important that this Unit should have the qualified staff and necessary resources for it to handle efficiently and in a timely fashion the large number of cases likely to be referred to it each year. Prompt action will be necessary in order to contain the legal aid costs that continue to be incurred during an investigation.</p>	<p>Treasury Minute: The Department notes the Committee's comments.</p> <p>Post Treasury Minute: See paragraphs 2.22 and 2.23 of main report.</p>
<p>We recommend that the Special Investigations Unit should examine long running and high cost cases as well as initial applications. These cases have high risk features that were not identified during the original means assessment. Allegations from third parties should also be investigated.</p>	<p>Treasury Minute: The Department will consider extending the role of the Unit when it is more fully developed.</p> <p>Post Treasury Minute: The role of the Special Cases Unit has been expanded to examine these types of cases (Part 2).</p>
<p>We note the difficulty of mounting successful prosecutions where false disclosure of means is suspected; the standard of proof is high and prosecutions can at present only be brought under section 39 of the Legal Aid Act 1988, where the sentence available is relatively light. We, therefore, welcome the consideration being given by the Lord Chancellor's Department to promoting legislative change that would enable prosecutions to be brought under different provisions.</p>	<p>Treasury Minute: The Department notes the Committee's comments.</p> <p>Post Treasury Minute: The Access to Justice Act 1999 removed restrictions previously placed on the Commission about disclosing information to the police. In 2001-02, there were three successful prosecutions for false disclosure of means.</p>
<p>We look to the Lord Chancellor's Department urgently to consider what measures might be adopted to counter the practice of wealthy people arranging their financial affairs so as to qualify for legal aid. The purpose of the legal aid system has always been to provide funding for those who could not otherwise afford to go to law to remedy an injustice. We, therefore, support the suggestion that an applicant should be required to assign any undisclosed assets to the Legal Aid Board, which, if they came to light, could be used to defray any costs incurred.</p>	<p>Treasury Minute: A new regulation introduced in 1996 enables the assets of friends and relatives to be included in the means assessment. The Lord Chancellor's Department is considering assignment of assets.</p> <p>Post Treasury Minute: Applicants are still not required to assign undisclosed assets.</p>
<p>Emergency Certificates</p> <p>We recommend that the arrangements for granting emergency certificates should be reviewed. It is disturbing that in a significant number of cases substantial legal aid costs have been incurred without a full means test. Without compromising the underlying principle of emergency certificates, the Lord Chancellor's Department should consider imposing more stringent procedures for initial analysis and confirmation of financial eligibility. Greater use might also be made of limitations on the costs, time or work that can be undertaken under emergency certificates. The legal aid made available to applicants might also be restricted when an application form has not been properly completed or further information is sought.</p>	<p>Treasury Minute: The Legal Aid Board has taken immediate steps to improve control, for example, the use of computerised management programmes. Further measures on cost, time and work limitations are planned.</p> <p>Post Treasury Minute: The Commission only makes a restricted number of enquiries prior to the issue of an emergency certificate. However, each certificate is given an expiry date, a scope limit and a cost limit. Many emergency certificates are still revoked because the recipients do not subsequently accept an offer of legal aid. These cases usually occur where an injunction has been awarded to victims of domestic violence. In total, 3,620 emergency certificates were revoked in 2001-02.</p>

25th Report 1995-96	Treasury minute response and action taken
Main Findings and Recommendations	
<p>We are concerned that the total amount recovered in respect of revoked emergency certificates is not known. This and other gaps in the Legal Aid Board's management information cast doubts on the Board's ability to monitor and control the amounts outstanding and to target recovery action. It is not surprising in these circumstances that the total outstanding debt has risen from year to year, reaching £23.3 million at the end of March 1995.</p>	<p>Treasury Minute: The Legal Aid Board has taken immediate steps to improve performance. Their debt recovery computer system has been amended to provide information on the total amount of debts arising from emergency certificates and the total amounts recovered. The number of staff in the Debt Recovery Unit has been increased by 40% and training improved. The Unit will be restructured to improve the recovery process.</p> <p>Post Treasury Minute: The Commission's information systems are unable to identify the total amount recovered from revoked emergency certificates.</p>
<p>We consider that the Board had not treated this matter with sufficient urgency. The scheduled introduction of a new computer system at the end of 1996 should help, and the Board also intends to strengthen its debt recovery unit and to use external agents in specific, high-value cases. We also look to the Board to identify debt which is unlikely to be recovered or is not worth the cost of seeking enforcement.</p>	<p>Treasury Minute: The Treasury Minute response immediately above covered both final two points.</p> <p>Post Treasury Minute: External agents have since been employed to recover some of the Commission's debts. The Board has set down a threshold for small debts below which recovery is not usually pursued (Part 2).</p>

Appendix 2

The Funding Code

1. The Code underpins provisions in the Access to Justice Act 1999 and the Human Rights Act 1998 by providing guidance about whether the Legal Services Commission should fund or continue to fund services as part of the Community Legal Service.
2. The Code contains a standard set of criteria, called the General Funding Code which apply to all cases except where there are specific criteria which provide otherwise (paragraph 10). The criteria reflect the different purposes of public funding in different areas of law. In many areas, the aim of the code is to ensure that persons of limited means have the same access to justice as those who could afford to litigate privately. However, this is not the universal principle in the Code which is flexible enough to reflect other considerations. These include funding litigation where it is in the general public interest to do so, ensuring that public bodies are accountable for their actions and ensuring that children and other vulnerable persons are protected under the law.
3. Rather than attempting to set out extensive and wide ranging guidance, each section of the guidance has specific criteria in the Code as an aid to accurate and consistent decisions.
4. Section 4(2) of the Access to Justice Act 1999 describes in general terms the services which may be funded, these being the provision of:
 - general information about the law and legal system and the availability of legal services;
 - help by the giving of advice as to how the law applies in particular circumstances;
 - help in preventing, or settling or otherwise resolving, disputes about legal rights and duties;
 - help in enforcing decisions by which such disputes are resolved; and
 - help in relation to legal proceedings not relating to disputes.
5. Since the Funding Code sets different criteria for different services, and sometimes for different stages of the case, the Code divides the services which may be funded under Section 4(2) into discrete "levels of service". These levels of service include legal help, investigative help and legal representation, each of

which has its own legal definition and criteria. Every application for funding is restricted to one level of service.

6. Certain areas of law, such as personal injury cases, are excluded from legal aid by virtue of Schedule 2 of the Access to Justice Act, 1999, unless the Lord Chancellor directs otherwise. The Code provides guidance on when exceptions occur, for example, where the case is in the wider public interest.
7. There is no presumption in the Code that adversarial court proceedings are the only satisfactory means of resolving a dispute. Where appropriate, legal representation in court proceedings may be limited or refused on the grounds that some other alternative dispute resolution should be pursued. Representation may also be refused if the case can be handled by suppliers under a conditional fee ("no win, no fee") basis.

General Funding Code Criteria

8. There are several criteria under the General Funding Code. One of the most important is the prospect for success. All applications for legal representation, save for a limited range of family, judicial review or mental health cases, must demonstrate a minimum level of prospect of success. Most types of case can only be funded where the prospects of success are at least 50%. However, for some types of case, funding may be granted when the prospects of success are only borderline. This applies to cases with a significant public interest, which have overwhelming importance to the client or are in a priority area such as housing repossession. Legal representation in Special Children Act proceedings can be granted without reference to means, prospect of success or reasonableness. Elsewhere, where the prospects of success are unclear, any funding in the first instance should take the form of investigative help rather than legal representation.
9. Another key criterion is cost benefit under which applicants must show that what is to be gained from the proceedings justifies the likely costs. The criteria also allows representation to be refused if there are other persons or bodies who might benefit from the proceedings and who can reasonably be expected to bring or fund the case.

Specific Criteria

10. There are various categories of law which contain specific criteria in the Code. The categories are not exactly the same as contract categories although there is some overlap. Categories include very expensive cases,

judicial review, family, clinical negligence and social welfare categories such as employment and debt. Applications for funding are in most cases subject to the General Funding Code except to the extent that different criteria are specified. An example of specific criteria for clinical negligence is given below.

Specific Criteria - Clinical Negligence

Scope

Clinical negligence proceedings refer to:

- (a) a claim for damages in respect of an alleged breach of duty of care or trespass to the person committed in the course of the provision of clinical or medical services; or
- (b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim.

Applications for funding can only be made by firms with a clinical negligence contract which is restricted to solicitors with expertise in clinical negligence claims.

The General Funding Code criteria referring to alternatives to litigation is strongly emphasised. Local resolution under NHS complaints procedures is recommended and mediation must be routinely considered both before the issue of proceedings and throughout the case.

Legal Help Stage

The practitioner should take instructions from the client about what happened, how it happened and what injuries and losses have resulted. The practitioner should carry out initial screening to establish if there is prima facie evidence indication of negligence and that the value of the claim exceeds a damages threshold of £5,000. This stage will also provide an opportunity for consideration of alternative remedies.

Investigative Help Stage

Investigative help may only be granted where the prospects of success of the claim are unclear and substantial investigative work is required before those prospects can be determined. The practitioner will need to provide justification for not using the complaints procedure if the claim is for less than £10,000. Situations where it would be appropriate to fund, despite there being a relatively small claim, include where the complaints procedure is not available to the client or where the claim has overwhelming importance to the client, for example because it relates to infant death.

The practitioner will usually be expected to carry out a preliminary investigation to allow for further merits screening before the commitment of the substantial levels of time and costs to a formal investigation which is the second part of this stage.

Certificates issued for investigative help contain strict scope and cost limits. Conditional fee agreements do not apply to clinical negligence claims unless the application relates to a multi-party action.

Legal Representation

An application for funding for full representation will be refused if the prospects for success are poor, borderline or unclear. The General Funding Code cost benefit criteria are replaced for clinical negligence claims -

- (a) 1:1 - for cases where the prospects of success are greater than 80%. This means that damages must exceed likely costs;
- (b) 1.5:1- for the 60-80% bracket where damages must exceed likely costs by at least 1.5; and
- (c) 2:1 - for the 50-60% range where damages must be at least twice the likely costs.

Appendix 3

Examination methodology

1. The National Audit Office undertook four main exercises to collect information for this report.
2. With the aid of a questionnaire, we interviewed staff in regional offices in London, Wales and the West Midlands to address three key issues - whether the Community Legal Service has:
 - provided a network of easily identifiable suppliers of civil legal services;
 - established proper control of the Community Legal Service Fund; and
 - succeeded in providing justice to the most disadvantaged.
3. At the regional offices, we also examined a sample of cost assessments of Category 3 performers. The purpose of the examination was to analyse the reasons for, and the volume of, disallowance of costs made by the Commission's audit staff. In addition, we examined in detail the largest individual cost recovery by the London regional office.
4. We interviewed four suppliers of legally aided services to each of the regional offices. Eight suppliers were from firms of solicitors and four from the not-for-profit sector, two of these being Citizens Advice Bureaux and two law centres. We used a separate questionnaire but one that addressed the same key issues as at the regional offices. We also interviewed representatives from the Law Society, the Legal Aid Practitioners' Group and the Office of Government Commerce.
5. At the Commission's headquarters, we interviewed staff from the Special Investigations Unit and the Special Cases Unit to establish how successful they have been at their key tasks and to review a sample of cases which they managed.