



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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**Ministry of Justice and Legal Aid Agency**

# Implementing reforms to civil legal aid

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Ministry of Justice and Legal Aid Agency

# Implementing reforms to civil legal aid

Report by the Comptroller and Auditor General

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National Audit Act 1983 for presentation to the House of  
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Sir Amyas Morse KCB  
Comptroller and Auditor General  
National Audit Office

17 November 2014

This report examines whether the Legal Aid Agency's implementation of the Ministry of Justice's reforms to civil legal aid, as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, provides value for money.

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## Key facts

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**£300m**

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

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**£3.4m**

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

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**£268m**

our estimate of the expected annual spending reduction from the reforms

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**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.

# Part One

## Reducing spending on civil legal aid

### Introduction

**1.1** This part examines:

- the history of legal aid;
- the Ministry of Justice's (the Ministry's) approach to reducing spending on civil legal aid;
- the reduction in civil legal aid spending following the reforms; and
- costs arising from the reforms.

### History and overview of civil legal aid

**1.2** The government provides legal aid to help people who are unable to pay for legal advice or representation. Legal aid in its current form was established by the Legal Aid and Advice Act 1949. Before this, judges could award financial support to litigants who could not afford legal fees. Such rights of access to justice date back almost 800 years to the Magna Carta.

**1.3** In England and Wales, legal aid is provided by the Legal Aid Agency (the Agency), an agency of the Ministry. There are two ways legal aid is provided: over the phone via the telephone helpline, which assesses eligibility and provides advice; and face-to-face from legal professionals.

### Scope of legal aid

**1.4** Legal aid gives funding for advice and representation in legal proceedings for those who meet the eligibility criteria. These include assessing their means (whether they can afford to pay for their own legal advice or not); the merits of their case (how likely it is to succeed); and the scope (whether the case relates to an area of law covered by legal aid). Legal aid can cover the cost of legal advice for people accused of a crime, as well as those involved in civil law proceedings.

**1.5** Civil law covers non-criminal disputes between individuals or organisations, for example family law cases involving children being taken into care. Civil legal aid consists of 'legal help', where the lawyer provides advice and assistance but does not represent the client in court, and 'civil representation', where in addition to giving help and advice the lawyer also represents the client in court.

### Trends in civil legal aid spending

**1.6** Spending on legal aid is difficult to forecast and manage because it is demand-driven. Spending can vary for reasons including changes to the scope of legal aid, trends in cases going to court, and changes in legal aid fees. Current uncertainties include the impact of judicial reviews, which may result in changes to the scope of legal aid, and the decline in mediation cases and other elements that are in scope; if uptake increases it may cost the Ministry more. Spending on legal aid rose between 1979-80 and 1996-97. It fluctuated for several years then began falling in 2009-10, before the implementation of the reforms (**Figure 1**). The Ministry does not know what caused the fluctuations or the drop in spending before the reforms.

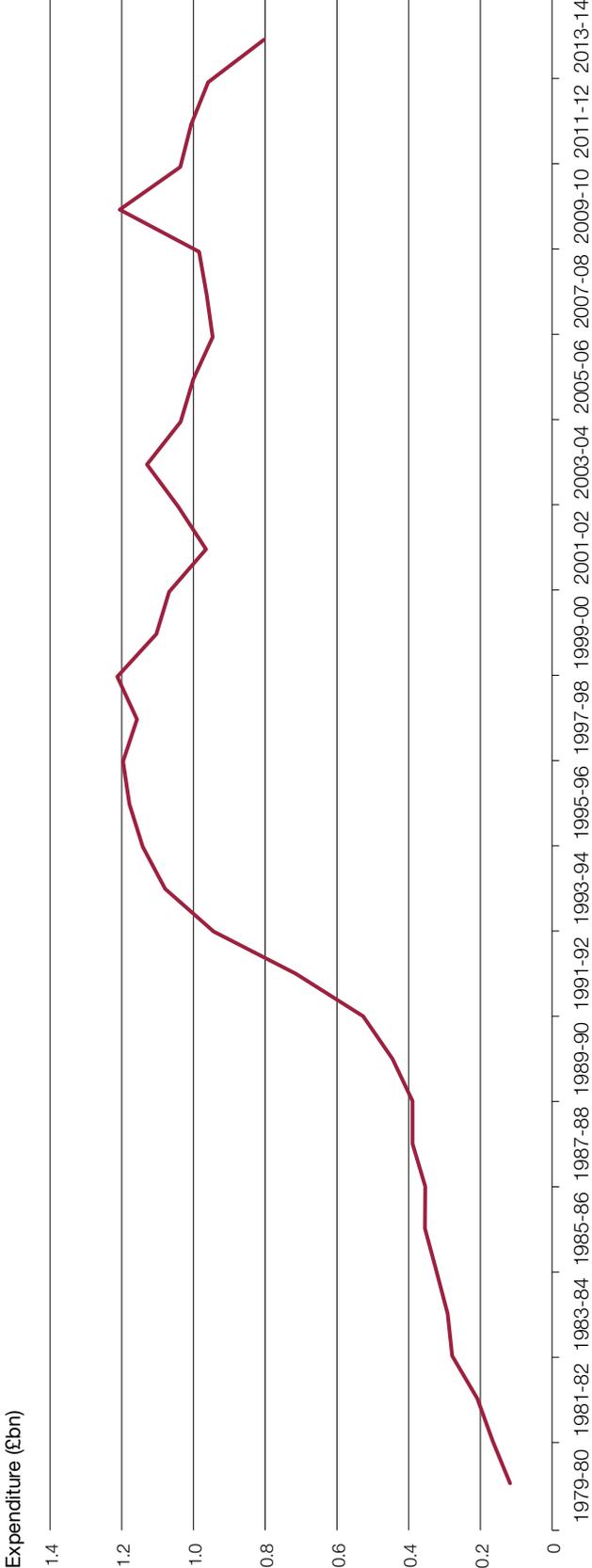
### **The Ministry's approach to reducing spending on legal aid**

**1.7** The Ministry aimed to significantly reduce spending on legal aid. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into effect on 1 April 2013. It introduced reforms to reduce spending on civil legal by:

- limiting the areas of law for which legal aid is available – before the reforms, all areas of civil law were within scope unless specifically excluded. Areas still in scope after the reforms include child protection, domestic violence, asylum, mental health and some cases relating to debt and housing;
- changing the financial eligibility criteria for receiving legal aid;
- requiring some people who receive legal aid to make an increased contribution to the cost of their case; and
- providing more advice over the telephone.

**1.8** The Ministry also reduced the fees paid to civil legal aid providers and expert witnesses through fee reforms implemented in October 2011 and February 2012.

**Figure 1**  
Spending on civil legal aid between 1979-80 and 2013-14



**Notes**

- 1 Adjusted to 2013-14 prices.
- 2 Spending is shown as cash expenditure up to 2007-08, resource expenditure from 2008-09.

Source: Legal Aid Agency analysis of civil and family legal aid spending

## Reduction in civil legal aid spending following the reforms

**1.9** The Agency spent £801 million on civil legal aid in 2013-14, £141 million less than its predecessor spent in 2012-13 and £41 million less than its budget. However, these figures do not give an accurate indication of savings made from the reforms. Several years can elapse between the time civil legal aid is granted and the time the Agency pays a provider. This means most of the cases started in 2013-14 (after the reforms) will be paid for in future years.

**1.10** The Ministry did not set a target for spending reductions. We examined the impact of the reforms on spending by comparing the estimated number of civil legal aid cases (matter starts) that would have been approved in 2013-14 without the reforms, and the number that actually started, taking the pre-existing downward trend in matter starts into account. We estimate that the reforms could eventually reduce spending on legal aid by £300 million a year. This method does not take into account any change in the complexity of cases which may occur as a result of the reforms. **Figure 2** shows case volume and spending for each type of legal aid following the reforms.

**1.11** We found that matter starts in 2013-14 were broadly in line with expectations but varied by case type.

### Figure 2

Estimated spending reduction as a result of the LASPO scope changes and 10% fee reduction

Type of civil legal aid	Expected matter starts without reforms <sup>1</sup>	Actual matter starts 2013-14	Variation	Spending reduction (£m)
Civil representation	144,633	108,096	-36,537	<b>210</b>
Legal help	496,549	170,545	-326,004	<b>83</b>
Mediation	13,609	8,432	-5,177	<b>2</b>
Mediation assessments	30,668	13,423	-17,246	<b>5</b>
<b>Total</b>	<b>685,459</b>	<b>300,496</b>	<b>-384,964</b>	<b>300</b>

#### Notes

- 1 Calculated as the matters that would have been started in 2013-14 if the trend had followed the previous 3 years. There is no clear trend for mediation, or mediation assessments so we have used 2012-13 data. We have used actual 2013-14 matter starts figures for Special Children's Act figures because other policy changes in this area mean that spend is unlikely to have followed the previous trend. The expected figure does not include changes to financial eligibility as it was not possible to update the 2009-10 data for this.
- 2 These figures do not include cases related to discrimination, because this was not counted as a separate category before the reforms and the Ministry did not estimate how many cases it expected in this area.

Source: National Audit Office analysis of data from Ministry of Justice, *Legal Aid Statistics in England and Wales 2013-14*, April to June 2014. Further explanation of our methodology is at Appendix Two

## Civil representation work in 2013-14

**1.12** We estimate that the Agency's spending as a result of matter starts on civil representation in 2013-14, excluding Special Children's Act work where we cannot calculate a trend because of other policy changes in this area, will be £9.7 million (5%) below expectations. The Agency planned to start a total of around 111,000 cases for 2013-14, and actually started around 108,000 (a 3% shortfall).

**1.13** The Agency is providing close to the level of legal aid it anticipated in family law, which represents around 85% of matter starts, with 4% fewer matters starting than expected.

## Legal help work in 2013-14

**1.14** We estimate that the Agency's spending as a result of matter starts on legal help in 2013-14 will be £2.7 million (4%) below the expected level. This is because it started 171,000 civil legal help cases rather than the 187,000 expected (9% fewer).

**1.15** The Agency is delivering to within 7% of its forecasts in the 3 largest areas of civil law (housing, mental health and family) which make up more than three-quarters of matters in 2013-14. In other areas of law, legal aid activity is very different from that forecast. For example, the Agency expected 16,466 debt cases to start but actually only started 2,434 (85% fewer cases). We estimate that this equates to £2.6 million less than expected.

## Mediation work in 2013-14

**1.16** The Agency approved significantly fewer mediation cases and mediation assessments than it expected in 2013-14. It expected to approve 39,668 assessments and actually approved 13,423. It expected to approve 23,609 mediation cases, and in fact approved 8,432. As a result, the Agency spent £20 million less on mediation than it forecast. Mediation is covered in more detail in Part Two.

## Costs arising from the reforms

**1.17** Reducing the scope of legal aid has reduced the Agency's spend. However, it has the potential to increase costs to the Ministry and across the public sector. The Ministry recognised the potential for increased costs in its impact assessment, but did not quantify these costs, which include:

- costs to the Ministry as a result of an increase in the number of people representing themselves in court (litigants in person); and
- wider costs to government that may arise from individuals not being able to access support to resolve civil legal problems.

## Costs to the Ministry from the increase in litigants in person

**1.18** We have previously identified problems with the Ministry's forecasting of potential wider costs arising from reforms. For example, in *The Ministry of Justice's language services contract*, we noted that the Ministry had not quantified the opportunity costs of delayed court services as a result of inadequate performance of contractors.<sup>1</sup>

**1.19** The Ministry acknowledged that the reforms were likely to lead to additional costs to HM Courts & Tribunals Service because of an increase in the number of litigants in person but did not quantify these costs. This was because of limitations in the data that it collects on litigants in person<sup>2</sup> and a lack of conclusive evidence on the impact of litigants in person on the courts. Despite recognising the lack of evidence in 2010, the Ministry has not improved its data collection on litigants in person. The reforms resulted in a significant increase in litigants in person in family courts. We estimate that this has cost the Ministry £3.4 million in 2013-14.

### **Evidence on the impact of litigants in person**

**1.20** Research in UK courts indicates that litigants in person may use more court resources. These research projects used small case samples, so it may not be possible to generalise from their findings. Noting this limitation, this research found that litigants in person:

- are less likely to settle cases outside of court hearings;
- are likely to have more court orders and interventions in their cases;
- tend to lack the knowledge and skills required to conduct their case efficiently; and
- create additional work for judges and court staff, which can make court listing processes less efficient.<sup>3</sup>

**1.21** Recent anecdotal evidence from legal professionals supports these research findings. For example, judges have estimated that hearings involving litigants in person take around 50% longer on average and have reported that more cases are going to court hearings that would have been 'filtered out' with accurate advice on their legal merits.<sup>4</sup> Family law professionals have reported an increase in hearing duration, which may result in fewer hearings per day.<sup>5</sup>

1 National Audit Office, *The Ministry of Justice's language services contract*, September 2012.

2 The Ministry's database records case duration as the time from when a petition is lodged to the conclusion of the case. It does not capture time waiting to attend a court hearing, the length of individual hearings, or the number of hearings per case.

3 For details of the research, see Appendix Two.

4 Judicial Executive Board, submission to the House of Commons Justice Committee, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/impact-of-changes-to-civil-legal-aid-under-laspo/written/9472.html>

5 Ministry of Justice, internal survey of local family justice boards, May–June 2014, unpublished. Out of 44 boards, 26 responded to the survey.

**1.22** The Ministry's monitoring of the impact of increasing numbers of litigants in person has included:

- conducting a survey of its network of local family justice boards in May 2014 to assess the impact of litigants in person on family courts;
- holding regular meetings with stakeholders including the Civil Justice Council, Family Justice Council, members of the judiciary, family court practitioners and court personal support units; and
- publishing data on the number of litigants in person in family courts and attempting to analyse the impact of legal representation status on family court hearing lengths.

**1.23** The Ministry has also commissioned research into the impact of litigants in person on family courts, but this has not yet been finalised.

### **Changes to legal representation status**

**1.24** Since the reforms, there has been an increase in the number of litigants in person in family courts. The reforms are also likely to have had an impact on the number of litigants in person in civil law courts, but this is more difficult to determine from the available data.<sup>6</sup>

**1.25** Across all family court cases (including those that remain eligible for civil legal aid) there was an increase of 18,519 cases starting, or 30%, in which neither party had legal representation in 2013-14 compared with 2012-13. In the January–March quarter of 2013-14, 80% of all family court cases starting included at least one party that did not have legal representation (**Figure 3** overleaf).

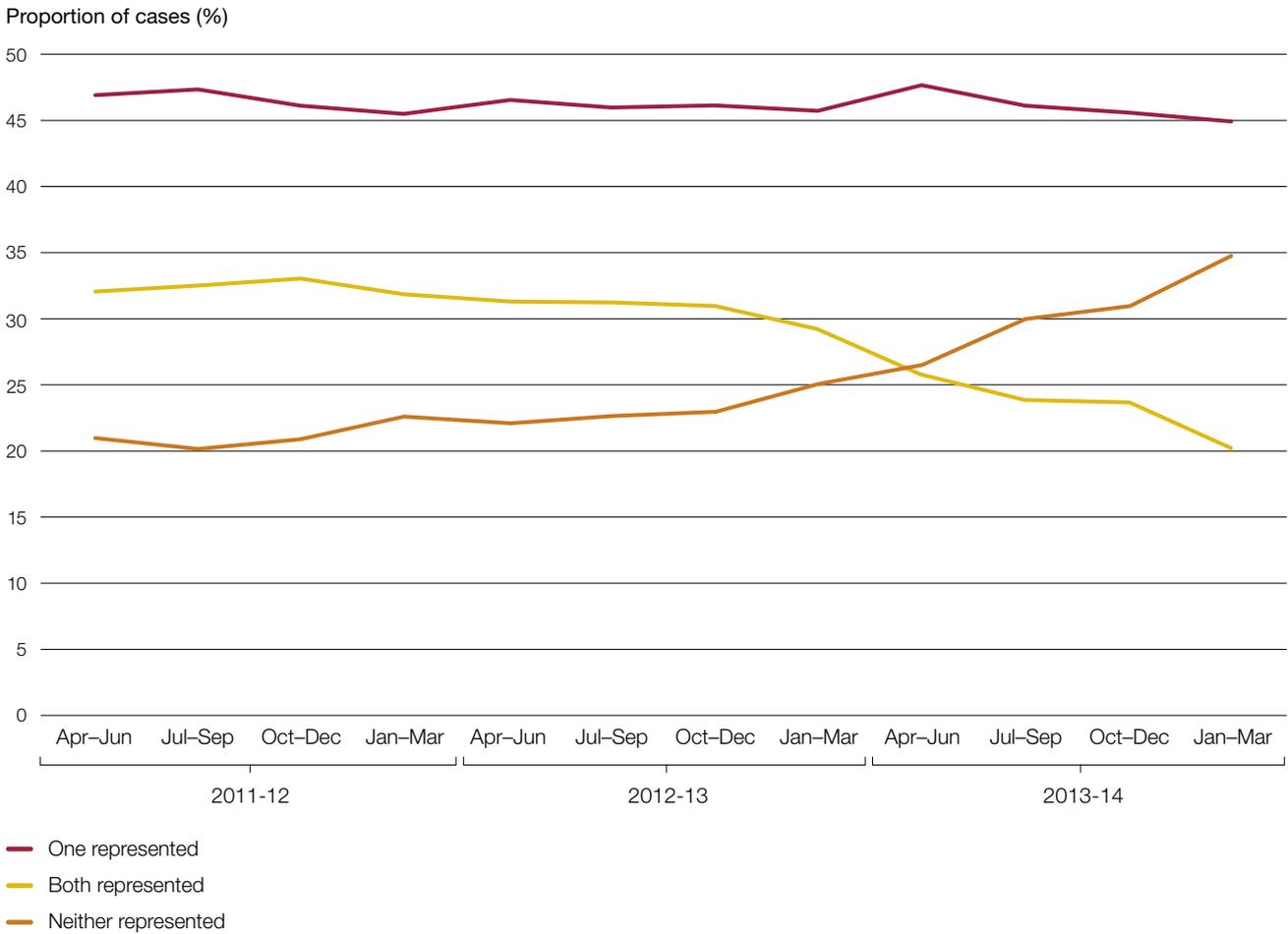
**1.26** For cases involving contact with children (Children's Act private law matters), 8,110 more court cases started with neither party represented in 2013-14 compared with 2012-13. This represents an increase of 22 percentage points from January–March 2012-13 to January–March 2013-14 (**Figure 4** on page 17).

**1.27** In 2013-14 there was also an increase in the number of cases involving contact with children that were contested. In the final quarter of 2012-13, 64% of cases starting in this area of law were contested. This rose to 89% in the corresponding quarter of 2013-14. A contested case is likely to take longer and use more court resources than an uncontested case.

<sup>6</sup> Different databases are used to record family and civil court data and these record information differently. For example, the 'case type' codes used in the civil database do not match the funding categories used by the Agency for civil representation.

**Figure 3**

Changes to legal representation in cases starting in the family court, 2011-12 to 2013-14



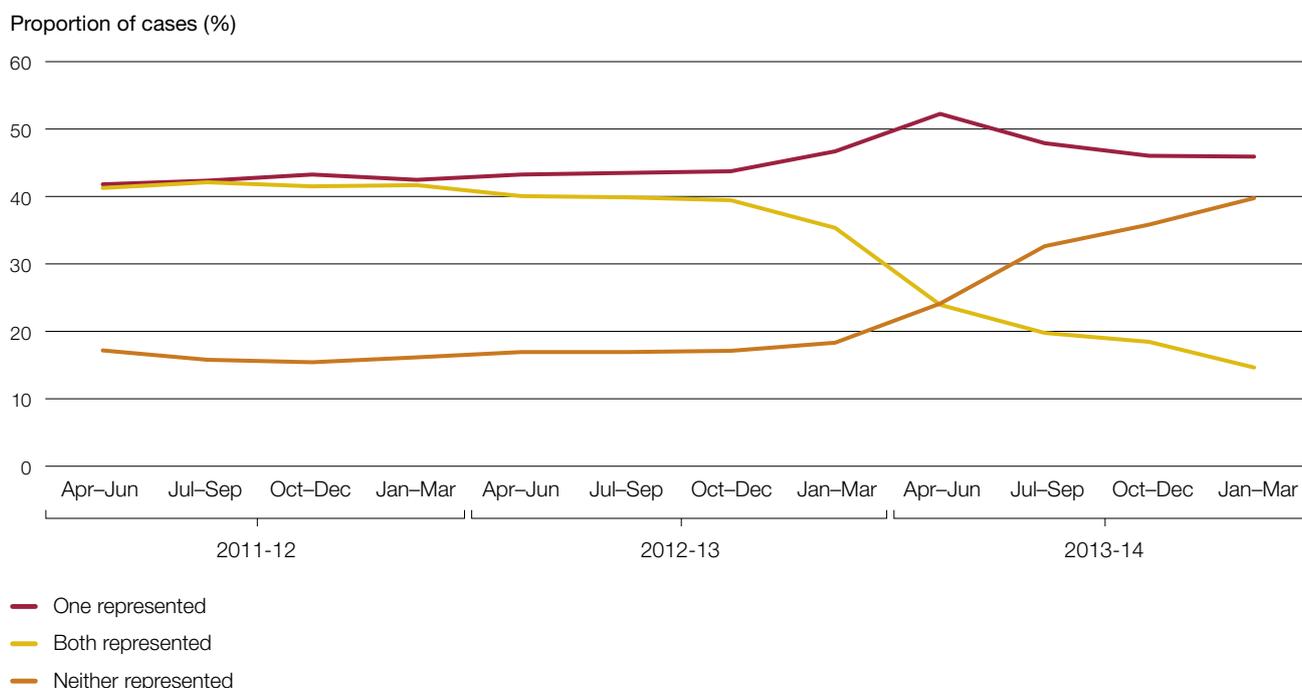
**Notes**

- 1 One case category – forced marriage protection orders – has been omitted because of the low number of cases and poor quality of data recording on legal representation.
- 2 This chart uses legal representation status as recorded at the point when court proceedings were initiated. Unrepresented parties may obtain legal representation at a later stage of their case or represented parties may become unrepresented.

Source: National Audit Office analysis of data from HM Courts & Tribunals Service Familyman database, September 2014

**Figure 4**

Changes to legal representation in Children's Act private law cases, 2011-12 to 2013-14

**Note**

1 This chart uses legal representation status as recorded at the point when court proceedings were initiated. Unrepresented parties may obtain legal representation at a later stage of their case or represented parties may become unrepresented.

Source: National Audit Office analysis of data from HM Courts & Tribunals Service Familyman database, September 2014

**Estimated cost of the increase in litigants in person**

**1.28** The published evidence on the impact of litigants in person on court resources indicates that cases involving litigants in person increase costs to the courts. If, as has been estimated, cases involving litigants in person take 50% longer, the impact of increased numbers of litigants in person in family courts could be £3 million. This estimate does not include additional costs in civil courts. We have based this estimate on the increase of 11,144 in the number of court cases started in family courts in which neither party is represented in 2013-14 (excluding divorce cases);<sup>7</sup> the average cost of a family court case, which we estimate at £547;<sup>8</sup> and estimates from judges that cases involving litigants in person take on average 50% more court time.

<sup>7</sup> We excluded divorce cases, as most are uncontested and unlikely to use additional court time.

<sup>8</sup> See Graham Cookson, 'Analysing the economic justification for the reforms to social welfare and family law legal aid', *Journal of Social Welfare and Family Law*, vol. 35 issue 1, 2013, pp. 21-41.

**1.29** The Ministry increased support for litigants in person in response to problems identified in the courts following the reforms. In 2013-14, it spent approximately £370,000, made up of:

- £290,000 on personal support units and a 'court navigation service';
- £40,000 on a booklet giving advice about going to court;
- £40,000 on a pilot programme to fund DNA and drug testing where it is required as evidence and neither party can afford to fund it;<sup>9</sup> and
- an unknown amount on revising court forms to make them easier for non-legal professionals to use, and a training course for judges focusing on dealing with litigants in person (cost absorbed by HM Courts & Tribunal Service budget).

**1.30** In October 2014 the Ministry announced that it would provide approximately £2 million over the next 2 years for support programmes for litigants in person in family and civil courts (£414,000 in 2014-15 and between £1.4 million and £1.6 million in 2015-16). The programmes will be delivered in partnership with selected not-for-profit organisations and will include:

- increasing the number of personal support units in courts;
- funding community law centre clinics to give initial legal advice; and
- improving online information for separating couples.

**1.31** In addition, the Ministry will fund a telephone helpline pilot for separating parents who are in dispute.

**1.32** The Ministry's savings included reductions in court fees paid by legal aid. The Ministry acknowledged that many individuals who no longer received legal aid would be eligible to have their fees waived, estimating the cost to the courts at £10 million. This element of the legal aid savings is therefore not a saving overall to the Ministry, which is responsible for both the Agency and the courts, but a transfer of costs.

### Wider costs to government

**1.33** As well as direct costs to the Ministry, the legal aid reforms could result in wider costs to government. These costs are difficult to estimate due to the complexity and uncertainties involved. The Ministry acknowledged these costs in its impact assessment, but did not estimate them.

9 Estimated budget for the pilot programme, which is ongoing and subject to change.

**1.34** Individuals who have civil legal issues may experience a range of adverse consequences if they cannot resolve their problem. The 2010 English and Welsh Civil and Social Justice Panel Survey found that 50% of respondents who were eligible for legal aid reported that their civil legal problem had a negative effect on their health and wellbeing. Where legal problems remain unresolved, the cost may be met by the taxpayer through additional costs to the NHS or welfare programmes.

**1.35** One area in which costs can be estimated more accurately is the impact on VAT. Payments from the Agency to providers are subject to VAT, therefore 20% of the savings to the Agency are negated by reduced revenue to HM Treasury; this equates to an estimated £60 million in 2013-14.<sup>10</sup>

<sup>10</sup> A small number of providers do not charge VAT for their services as their turnover is below the VAT threshold, so the actual figure may be slightly lower.

## Part Two

### Discouraging unnecessary and adversarial litigation at public expense

#### Introduction

2.1 This part examines:

- the Ministry of Justice's (the Ministry's) success in discouraging unnecessary and adversarial litigation at public expense; and
- steps taken to discourage unnecessary litigation, including:
  - reducing the scope of civil legal aid;
  - encouraging use of alternative forms of dispute resolution;
  - directing those who are ineligible for civil legal aid to alternative sources of support; and
  - supporting the third sector to provide alternative sources of support.

#### The Ministry's success in discouraging litigation

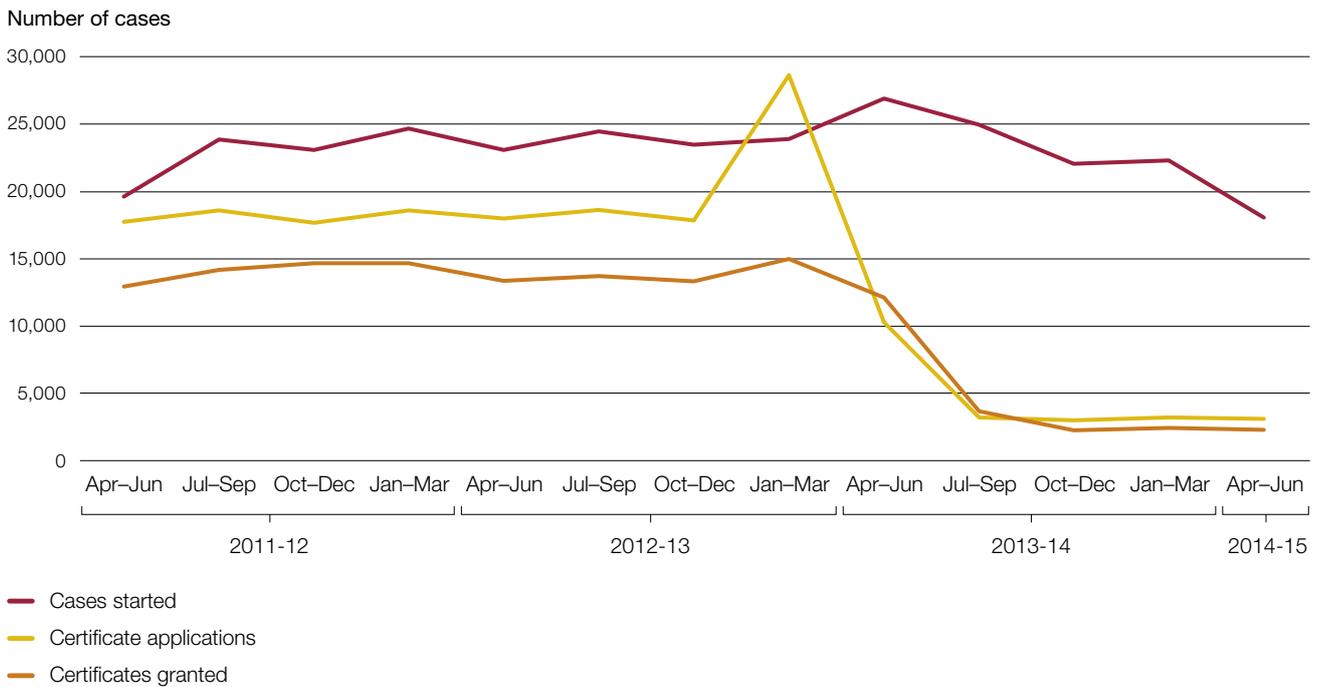
2.2 The Ministry considered that too many people were using courts to resolve issues that could be dealt with outside court. It intended to discourage unnecessary and adversarial litigation at public expense, but did not set a target for reducing use of the courts. The number of cases going to court in the areas removed from the scope of legal aid decreased in the most recent quarter after increasing in the year after the reforms.

2.3 The two main areas of family law removed from the scope of legal aid were divorce and cases involving contact with children.<sup>11</sup> The number of cases started in these areas of law in the April–June quarter of 2014 fell by 4,264 from the previous quarter. This indicates that the reforms are beginning to have an effect on the number of cases starting, although the reduction in cases starting is far less than the reduction in cases funded by legal aid (**Figure 5**). In 2013-14, the Legal Aid Agency (the Agency) granted 34,934 fewer certificates for legal aid representation in these areas than it had in 2012-13, but 1,381 more court cases started in these areas. This may be partly because of an increase in grants of legal aid just before the implementation of the reforms.

<sup>11</sup> Data on divorce cases not involving the division of assets (financial remedies cases) has not been included in this section, as divorce requires court documents to be lodged, which is recorded as a case starting, even when the parties are not in dispute.

**Figure 5**

Legal aid applications and grants and total cases started, Children's Act private law and financial remedies, 2011-12 to 2014-15

**Note**

1 A case involving two people will be counted as a single 'case started'. In some cases both parties to a case may be granted a certificate of representation, which would be counted as two certificates granted.

Source: National Audit Office analysis based on Legal Aid Agency, *Legal Aid Statistics in England and Wales*, April to June 2014, Tables 6.1 and 6.2; Ministry of Justice, *Quarterly Court Statistics*, April to June 2014, Table 2.1

## Steps taken to discourage litigation

**2.4** The Ministry's objective of discouraging litigation relied on changing the behaviour of people who no longer qualify for civil legal aid. To effectively change people's behaviour, it is important to have:

- a clear definition of the desired outcome, including the target population, the desired behaviour change, and the potential adverse outcomes; and
- a robust understanding of current behaviour, including an understanding of barriers to the desired behaviour and an understanding of other factors that influence behaviour.

**2.5** The Ministry intended to divert couples who were in dispute over contact with children or division of assets to mediation instead of court. It did not set out specific objectives for other areas of law. The Ministry currently has a limited understanding of what influences people to go to court, but it is seeking to develop this: In 2014, the Ministry commissioned a research project called Varying Paths to Justice to examine this issue. This research is due for publication in mid-2015, 2 years after the reforms were implemented.

### Reducing the scope of civil legal aid

**2.6** The Ministry made significant reductions to the scope of civil legal aid. Before the reforms, all areas of civil and family law were within scope unless specifically excluded. The reforms reversed this approach, so that all areas of civil and family law are now excluded from civil legal aid unless otherwise stated.

**2.7** The reforms have reduced the number of cases the Agency funds. In 2013-14 the Agency funded more than 400,000 fewer legal help matters (a drop of 70%) and granted more than 42,000 (28%) fewer certificates for legal representation than it had in 2012-13 (**Figure 6**).

### Figure 6

Reduction in number of cases started from 2012-13 to 2013-14

	Cases started in 2012-13	Cases started in 2013-14	Reduction from 2012-13 to 2013-14
Legal help	573,632	172,846	400,786 (70%)
Family law	204,251	42,628	161,623
Other civil law	369,381	130,218	239,163
<b>Civil representation</b>	<b>150,472</b>	<b>108,100</b>	<b>42,372 (28%)</b>
Family law	127,776	89,758	38,018
Other civil law	22,696	18,342	4,354

#### Note

1 Unlike Figure 2, these numbers do include discrimination cases for completeness.

Source: National Audit Office analysis of data from Ministry of Justice, *Legal Aid Statistics in England and Wales*, April to June 2014

## Encouraging alternative routes to resolve disputes

**2.8** Significantly fewer family law cases were diverted to mediation following the reforms than the Ministry expected. The Ministry expected that removing funding for civil legal aid for private family law matters, but retaining funding for mediation, would divert people away from courts and lead to an additional 9,000 mediation assessments and 10,000 mediation cases per year. However, there were 17,246 fewer mediation assessments in 2013-14, a 56% decrease from 2012-13. In addition, the number of mediation cases starting fell by 5,177 cases, or 38% in the same period (**Figure 7** overleaf).

**2.9** The Ministry did not realise that by reducing the scope of legal aid and therefore consultations with solicitors it would also reduce referrals to mediation. The Ministry established a mediation taskforce to understand the lower-than-expected take-up of mediation. It found that the reforms to civil legal aid had contributed to the reduced take-up of mediation by reducing the number of referrals from solicitors.<sup>12</sup> Respondents to our consultation with legal aid providers shared this view. Some also reported that the Ministry's promotion of the fact that mediation remained in scope for civil legal aid was inadequate.

**2.10** The Ministry is taking steps to increase take-up of mediation. In April 2014 it implemented a legal requirement for legal aid applicants to attend a mediation assessment meeting. The Ministry is implementing some of the mediation taskforce's recommendations, including:

- funding one mediation session for both parties in cases where only one party is receiving legal aid funding;
- funding an ongoing mediation awareness campaign; and
- establishing an advisory group to improve mediation practice.

**2.11** In the April–June quarter of 2014 the number of mediation assessments increased by 12% from the previous quarter, indicating that the Ministry's efforts to increase take-up of mediation is having some impact.

<sup>12</sup> Ministry of Justice, Family Mediation Taskforce, *Report of the Family Mediation Taskforce*, July 2014, available at: [www.justice.gov.uk/downloads/family-mediation-task-force-report.pdf](http://www.justice.gov.uk/downloads/family-mediation-task-force-report.pdf)

**Figure 7**  
Mediation assessments and starts between 2006-07 and 2013-14



Source: Legal Aid Agency, *Legal Aid Statistics in England and Wales*, April to June 2014, Tables 7.1 and 7.2

## Directing ineligible people to alternative support

**2.12** The Ministry provides a telephone helpline to check whether individuals are eligible for civil legal aid (paragraph 3.16). It also offers a website that helps people to determine if they are likely to be eligible for civil legal aid. The website directs those who may be eligible to a legal aid provider, and those who are not eligible to alternative forms of support, including third-sector legal advice providers, mediation providers or solicitors. On average, 20,000 people visited the website each month in 2013-14. The Ministry's monitoring indicates the majority of people progressed through multiple pages of the website, with 85% of website users viewing more than one page and an average of around 8 page views per visit.

## Supporting third-sector legal advice providers

**2.13** Some individuals who are no longer eligible for civil legal aid may choose to pay for legal advice themselves. However, many who would have received legal aid are unlikely to be able to afford full legal advice or representation for their case. The Ministry acknowledged it was likely that more individuals would seek free advice from third-sector providers because of the reforms. It did not try to forecast the extra demand for these services.

**2.14** Our consultation with providers indicates that third-sector providers may not be able to meet the extra demand generated by the reforms. Among legal firms/advocate respondents, 49% told us they were referring more clients to third-sector organisations since April 2013 and 70% of third-sector respondents told us they could meet half or less of the demand from clients who were not eligible for civil legal aid.

**2.15** This finding is consistent with other recent research. For example, Citizens Advice reports that there has been a 62% increase in people seeking advice online about help with legal costs since the reforms, while 92% of Citizens Advice Bureaux are finding it difficult to refer people to specialist legal advice since the reforms were implemented.<sup>13</sup> Similarly, the Bar Pro Bono Unit reports that requests for assistance have increased by almost 50% since April 2013.<sup>14</sup>

<sup>13</sup> Citizens Advice media release, 8 July 2014, available at: [www.citizensadvice.org.uk/index/pressoffice/press\\_index/press\\_20140708b.htm](http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_20140708b.htm)

<sup>14</sup> Bar Council, *LASPO: One year on, Final Report*, September 2014, available at: [www.barcouncil.org.uk/media/303419/laspo\\_one\\_year\\_on\\_-\\_final\\_report\\_\\_september\\_2014\\_.pdf](http://www.barcouncil.org.uk/media/303419/laspo_one_year_on_-_final_report__september_2014_.pdf)

# Part Three

## Targeting civil legal aid to those who need it most

### Introduction

**3.1** The Ministry of Justice (the Ministry) aimed to “target legal aid to those who need it most.” This part examines:

- the clarity of the Ministry’s revised eligibility criteria;
- the quality of civil legal aid provision; and
- the quantity and accessibility of civil legal aid.

### Clear eligibility criteria

**3.2** Three factors determine eligibility for civil legal aid:

- The case must fall into an area of law for which legal aid is still available.
- The case must have reasonable prospects of success, and be one that someone of reasonable means would bring if they were funding the case themselves.
- The individual must meet the criteria for income and assets.

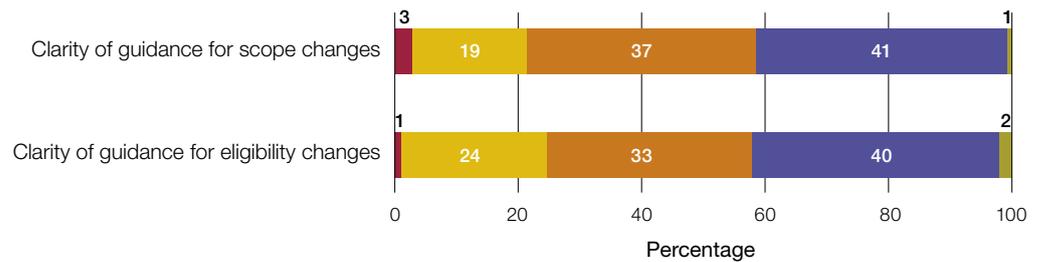
**3.3** The Ministry took a structured approach to determining which areas of law would remain in scope for legal aid. Factors considered included the seriousness of the issue (particularly in relation to the impact on the individual’s liberty), whether an individual was likely to be able to present their own case, the availability of alternative sources of funding and the availability of alternative methods for resolving the issue.

**3.4** The providers who responded to our consultation did not think the Ministry provided clear guidance on the eligibility criteria after the reforms (**Figure 8**). Of those responding, 73% thought that the guidance on individual eligibility was either poor or very poor and 78% felt this way about the guidance on scope changes. The Ministry considers that scope and eligibility are set out clearly in the legislation. It has published guidance setting out some of the factors the Legal Aid Agency (the Agency) considers, but does not intend this to be exhaustive as applications should take account of the facts in individual cases and new case law.

**Figure 8**

## Provider consultation response on clarity of guidance for scope and eligibility changes

How would you rate the following aspects of the government's implementation of the reforms?



- Very good
- Good
- Fair
- Poor
- Very poor
- N/a

**Notes**

- 1 There were 275 valid responses to this question. 2,448 firms carried out civil legal aid work in 2013-14.
- 2 These are the results of an online consultation exercise and should not be taken as representative of the views of all providers.
- 3 The sum of individual proportions may not add up to 100% due to rounding.

Source: National Audit Office consultation with civil legal aid providers, July 2014

**3.5** Providers consider that there is a lack of clarity about the Ministry's eligibility criteria for the 'exceptional case funding' scheme. The scheme funds cases that do not fall within the revised scope of civil legal aid, but where the failure to provide funding would result in a breach of the individual's rights under international law.

**3.6** The Agency planned for between 5,000 and 7,000 applications in the year following the reforms. This was based on 2009-10 trends and was not updated. In 2013-14 the Agency received 1,520 applications, of which 69 were granted (5%). The Ministry does not know whether the smaller than expected number of applications is because fewer cases are eligible than estimated, or because eligible people have been unable to access the scheme. In the April-June quarter of 2014, the rate of grants increased to 14%.

**3.7** Many respondents to our consultation with legal aid providers told us that the exceptional case funding scheme was ineffective. They argued that the application process was burdensome and the low success rate discouraged further applications. There is no payment for completing an application unless it is successful, which creates a disincentive for providers to apply given the small number of approvals. Several providers noted that while individuals are allowed to prepare their own applications, the complexity of the forms makes this very difficult for most people. Only 80 of the applications for exceptional case funding were submitted without the formal involvement of a solicitor; 2 of these received preliminary approval.<sup>15</sup>

**3.8** In June 2014 the High Court ruled that the Ministry's guidance for exceptional case funding was unlawful because it set too high a threshold for granting legal aid. The Ministry is appealing this decision.

### **Quality of provision**

**3.9** The Agency funds civil legal aid advice in two ways:

- **Face-to-face advice** provided by law firms or third-sector organisations that hold a contract to deliver it.
- **Telephone advice** provided by the civil legal advice telephone helpline (the helpline).

**3.10** There is a two-stage process for accessing legal aid-funded advice through the helpline (**Figure 9**). The helpline offers advice on aspects of 6 legal areas (debt, education, discrimination, family, housing and welfare benefits). People seeking legal help in 3 of these areas (debt, education and discrimination) must use the helpline, rather than approach a legal aid contractor for face-to-face advice.

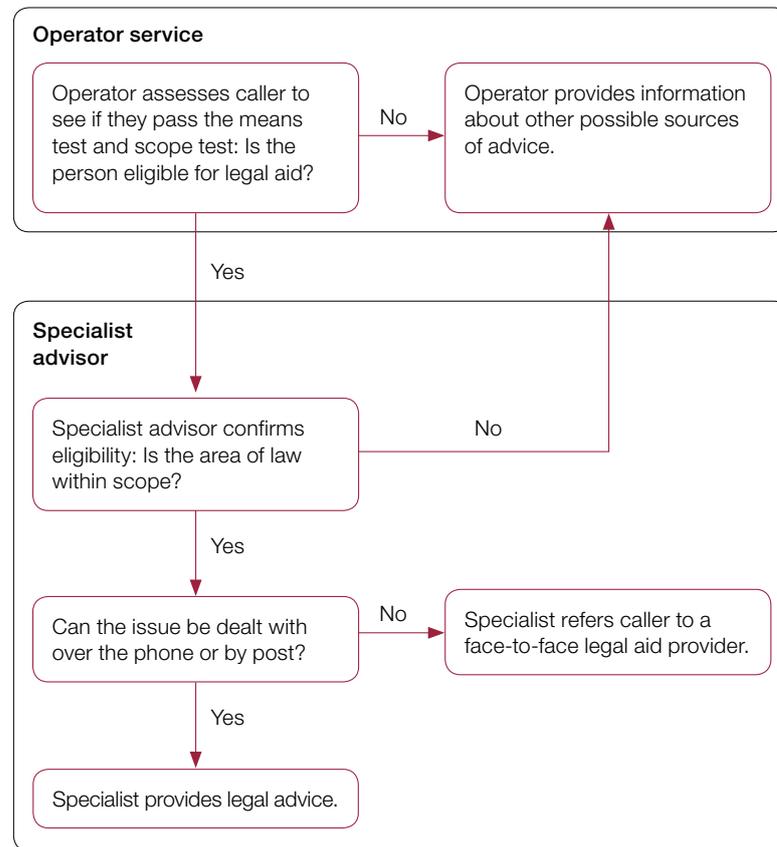
### Telephone helpline

**3.11** The Agency monitors the quality of service provided by the telephone helpline and has improved the service since 2012-13. In 2013-14 most callers who spoke only to the operators described the service they received as 'very good' or 'good' (74%, compared with 69% in 2012-13) as did callers who spoke to a specialist (71% compared with 51% in 2012-13).<sup>16</sup> The Agency carries out regular surveys of people who have used the service. It has made changes in response to the feedback it received, for example by extending the opening hours of the service.

<sup>15</sup> Ministry of Justice, *Exceptional Case Funding data: April 2013 to March 2014*.

<sup>16</sup> Legal Aid Agency performance monitoring information.

**Figure 9**  
The civil legal aid telephone helpline process



**Notes**

- 1 The operator sifts out 86% of calls at the first stage.
- 2 The helpline dealt with 228,559 calls in 2013-14.

Source: National Audit Office analysis of Legal Aid Agency information

## Face-to-face support

**3.12** The Agency monitors some aspects of the quality of face-to-face advice. In some cases it does this directly and in others it relies on professional standards bodies. In order to obtain a contract to deliver publicly funded work, providers must demonstrate that they meet several requirements, including holding a recognised quality mark standard and having appropriately qualified staff to supervise work. Measures of quality of service could include: whether an individual found it easy to get an appointment, was advised about alternatives to going to court, and was kept informed of progress in their case. The elements the Agency monitors are:

- **Compliance with contractual requirements** – Contract managers offer guidance to providers, ensure that they comply with the terms of their contract, and carry out targeted visits to ensure providers are billing correctly.
- **The accuracy of bills submitted by legal aid providers** – Each bill is reviewed by a caseworker to check the client is eligible and there is evidence that the work was done. The Agency’s core testing team then reviews a sample of cases. Internal and external financial auditors examine the core testing team’s work.
- **The quality of legal advice provided (whether the advice was correct)** – Quality of legal advice is assessed through a mixture of targeted and random peer reviews; most reviews are targeted. A high proportion of the firms fail these. In 2013-14, 32% of targeted firms and 23% of firms selected at random failed the review. This is a reduction on 2012-13 when 41% of non-targeted and 28% of targeted firms failed.<sup>17</sup>

**3.13** The Agency also asks firms to seek feedback from clients, but does not specify what this should cover or review the results. Collecting this information would help the Agency to evaluate the quality of the services delivered, and to gain insights into the wider legal aid market. For example, it could monitor how people find a legal aid provider, and whether the first provider they approached was willing to take on their case. However, statutory regulators do enforce professional standards for legal aid providers.

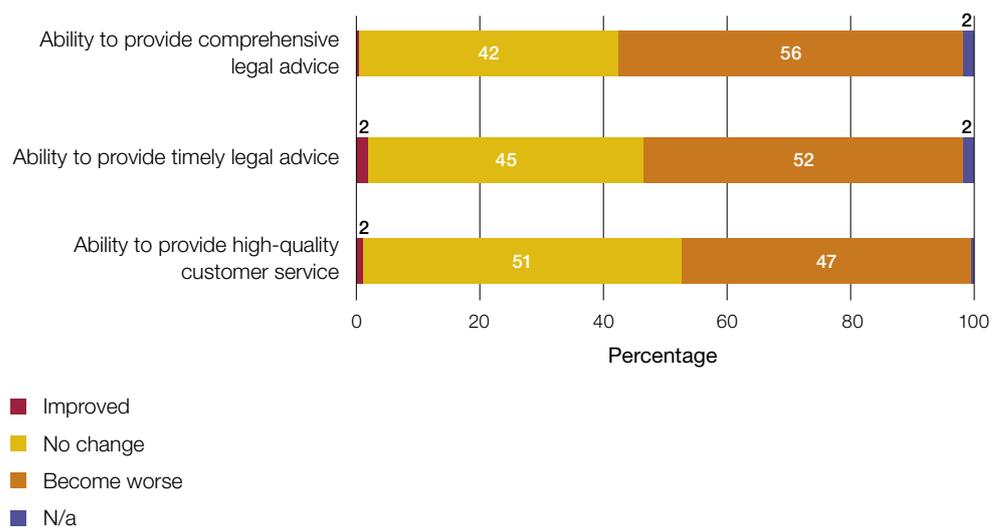
<sup>17</sup> Legal Aid Agency performance monitoring data, unpublished.

**3.14** Some providers report that the quality of service they provide to people who are eligible for legal aid has decreased. Around half of the respondents to our consultation said their ability to provide high-quality services to clients who are still eligible for legal aid has declined since April 2013 (**Figure 10**). Less than 2% of respondents said that their services had improved. Providers may have an incentive to over-report declines in service standards because of the recent fee reductions. The Agency does not monitor these aspects of service provision so does not know if these results reflect widespread changes.

**Figure 10**

Providers' views of changes to the quality of services for clients who qualify for civil legal aid since April 2013

Thinking about people who still qualify for civil legal aid, how, if at all, have the following aspects of your organisation's services changed since April 2013?



**Notes**

- 1 There were 245 valid responses to this question; 2,448 firms carried out civil legal aid work in 2013-14.
- 2 These are the results of an online consultation exercise and should not be taken as representative of the views of all providers.
- 3 The sum of individual proportions may not add up to 100% due to rounding.

Source: National Audit Office consultation with civil legal aid providers, July 2014

## Quantity and accessibility of provision

**3.15** To target legal aid to those who need it most, the Agency must ensure the service is accessible to the people it is targeting, and that there is sufficient provision to meet demand.

### The telephone helpline

**3.16** The Ministry intends the helpline to be the sole way in to legal aid for several categories of law. Accessibility measures include an interpretation service, a text relay service, free call-back and the ability to have someone else call on your behalf. The Agency advises that if an individual is unable to call, they should ask a family member or a friend to help or go to an advice agency such as Citizens Advice. This may place additional demands on advice services (paragraphs 2.13 to 2.16).

**3.17** The helpline is approving far less legal aid than forecast in some of the areas for which it is mandatory (**Figure 11**). It is not clear if this is because the forecast was too high or because there are people who are eligible for legal aid but who are not accessing the telephone helpline. The Agency approved 86% fewer debt claims than forecast. It has approved 14% more education cases than expected.

**3.18** When people do contact the helpline, the Agency answers a very high proportion of calls (99%) and does so faster than the industry standard. In our 2013 report *Charges for customer telephone lines*, we examined the performance of telephone lines across government and found that they answered between 84% and 100% of calls, compared with telephone helpline operators who answered 99% of calls. We also found that of the 21 lines for which departments measured the proportion of calls answered within a set timeframe, only 10 could show they had met the standard of answering 80% of calls by an adviser within 20 seconds. The helpline advisers answer 94% of calls within 20 seconds and 98% within 90 seconds.<sup>18</sup>

### Figure 11

Areas of law where the helpline is mandatory: variation between forecast and delivery

Area of law	Expected number of cases in 2013-14	Actual number of cases in 2013-14	Variation
Debt	17,542	2,434	-15,108 (-86%)
Education	1,021	1,153	132 (14%)
Discrimination <sup>1</sup>	–	2,301	–

#### Note

1 Discrimination did not exist as a category of law before the reforms and the Ministry did not set out the expected number of discrimination cases.

Source: National Audit Office analysis of Legal Aid Agency data

18 Comptroller and Auditor General, *Charges for customer telephone lines*, Session 2013-14, HC 541, National Audit Office, July 2013.

## Face-to-face legal advice

**3.19** Face-to-face legal aid is provided through a market of legal firms and third-sector organisations. In our previous work we have identified a number of risks to the quantity and accessibility of public services when they are provided through markets. In *Delivering public services through markets: principles for achieving value for money* we found that private markets can promote efficiency, but may not naturally provide universal services or equity of provision.<sup>19</sup> Also, they will not offer services if the cost of doing so is uneconomic, unless financial incentives are provided. In *Oversight of user choice and provider competition in care markets* we found that the Department of Health did not provide sufficient market oversight, or plan for provider failure in the social care market.<sup>20</sup> The financial problems faced by Southern Cross, a care home provider that became insolvent, illustrate the need for government to develop a system to address serious provider failure.

**3.20** The Ministry has reduced the fees it pays for legal aid, but does not know if the market is sustainable at the current level of fees. The Ministry reduced fees for legal aid providers by 10% to help it deliver an immediate reduction in spending. It thought enough providers would continue to work for fees at that level, but did not carry out an assessment of the costs of providing legal aid or model the impact of the changes. In addition, fees paid for legal aid have not been increased for inflation since 1998-99, which equates to a 34% real-terms reduction.<sup>21</sup>

**3.21** A large majority of respondents to our consultation said that the fees paid for providing legal aid did not cover the costs of providing them (**Figure 12** overleaf). While this may not be solely due to the civil legal aid reforms, it indicates that providers of civil legal aid feel under financial strain. A clear majority of civil legal aid providers who responded to our consultation said that their financial position had deteriorated since April 2013. A negative response was more common among third-sector organisations (73%) than legal firms or advocates (68%). Among those who said that their financial position had become worse, 95% identified changes to legal aid income as a reason for this. While providers may have an incentive to over-report financial difficulties, the Ministry needs to understand the effect on providers' willingness to undertake civil legal aid work.

19 National Audit Office, *Delivering public services through markets: principles of achieving value for money*, June 2012.

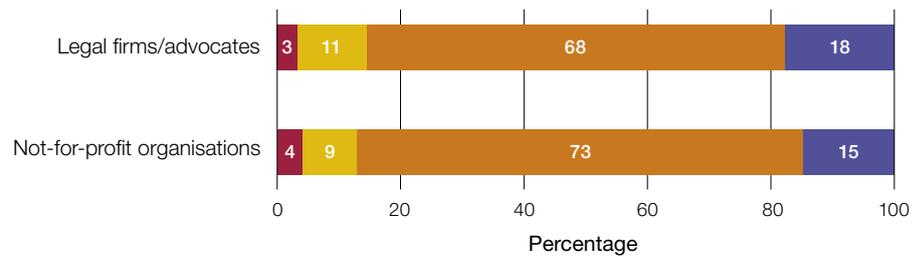
20 Comptroller and Auditor General, *Oversight of user choice and provider competition in care markets*, Session 2010–2012, HC 1458, National Audit Office, September 2011.

21 Using the Retail Price Index measure of inflation.

**Figure 12**

## Providers' views on the financial situation of their organisation

How, if at all, has your organisation's ability to balance its books changed since April 2013?



- Increased
- No change
- Decreased
- Don't know

**Notes**

- 1 There were 275 valid responses to this question (206 legal firms or advocates and 69 not-for-profit organisations); 2,448 firms carried out civil legal aid work in 2013-14.
- 2 These are the results of an online consultation exercise and should not be taken as representative of the views of all providers.
- 3 The sum of individual proportions may not add up to 100% due to rounding.

Source: National Audit Office consultation with civil legal aid providers, July 2014

**The Agency's management of the legal aid market**

**3.22** The Agency monitors the number of providers who become bankrupt, and its contract managers monitor whether a firm is at risk of failing. The Agency issues contracts for legal aid work to individual law firm offices, rather than the firm as a whole. It does not monitor how many of the offices that hold legal aid contracts actually undertake legal aid work. We analysed the Agency's data and found that 12% of the offices that hold legal aid contracts did not start any legal aid work in 2013-14. Of these, 3% have terminated their contracts or had them withdrawn by the Agency; and 7% have current contracts but have not done any work. For the remaining 2%, it is not clear from the data held by the Agency whether or not the contracts are live. Before April 2013, providers had to undertake a minimum amount of civil legal aid work each year to retain their contract, but that is no longer the case.

**3.23** The Agency does not know whether the face-to-face civil legal aid market is meeting demand. From our analysis it appears that there are areas of the country that do not have any active providers. There is a wide variation in the amount of legal aid-funded work being started across England and Wales. **Figure 13** overleaf shows the amount of face-to-face legal aid work started per 100,000 people in each local authority area in England and Wales. While people may travel outside their local authority area to get legal aid – and it is not possible to tell from the Agency’s data whether this is happening – in 14 local authorities no face-to-face providers based in the area started any legal aid-funded work during 2013-14.<sup>22</sup> Legal aid providers in a further 39 local authorities started fewer than 49 pieces of legal aid work per 100,000 people. The highest figure was in Camden in London, where providers based in the area started 4,283 pieces of legal aid work for every 100,000 people who lived there.<sup>23</sup>

**3.24** The Ministry does not know whether or not all those eligible for legal aid are able to access it. The Civil and Social Justice Panel Survey provided an indication of this and was last carried out in 2010. Because of this, it does not know how much of this variation is due to differences in demand (because some areas have more people who are eligible for legal aid than others) and how much is due to differences in supply (because some areas have enough active legal aid-funded providers to meet demand, and some do not). We would expect to see some variation in provision of legal aid between local authority areas, for example between more and less affluent areas.

**3.25** Understanding these variations is important because in civil and family law there is no alternative provision in place if legal aid contractors choose not to take on a case. For criminal legal aid, if there are no active legal aid providers then the Public Defender Service provides lawyers employed directly by the Agency.

### **Innovating to do more with less**

**3.26** The Ministry wanted providers to find new ways of doing work at lower cost, allowing them to continue to carry out legal aid work for reduced rates. In our online consultation with providers, we asked what actions they had taken to improve their financial situation since April 2013. The most commonly selected options were reducing overheads, reducing the number of paid staff, finding alternative sources of income and reducing or reorganising services. Relatively few respondents said that they had made more fundamental business changes such as merging or co-locating with other organisations (**Figure 14** on page 37). If providers reduce paid staff numbers and services, this may have an impact on the quality and quantity of provision of civil legal aid.

22 Broadland, Castle Point, Christchurch, Daventry, Elmbridge, Epsom and Ewell, Hart, Isles of Scilly, Lewes, Melton, Oadby and Wigston, Rochford, Rugby, and Wealden.

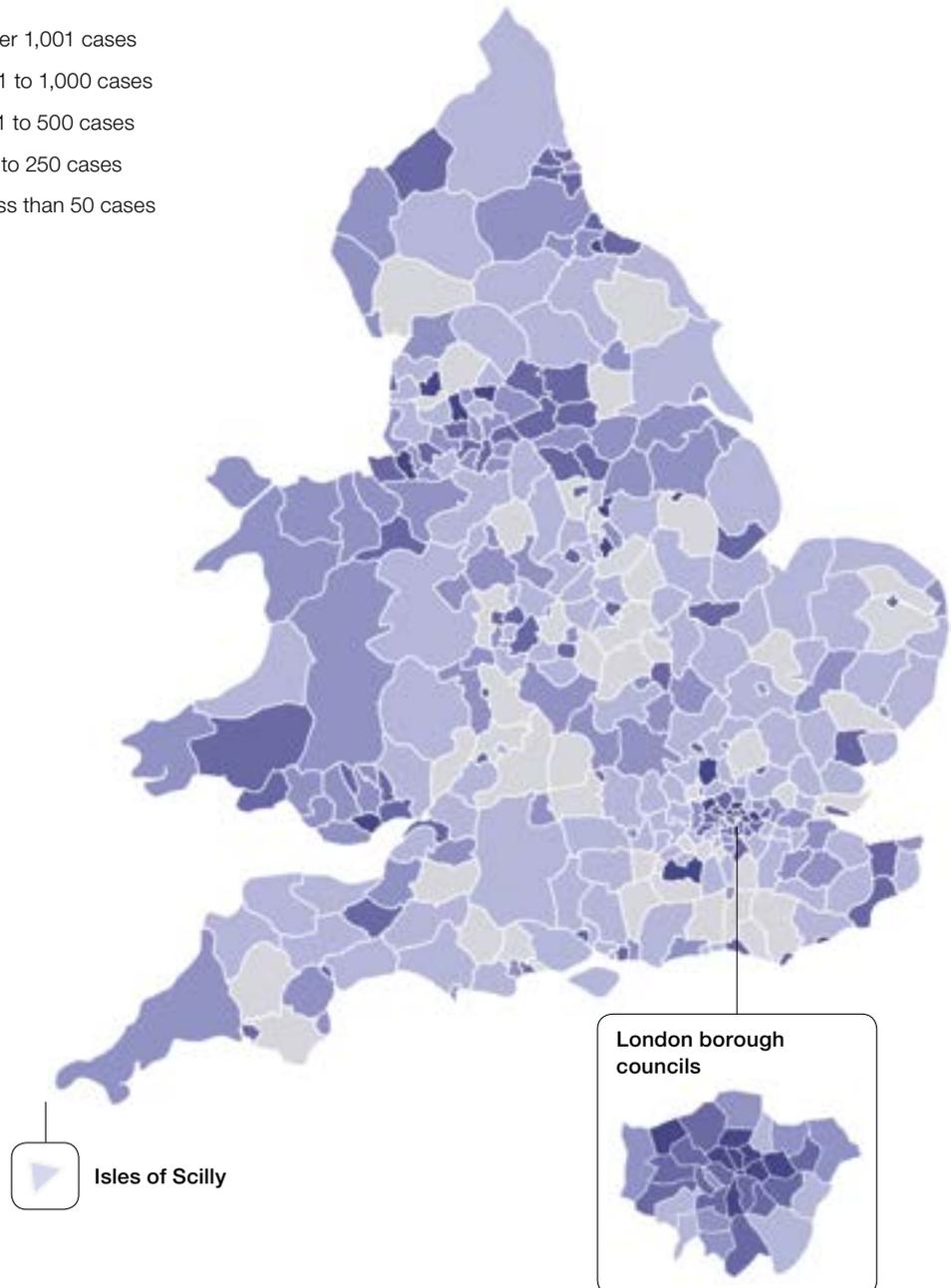
23 The City of London has a higher rate at 13,763, but this is likely to be distorted by the fact that few people live in the City, and there are several firms based there but with offices in other parts of London.

**Figure 13**

Number of face-to-face matter starts per 100,000 people in each local authority area in 2013-14

**Value**

- Over 1,001 cases
- 501 to 1,000 cases
- 251 to 500 cases
- 51 to 250 cases
- Less than 50 cases



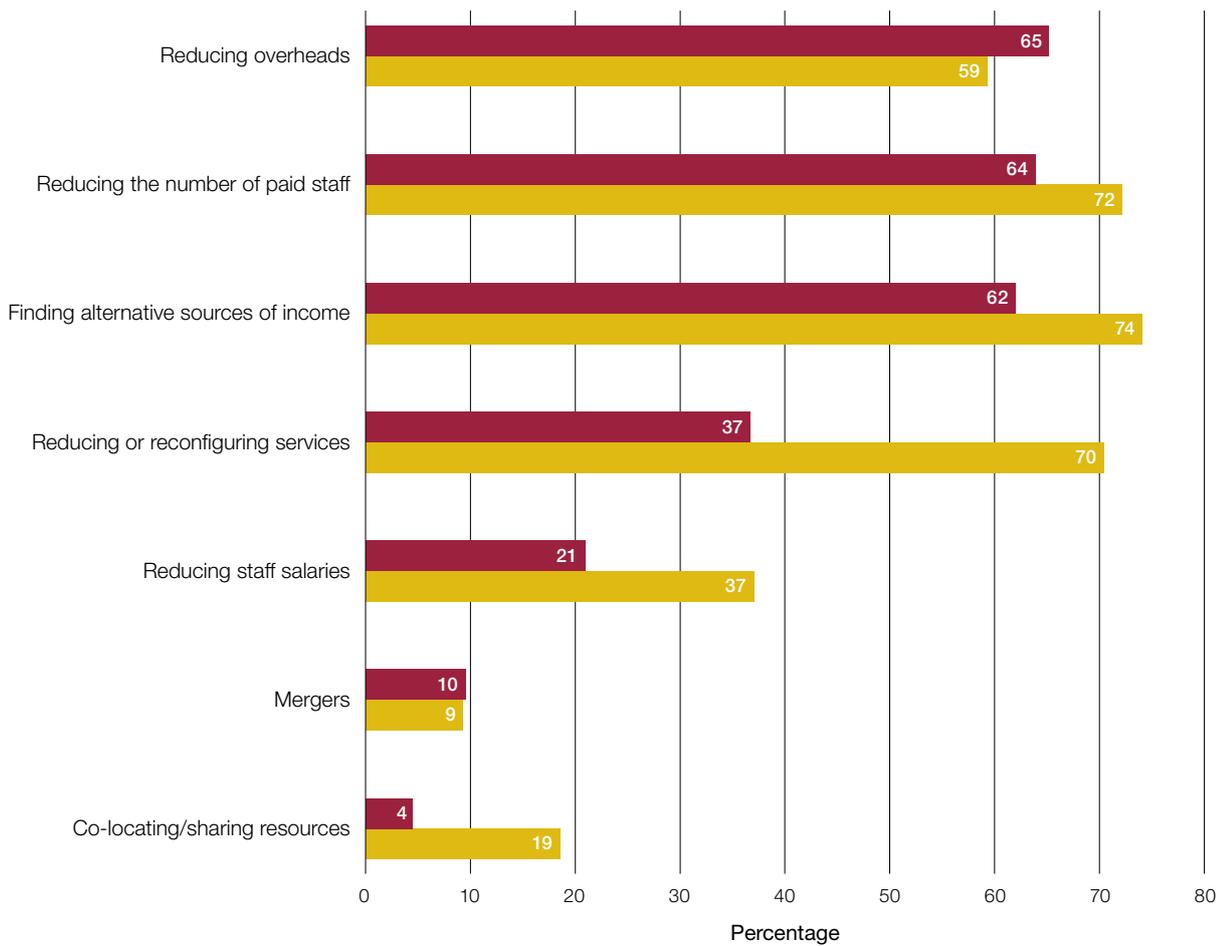
**Note**

- 1 This includes both legal help and civil representation matter starts. This is likely to over-estimate the amount of cases carried out as one case may have both a legal help and civil representation component. It is not possible to identify these cases from Legal Aid Agency data.

Source: National Audit Office analysis of Legal Aid Agency data

**Figure 14**  
 Actions taken by providers to improve their financial situation

Which, if any, of the following actions has your organisation taken to improve its ability to balance its books since April 2013?



- Legal firms/advocates
- Not-for-profit organisations

**Notes**

- 1 There were 212 valid responses to this question (158 legal firms or advocates and 54 not-for-profit organisations); 2,448 firms carried out civil legal aid work in 2013-14.
- 2 These are the results of an online consultation exercise and should not be taken as representative of the views of all providers.

Source: National Audit Office consultation with civil legal aid providers, July 2014

**3.27** There is some evidence that legal aid providers are offering legal services in more flexible ways. Of respondents to our provider consultation, 64% said that, since April 2013, they were more often offering to undertake defined pieces of work, rather than taking on an entire case. Several respondents also said that their organisations were increasingly offering fixed-fee payment options to people who were not eligible for legal aid, such as providing an initial appointment and comprehensive advice letter for a set fee. Similarly, a Legal Services Consumer Panel survey found that 45% of consumers surveyed had paid for family law services using a fixed-fee arrangement in 2014, compared with 12% in 2012.<sup>24</sup>

**3.28** The Ministry considers that there may be more scope to provide legal aid over the phone or internet instead of face-to-face as part of a cross-government move to make services ‘digital by default’. Digital by default means “digital services which are so straightforward and convenient that all those who can use digital services will choose to do so, while those who can’t are not excluded”. It can also result in lower costs for delivering services. In our 2010 report *Helping over-indebted consumers*, we found that face-to-face debt counselling cost £265. This compared with £51 for debt counselling by phone and £16 for internet-based counselling. We also found that internet-based counselling was not appropriate for everyone.<sup>25</sup>

**3.29** The legal aid providers who responded to our consultation thought delivering services digitally might make legal aid less accessible (**Figure 15**). They were also concerned that legal aid clients would resist new technology. The Ministry plans to gather more data on specific user needs to inform the digital redesign of each of its services and help meet those needs more effectively. It has not yet done so for civil legal aid recipients.

**3.30** If the Ministry’s research finds there is scope to deliver services digitally, it may need to consider the implications of training and set-up costs. Providers who responded to our consultation expressed concern about the set-up costs of delivering services digitally. This was more of a concern for not-for-profit organisations (68%) than legal firms (47%).

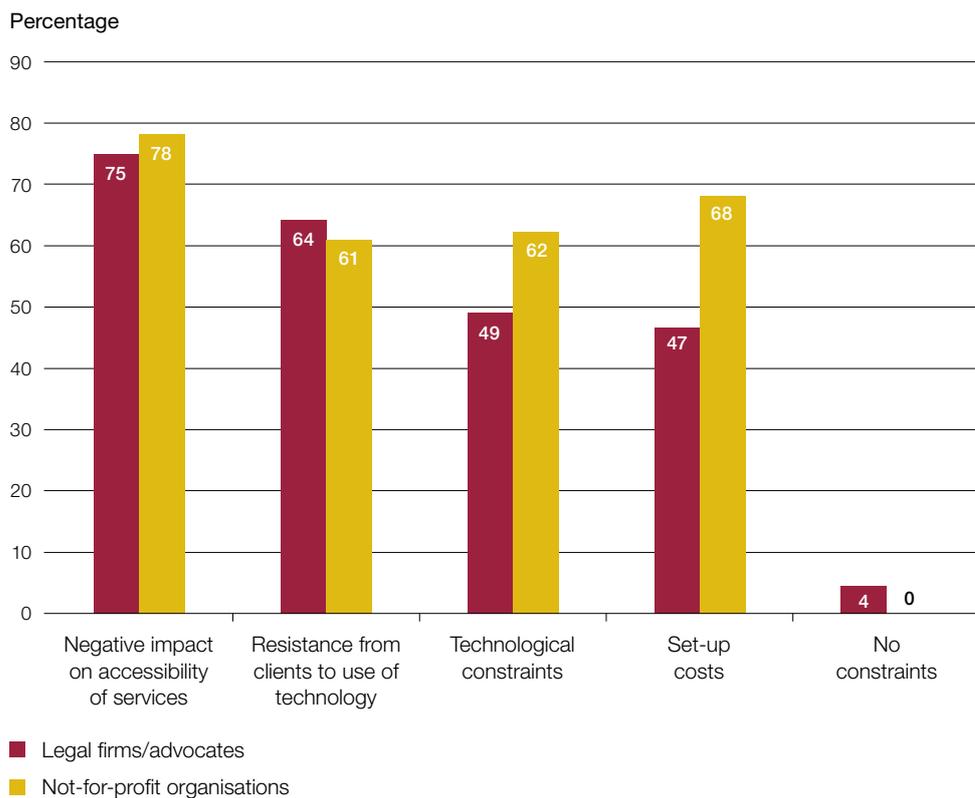
<sup>24</sup> Legal Services Consumer Panel, *Briefing note: A changing market*, 23 May 2014.

<sup>25</sup> Comptroller and Auditor General, *Helping over-indebted consumers*, Session 2009-10, HC 292, National Audit Office, February 2010.

**Figure 15**

Providers' views on constraints on the use of technology to deliver civil legal aid

What constraints, if any, do you see to increasing the use of telephone, internet or other technologies for the delivery of civil legal services?



**Notes**

- 1 There were 272 valid responses to this question (204 legal firms or advocates and 68 not-for-profit organisations); 2,448 firms carried out civil legal aid work in 2013-14.
- 2 These are the results of an online consultation exercise and should not be taken as representative of the views of all providers.

Source: National Audit Office consultation with civil legal aid providers, July 2014

# Appendix One

## Our audit approach

**1** This report examines whether the Legal Aid Agency’s (the Agency’s) implementation of the Ministry of Justice’s (the Ministry’s) reforms to civil legal aid, as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, provides value for money. We have excluded reforms to criminal legal aid, which had not been fully implemented at the time of our fieldwork, and further reforms to civil legal aid implemented after April 2013. We have assessed value for money using the objectives that the Ministry set out in its Impact Assessment of the changes. Our criteria for assessing value for money are set out in **Figure 16**.

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**Figure 16**  
Our value-for-money criteria

<b>Objectives from Impact Assessment</b>	<b>Value-for-money criteria</b>
Make significant savings in the cost of the scheme (Part One)	Ongoing savings from the reforms. Costs to the Ministry. Other wider costs.
Discourage unnecessary and adversarial litigation at public expense (Part Two)	Cases excluded from civil legal aid. Reduction in court cases. Impact of excluding cases on individuals.
Target legal aid to those who need it most (Part Three)	Clarity of the Ministry’s revised eligibility criteria. Quality of civil legal aid provision. Quantity and accessibility of civil legal aid.

Source: National Audit Office

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# Appendix Two

## Our evidence base

- 1 Our independent conclusions on whether the reforms to civil legal aid deliver value for money were reached following our analysis of evidence collected between April and September 2014.
- 2 We have assessed value for money using the objectives that the Ministry of Justice (the Ministry) set out in its Impact Assessment of the changes. Our audit approach is set out in Appendix One.
- 3 **We calculated the savings likely to be delivered as a result of the reforms.**
  - We conducted **financial analysis** to determine the reduction in spending that the Ministry achieved from the reforms. This involved analysing the Ministry's impact assessments and re-calculating the Ministry's projections to create a more accurate baseline that accounted for trends prior to implementation of the reforms:
    - We began by working out the trend in the number of civil legal aid cases over the past 3 years in order to work out the expected 2013-14 figures had the reforms not been implemented. We did this for all areas except Special Children's Act cases (where recent changes outside legal aid made it unlikely that the trend would continue) and exceptional case funding (where no trend data was available). This gave us an up-to-date baseline to work from.
    - We then multiplied these baseline matter starts figures by the expected reduction figure calculated by the Ministry in the Impact Assessment.
    - In order to work out average case costs, we took the 2010-11 spend on completed matters for each category in the statistics pack and divided it by the number of matters completed. We then took off 10% to take account of the 10% reduction in fees which was implemented in 2011-12.
    - By multiplying the expected matter starts figure by the average cost, we came up with the expected cost.

- By multiplying the average case cost by the actual number of matter starts we came up with the actual costs.
  - By comparing these two costs to the expected costs of cases had the reforms not been implemented we could estimate the expected savings and actual savings.
  - This method does not take into account any variations in the cost of cases as a result of the reforms and does not take into account the change in financial eligibility criteria.
- We did not use a trend in analysing expected costs for mediation because there was no clear trend in the years prior to reforms.
  - We did not include discrimination cases, because these were not included as a separate category in the Ministry's analysis.
  - In paragraph 1.10, we used legal aid statistics from financial year 2013-14, published by the Ministry, to calculate spending on civil legal aid in 2012-13 and 2013-14, and the Ministry of Justice Annual Report and Accounts for 2013-14 for the budget figures. We **estimated additional costs to the Ministry and HM Courts & Tribunals Service** by analysing data from the Ministry's courts databases (Familyman and Caseman) to determine changes to the number of people going to court without legal representation since the reforms. We also examined the best evidence available from published research and applied this to data from the Ministry on unrepresented litigants. Key sources include:
    - P Lewis, 'Litigants in person and their difficulties in adducing evidence: a study of small claims in an English county court', *International Journal of Evidence and Proof*, vol. 11, issue 1: March 2007, pp. 24–48.
    - Moorhead and Sefton, *Litigants in person: Unrepresented litigants in first instance proceedings*, Department of Constitutional Affairs Research Series 2/05, March 2005.
    - Hitchings et al, *Assembling the jigsaw puzzle: Understanding financial settlement on divorce*, University of Bristol, 2013.

**4 We assessed whether the reforms discouraged unnecessary and adversarial litigation at public expense.**

- We analysed the data on the reduction in legal aid certificates granted, the number of cases started in the areas of law that were removed from the scope of civil legal aid and the number of mediation cases started.
- We conducted **semi-structured interviews** with Ministry and Agency officials and reviewed planning documents to understand the steps taken to manage the impact of the reforms on these matters.

**5 We assessed whether the reforms targeted legal aid to those who need it most.**

- We conducted **semi-structured interviews** with Ministry and Agency officials and reviewed impact assessment documents to understand the steps taken to target legal aid and ensure the sustainable management of the market for legal aid.
- We conducted a **GIS mapping exercise** to assess the geographic distribution and activity levels of civil legal aid providers across England and Wales.
- We conducted an **online consultation** with providers of civil legal services, most of whom were current providers of civil legal aid. The consultation received 285 responses; 216 respondents were solicitors or barristers, while 69 worked at third-sector organisations.
- Using **descriptive analysis** of the consultation data, we analysed providers' views of the impact of the reforms on clients, providers and the legal aid market. Participants were self-selecting and the responses do not constitute a representative sample of legal aid providers.
- We observed the Agency's approach to contract management by attending meetings of the Agency's legal aid contract managers and reviewing relevant documents.

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