



National Audit Office

Report

by the Comptroller
and Auditor General

Ministry of Justice and Legal Aid Agency

Implementing reforms to civil legal aid

Key facts

£300m

our estimate of the actual spending reduction from the reforms, for legal aid work started in 2013-14

£3.4m

estimated additional cost of the reforms to the Ministry of Justice in 2013-14

£268m

our estimate of the expected annual spending reduction from the reforms

685,459

civil legal aid matters the Legal Aid Agency (the Agency) would have been expected to approve in 2013-14 without the reforms

361,551

civil legal aid matters the Agency expected to approve in 2013-14 as a result of the reforms

300,496

civil legal aid matters actually approved in 2013-14 (17% fewer than expected)

**18,519
or 30%**

increase in the number of cases starting in family courts in 2013-14 in which neither party had legal representation

9,000

increase in family mediation assessments that the Ministry of Justice expected in 2013-14

**17,246
or 56%**

decrease in family mediation assessments in the year after the reforms

Summary

1 Legal aid is government-funded legal services for people who meet its eligibility criteria. In England and Wales, it is administered by the Legal Aid Agency (the Agency), an agency of the Ministry of Justice (the Ministry). Legal aid is made up of criminal legal aid for criminal cases and civil legal aid for non-criminal cases.

2 The Ministry set out its proposals for reform of legal aid in November 2010. It reduced fees paid to civil legal aid providers by 10% between October 2011 and February 2012. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced further changes which were implemented in April 2013, including reducing the range of issues for which civil legal aid is available and changing the financial eligibility criteria for receiving legal aid. This report examines the implementation of these reforms. It does not cover reforms to criminal legal aid or the further reforms to civil legal aid proposed in the Ministry's subsequent consultation, which are still in progress.

3 This report examines the value for money of the reforms by examining the Ministry's stated objectives:

- a** to make significant savings in the cost of civil legal aid (Part One);
- b** to discourage unnecessary and adversarial litigation at public expense (Part Two);
- c** to target legal aid to those who need it most (Part Three); and
- d** to deliver better overall value for money for the taxpayer.

4 We carried out fieldwork between May and September 2014. Details of our methodology are at Appendix One.

Key findings

Delivering savings

5 The reforms are likely to significantly reduce legal aid fund spending. We estimate the reforms could reduce spending on civil legal aid by £300 million per year in the long term. The Ministry did not set a target for spending reductions. If the Ministry had funded as many matters as it anticipated, we estimate that spending would have reduced by £268 million. The Ministry is on track to exceed spending reduction forecasts by £32 million because, following the reforms, the Agency is funding fewer matters than it had anticipated. Achieving the reductions will depend on the extent to which the number of legal aid-funded cases, and the average case costs, remain at current levels (paragraphs 1.10 and 1.11).

6 The reforms have the potential to create additional costs, both to the Ministry and wider government. In the year following the reforms, there has been a 30% year-on-year increase in family court cases in which neither party had legal representation. What research there is suggests that such cases increase costs to HM Courts & Tribunals Service (an agency of the Ministry). Based on the increase in self-representation, we estimate the additional cost to HM Courts & Tribunals Service at £3 million per year, plus direct costs to the Ministry of approximately £400,000. The Ministry has committed to approximately £2 million for additional support for litigants in person over the next 2 years. There may also be costs to the wider public sector if people whose problems could have been resolved by legal aid-funded advice suffer adverse consequences to their health and wellbeing as a result of no longer having access to legal aid (paragraphs 1.17 to 1.34).

7 The Ministry did not estimate the scale of most of the wider costs of the reforms – even those that it would have to pay – because it did not have a good understanding of how people would respond to the changes or what costs or benefits may arise. The Ministry recognised that the reforms might result in wider costs, including to HM Courts & Tribunals Service, but it did not estimate the scale of most of them. Not quantifying these ‘hidden’ costs risks overstating the impact of the reforms (paragraph 1.17).

Discouraging unnecessary litigation

8 The Agency is funding significantly fewer cases following the reforms, reducing the amount of litigation funded directly by the taxpayer. In 2013-14 the Agency agreed funding for legal help in 326,004 fewer cases than would have been expected without the reforms. It agreed funding for representation in court in 36,537 fewer cases (Figure 2).

9 There has been a reduction in the amount of litigation in the areas of family law removed from the scope of legal aid. The number of cases starting in the most recent quarter of 2014 decreased considerably, following a small increase in the total number of cases starting in these areas over 2013-14 (paragraph 2.3).

10 Fewer individuals are using mediation for family law proceedings as an alternative to the courts. The Ministry continues to fund mediation through civil legal aid and expected 9,000 more mediation assessments and 10,000 more mediations to start in 2013-14. However, mediation assessments fell by more than 17,000 and there were more than 5,000 fewer mediations starting in 2013-14 than there were in 2012-13. The Ministry has since taken steps to increase the use of mediation (paragraph 2.8).

11 The Ministry implemented the reforms without a good understanding of why people go to court to resolve their disputes. It has recently commissioned work that should improve its understanding in this area. This research could help it develop interventions to encourage people to use alternatives to courts (paragraph 2.5).

Targeting civil legal aid

12 The Ministry does not know whether or not all those eligible for legal aid are able to access it. Therefore, it cannot be confident that it is targeting funding at those most in need. The number of providers conducting work and the number of cases varies widely across the country and in 14 local authority areas no face-to-face civil legal aid work was started in 2013-14. The Ministry does not know whether this is because of differing need or other factors (paragraphs 3.23 and 3.24 and Figure 13).

13 The Agency can demonstrate it is providing an excellent level of service through its telephone helpline. The telephone helpline provides advice on eligibility and the reforms made it mandatory for some areas of law. The Agency surveys users regularly and has made some changes in response to their feedback. In contrast, it has a weaker grasp of the availability and quality of face-to-face advice (paragraphs 3.9 to 3.14).

14 The Ministry reduced fees for providers without a robust understanding of how this would affect the market, and its monitoring has been limited. Many providers told us they were struggling to provide services for the fees paid, despite using a range of approaches to reduce costs. The Ministry wanted to stimulate the development of innovative solutions to providing services at a lower cost. It has monitored whether providers are in financial distress. However it has not monitored the extent to which providers are choosing not to undertake civil legal aid work. There is no requirement to perform a minimum level of work to remain a provider (paragraphs 3.19 to 3.26).

15 Use of the statutory ‘exceptional case funding’ scheme, which provides legal aid where a failure to do so would breach rights under international law, has been lower than planned. The Agency planned for between 5,000 and 7,000 applications in the year following the reforms. It received just 1,520, of which 69 (5%) were granted. Legal aid providers who commented on the scheme in our consultation said that the application process created disincentives for applying. In June 2014 the High Court ruled that the Ministry’s guidance for the scheme set too high a threshold and was unlawful. The Ministry is appealing this decision (paragraphs 3.5 to 3.8).

Conclusion on value for money

16 The Ministry is on track to meet its main objective of significantly reducing spending on civil legal aid in a short timeframe. The extent to which it has met its wider objectives is, however, less clear. Although the Agency now funds fewer cases, litigation has only just started to decrease in the areas of family law removed from civil legal aid. In addition, the increase in people representing themselves is likely to create extra costs for the Ministry.

17 In implementing the reforms, the Ministry did not think through the impact of the changes on the wider system early enough. It is only now taking steps to understand how and why people who are eligible access civil legal aid. The Ministry needs to improve its understanding of the impact of the reforms on the ability of providers to meet demand for services. Without this, implementation of the reforms to civil legal aid cannot be said to have delivered better overall value for money for the taxpayer.

Recommendations

- a** **The Ministry should develop measures to evaluate the impact of the reforms more fully, including estimating any wider costs to the courts system.** For example, it should improve its data on court case duration, potentially as part of its criminal justice system efficiency programme.
- b** **The Ministry should consider what further steps it could take to meet its objective of reducing the number of cases going to courts in the areas of law removed from the scope of civil legal aid.** This includes continuing to monitor the use of mediation, and considering what further action it should take if take-up does not increase in line with expectations.
- c** **The Ministry should establish the extent to which those who are eligible for civil legal aid are able to access it and what obstacles, if any, exist.**
- d** **The Ministry should develop its understanding of the challenges facing civil legal aid providers and the provision of support across the country.** It should use this improved understanding to ensure sustainability in the market and coverage across the country.