

# Report of the Comptroller and Auditor General to the Houses of Parliament on the Community Legal Service Fund and Criminal Defence Service Accounts for the year ended 31 March 2013

## Introduction

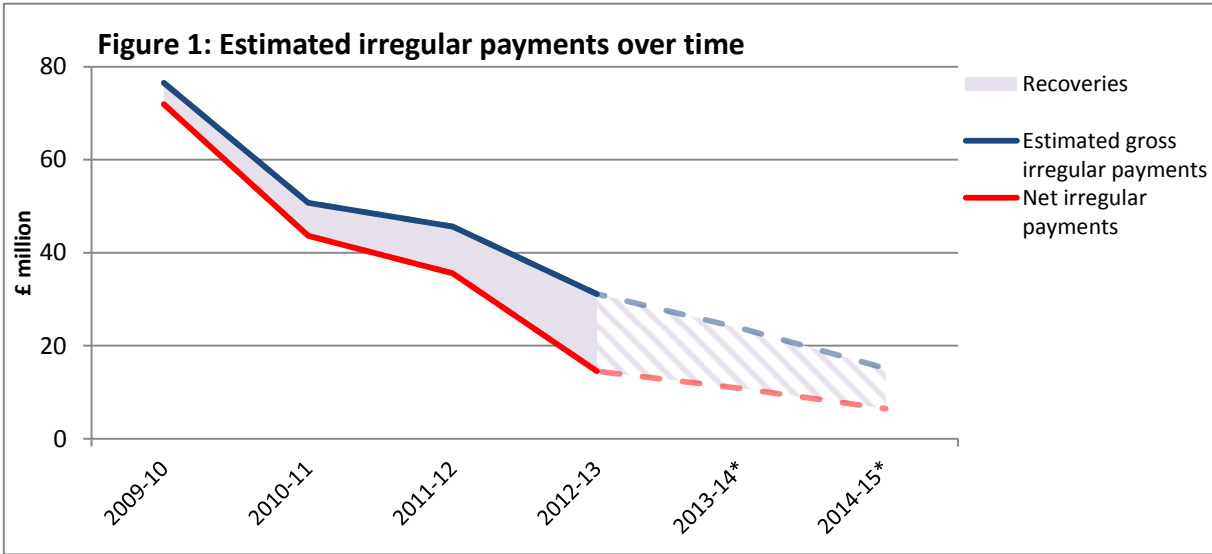
1. The Legal Services Commission (LSC) was an executive Non Departmental Public Body (NDPB) of the Ministry of Justice. LSC was responsible for the provision of legal aid in England and Wales through the Community Legal Service Fund (for civil cases) and the Criminal Defence Service (for criminal cases).
2. Under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, LSC was abolished on 1 April 2013 and its assets, liabilities and functions transferred to the Legal Aid Agency (LAA) within the Ministry Of Justice.

## Audit opinion

3. In each year between 2008-09 and 2011-12 I qualified my opinion on the regularity of the transactions underlying the annual financial statements of LSC because material amounts were paid to:
  - legal aid providers where the claim is not in compliance with statutory scheme rules; and
  - legal aid providers after granting of legal aid to applicants who were not eligible or whose eligibility could not be proven.
4. I have given a clear opinion on the regularity of transactions for the year ended 31 March 2013. Whilst I identified an estimated £14.5 million of irregular payments (2011-12 £35.6 million), I do not consider this amount to be material in the context of annual payments of £2.1 billion.
5. My clear opinion reflects the significant improvements made by LSC in their stewardship of the fund, risk management and internal controls. This report highlights the improvements and the further challenges faced by LAA.

## Areas of improvement

6. The value of irregular payments has reduced significantly over time, as illustrated in **Figure 1**.



\* Projections based on LSC forecast (unaudited)

7. My audit found that the substantial reduction in irregular payments is due to:
  - A strengthened control environment and assurance framework to detect and recover irregular payments made to suppliers in the current and previous years;
  - More robust, risk-based management of legal aid providers through contract management and routine, targeted compliance reviews; and
  - Management being proactive in addressing the underlying causes of irregularity.
8. LSC developed a more systematic assurance framework that is risk-based and supported by more robust management information. These improvements extend to more active supplier management, a statistically sound compliance testing methodology, and improved communications and feedback to suppliers on errors, trends and emerging issues.
9. The risk-based approach was enhanced in 2012-13, for example, with tools to analyse provider claims for unusual or higher risk billing patterns and more targeted reviews of high risk suppliers. There is also greater focus on managing providers to get claims right first time. For example, testing of case files and identifying recoveries during routine supplier visits, and more active supplier communication and education.
10. The frequency of LSC's sample testing of transactions has also increased to monthly (previously quarterly), allowing more timely identification of errors and improving management's ability to identify trends and correct process errors within the financial year.
11. LAA is planning to make further improvements. These include shifting from detective to more preventative controls, such as improved validation of claims to prevent inaccurate submissions and development of standard operating procedures and checklists to improve caseworker performance.

## **Progress over time**

12. Irregular payments reduced by over 30 per cent in the year to 31 March 2013 to £31.1 million. LSC also increased recoveries of identified irregular payments made to suppliers in current and previous years, from £10 million in 2011-12 to £16.6 million in 2012-13. Significant trends in the irregular payments are outlined below.

### ***Payments not in accordance with statutory scheme rules***

13. Key areas of improvement were on assistance in magistrates' court criminal proceedings and civil legal help schemes. Gross irregular payments have reduced to £12.7 million, from £24.4 million in 2011-12 and recoveries of overpayments in previous periods have increased on these schemes by £5.3 million to £14.9 million. Reductions in gross irregular payments have also been made in the other areas.
14. Overall, LSC succeeded in reducing gross irregular payments to less than 1 per cent of the total cash payments made in 2012-13.

### ***Payments where applicants were not eligible or eligibility could not be proved***

15. Irregular payments have reduced by £4.8 million, primarily due to a large reduction in irregular payments on civil representation cases. However, irregular payments on other means-tested schemes for legal help and criminal cases have increased.

### ***Irregular receipts***

16. In addition to the irregular payments I also identified £1.2 million of irregular receipts in contributions levied on funded clients. This represents a substantial reduction from the £3.4 million in the previous year.

## **Future challenges**

17. LAA faces several on-going and significant challenges in 2013-14 and beyond including: continuing reforms to legal aid, completing the implementation of a new civil case management and finance system, reduced funding and resources, and continuing to strengthen the control framework.
18. The substantial reforms introduced under the LASPO Act 2012 have yet to fully materialise. Whilst some changes may be beneficial to LAA's stewardship of the fund, such as the reduced scope of legal aid, the reforms present significant challenges, for example maintaining accurate assessments of eligibility as changes to entitlement are introduced. There will also be further changes, such as to the procurement of criminal legal aid, and to the benefits systems, which will have a substantial impact on assessment of eligibility for legal aid.
19. A new case management and finance system was introduced during 2012-13. This should improve further the quality, reliability and timeliness of management and financial information. However, the on-going transition to the new system presents significant risks to LAA.

## **Conclusion**

20. LAA starts with an improved assurance framework embedded within the business and significantly reduced levels of irregularity. This is underpinned by more robust supplier management, risk-based assurance activity and more routine recovery of irregular payments.
21. As outlined above, some significant challenges remain for LAA, to ensure that progress and improvements are maintained and sustainable. This includes the implementation of the case management and finance system, which is central to LAA's more preventative and 'right first time' control framework.
22. LAA must also keep driving down irregularity through more preventative (pre-payment) checks and maintain the routine recovery of irregular payments made to suppliers in previous years. These are an essential part of LAA's management of suppliers and protection of taxpayers' funds.
23. Gross irregularity remains high for civil legal help schemes and has increased for some schemes based on eligibility (means-testing). LAA should focus effort on these areas, particularly on the prevention of errors during means assessments. Further improvement is challenging due to the inherent difficulties of administering means-tested payments, and from the complexity of the legal aid schemes.

**Amyas C E Morse**

Comptroller & Auditor General

21 June 2013

National Audit Office

157-197 Buckingham Palace Road

Victoria

London SW1W