

# Unintended Consequences: the cost of the Government's Legal Aid Reforms

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*A Report for The Law Society of England & Wales*

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November, 2011

# Acknowledgements

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All errors and omissions are the author's own.

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# Contents

Acknowledgements .....	i
Contents .....	ii
List of Figures.....	iii
List of Tables.....	iv
1. Executive Summary .....	6
2. Introduction.....	7
3. The Context .....	10
4. Civil Justice in England & Wales.....	16
5. Unintended Consequences .....	30
6. Family Law .....	46
7. Social Welfare Law .....	56
8. Clinical Negligence.....	65
9. Summary & Conclusions.....	72
10. References .....	79

# List of Figures

Figure 1: Legal Aid Net Expenditure (£ millions) 2000-2010 (in 2009 prices) <sup>4</sup> .....	10
Figure 2: Incidence of Civil Justice Problems 2006-9 .....	17
Figure 3: Responses to Civil Justice Problems 2006-9 .....	18
Figure 4: Responses to Advisor Unavailability .....	21
Figure 5: Sources of funding for free legal advice .....	22
Figure 6: Willingness to Pay for Legal advice.....	22
Figure 7: How social justice problems were resolved by law area 2006-9 .....	23
Figure 8: Proportion of Problems Reported “Resolved” by response 2006-9 .....	23
Figure 9: How social justice problems were resolved by response 2006-9 .....	24
Figure 10: Perceived Fairness of Resolution by Response 2006-9.....	24
Figure 11: Reasons for Accepting Unfair Outcomes 2006-9 CSJS.....	25
Figure 12: Adverse Consequences of Civil Justice Problems 2006-9.....	26
Figure 13: Improvements in Adverse Consequences after Obtaining Advice .....	27
Figure 14: Family Legal Aid Expenditure (£m) Relative to Total Civil Legal Aid (2009 prices) .....	47
Figure 15 Law Expenditure & Case Volume Trends <sup>4</sup> .....	48
Figure 16: Legal Representation Expenditure by Domain (2009 prices) .....	49
Figure 17: Legal Representation Volumes by Domain .....	49
Figure 18: Flows through the Family Law System (2009-10 Baseline & CSJS Data) .....	51
Figure 19: Social Welfare Law Legal Aid Expenditure (£m) Trends (2009 prices)	58
Figure 20: Legal Aid Expenditure (£m) and Case Volumes (1,000s) in 2009 prices 2006-9 .....	59
Figure 21: Average Case Costs for Social Welfare Law 2006-9 (2009 Prices).....	60
Figure 22: County Court Possession Orders Granted 2004-9 .....	60
Figure 23: Knock-on Costs Under Reforms to Social Welfare Legal Aid.....	62
Figure 24: Clinical Negligence Legal Aid Expenditure (£m) Relative to Total Civil Legal Aid (2009 prices) .....	67
Figure 25: Clinical Negligence Legal Aid Expenditure (£m) and Case Volumes (1,000s) in 2009 prices.....	68
Figure 26: Government Savings against Estimated Knock-on Cost (£ millions) ....	73
Figure 27: Key Knock-on Costs (2009 £ millions) .....	74

# List of Tables

Table 1: Civil & Family Legal Aid Net Expenditure (£ million) 2004-2010 (in 2009 prices). <sup>4</sup> .....	11
Table 2: Areas of Law to be Removed from Scope .....	13
Table 3: Reductions in absolute amounts of legal aid (from 2009-10) .....	14
Table 4: Reduction in relative amount of legal aid (from 2009-10) .....	15
Table 5: Sources of Advice 2006-9 .....	19
Table 6: Adverse Consequences of Civil Justice Problems by Area of Law (2006-9) .....	26
Table 7: Economic Costs of Adverse Consequences .....	28
Table 8: Summary of Family Law Knock-On Costs .....	51
Table 9: Summary of Knock-on costs for Social Welfare La.....	63
Table 10: Summary of Knock-On Costs of Clinical Negligence .....	70

*“To no-one will we sell, to no one deny or delay right or justice.”*

CLAUSE 40, MAGNA CARTA

# 1. Executive Summary

- 1.1 Legal aid was introduced in England and Wales in 1949. In 2009 this system cost £2.1 billion with over £900 million being spent on civil legal aid.
- 1.2 As part of the government-wide public expenditure cuts to reduce the UK deficit, the Ministry of Justice must save £2 billion per annum from 2014-15. To help achieve this fiscal target, the department is proposing substantial reforms to the legal aid system to deliver savings of £450 million per annum. The largest saving (of £270 million, net) is to be generated by removing significant categories of law from the scope of legal aid.
- 1.3 In order for these savings to contribute to reducing the fiscal deficit the reforms must not generate substantial knock-on or consequential costs to the public purse. However, the Government's own impact assessment indicated that the reforms could generate knock-on costs including reduced social cohesion, increased criminality, reduced business and economic efficiency, increased resource costs to other Departments, and increased transfer payments from other Departments. As reported by the Justice Select Committee and acknowledged by the Ministry of Justice, the magnitude of these knock-on costs has not been estimated.
- 1.4 The research's aim was to identify the potential impact of the reform to legal aid scope on the public purse, focusing in particular on the areas of law expected to generate the largest savings: family law, social welfare law and clinical negligence. To achieve this aim, data from the Civil and Social Justice Survey were combined with data from the Legal Services Commission, and publically available data to understand the potential impact of the reforms.
- 1.5 The research finds that knock-on costs could be in the region of £139 million per annum, realising a net saving of significantly less than half (42 percent) of the Government's prediction within the areas of law under study. Numerous costs could not be estimated, and this figure is therefore likely to be a substantial underestimate of the true costs.
- 1.6 It is impossible to say for certain what the impact of the proposals will be, just as it is impossible for the Government to assert that there will be a saving of £270 million from the public purse. This report however, *suggests* that it is unlikely that the Government will realise such substantial savings. Therefore, the reforms are unlikely to make a significant contribution to reducing the fiscal deficit.
- 1.7 As better data are made available on the costs and flows through the civil justice system the analysis can be updated. There are significant gaps in the evidence base that should be filled before legislation is passed. I therefore reiterate the Justice Select Committee's appeal to the Government to estimate these impacts fully before implementing any reforms.

## 2. Introduction

- 2.1 Access to justice is a hallmark of a civil society<sup>1</sup>. Legal aid is an essential tool in achieving equality of access for members of society who cannot afford legal advice and representation.
- 2.2 Legal aid was first introduced in England and Wales in 1949. What the National Health Service did by removing barriers to access to hitherto expensive medical care, legal aid did for access to legal advice and representation. As Anthony Hurndall of the Centre for Justice states, free access to justice is “one of the three central pillars of the welfare state”<sup>2a</sup>. The defence of legal aid has thus far been made primarily on humanitarian grounds, around the issue of access to justice. In contrast, this research focuses on the ‘economic’ aspects of legal aid.
- 2.3 Since its inception, the legal aid scheme has expanded considerably. In 2009-10 legal aid expenditure was £2.1 billion, of which £941 million was for civil and family cases<sup>4</sup>.
- 2.4 At present, legal aid is administered by the Legal Services Commission (LSC) and funded by the Ministry of Justice (MoJ). Legal aid expenditure represents approximately 25 percent of the total MoJ budget. As part of wider public expenditure cuts, the MoJ must reduce their annual budget by 23 percent, or approximately £2 billion from 2014-15<sup>5</sup>.
- 2.5 Reducing legal aid expenditure was therefore a key driver of the legal aid reforms contained in *The Legal Aid, Sentencing and Punishment of Offenders Bill*. This bill proposes a number of changes to the legal aid scheme that were put out for consultation between November 2010 and February 2011.
- 2.6 The savings<sup>b</sup> outlined in the consultation exercise will be made largely through reforms to the scope (what is covered), eligibility (who is covered) and the fee structure. In total, the MoJ anticipates saving £450 million<sup>c</sup> per annum with over 60 percent (£270 million) of these savings arising from changes to the scope of legal aid. In the area of private family law these cuts are particularly deep, at 63 percent (£170 million) of current expenditure.

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a In an international context, following a public commission on legal aid in British Columbia, the Commissioner concluded that legal aid was the fourth pillar of the state, along with education, healthcare and social security.<sup>3</sup> Doust LT. Foundation for Change: Report Of The Public Commission on Legal Aid in British Columbia: Public Commission on Legal Aid in British Columbia, 2011.

b The savings figures here relate to the revised estimates circulated in the Government’s response to the consultation exercise. While there was little change in the total savings generated by the reforms between the two documents, the distribution of the cuts across the different categories of law is different. All figures reported in paragraph 2.5 come from the MoJ’s revised Impact Assessment.<sup>6</sup> MoJ. Cumulative Legal Aid Reform Proposals Impact Assessment. 2011.

c £450 million saving is made up for £270 million (net of mediation) from scope changes, £160 million from fee reforms (including £100m criminal, £50m civil/family and £10m expert fees), £10 million from eligibility changes, £7 million from the Supplementary Legal Aid Scheme, and £1-2 million from telephone advice. For full details see 7. Ministry of Justice. Impact Assessment: Cumulative Legal Aid Reform Proposals. London, 2011.

- 2.7 The cuts are predicated on two arguments<sup>1</sup>. First, that legal aid expenditure is too great. People are too willing to litigate rather than negotiate, as is indicated by England and Wales spending almost four times as much per capita on legal aid than New Zealand with a similar, common law, system<sup>8</sup>. Second, that legal aid is not immune from the public spending cuts aimed at the deficit reduction.
- 2.8 This report focuses on this second, economic argument. In order for these savings to contribute to reducing the fiscal deficit the reforms must not generate substantial knock-on or unintended costs.
- 2.9 For example, the Government’s own Impact Assessment<sup>d5</sup> identified a number of potential knock-on costs of the reform, including: reduced social cohesion, increased criminality, reduced business and economic efficiency, increased resource costs to other Departments, and increased transfer payments from other Departments. In Canada, a recent public commission concluded that cutting legal aid expenditure was a false economy as it shifted the costs of unresolved problems onto other government departments.<sup>3</sup> And as the Justice Select Committee<sup>4</sup> stated: *“Reducing spending on legal aid may have financial implications – and indeed may inflate costs – in other parts of the legal system.”* [Para. 37]
- 2.10 Although the MoJ has acknowledged these potential impacts it has failed to identify either the magnitude of these costs or their likelihood. In evidence to the Justice Select Committee, the MoJ admitted that it had not analysed the impact of the proposals on other Departments. Given that the Government has stated that it is committed to evidence-based policy making, this is surprising<sup>9 10</sup>. As the House of Commons Justice Committee’s report on the Government’s proposals stated:
- “It has been put to us that the removal from scope of many areas of social welfare law will lead to significant costs to the public purse as a result of increased burdens on, for example, health and housing services. We are surprised that the Government is proposing to make such changes without assessing their likely impact on spending from the public purse and we call on them to do so before taking a final decision on implementation.”* [Para. 136]
- 2.11 An explanation could be the lack of knowledge of the true cost of the activities it is responsible for. As a National Audit Office report<sup>11</sup> concluded:
- “The Ministry’s Finance Directorate does not have sufficient visibility of the costs of policy proposals, affecting its ability to monitor their financial implications centrally.”*[p.6]
- A similar sentiment is echoed by the Public Accounts Committee<sup>12</sup>:
- “It is essential that the Ministry implement its Spending Review settlement on the basis of a full understanding of the cost and value of its services, so that financial cuts are best targeted to minimise the impact on frontline services. Yet the Ministry and its arm’s length bodies currently lack the detailed information they would need to do this.”*

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d The consultation (Green paper) document and the Government response to the consultation exercise included numerous Impact Assessments. Henceforth, Impact Assessment refers specifically to the Annex A: Scope Impact Assessment unless otherwise stated.

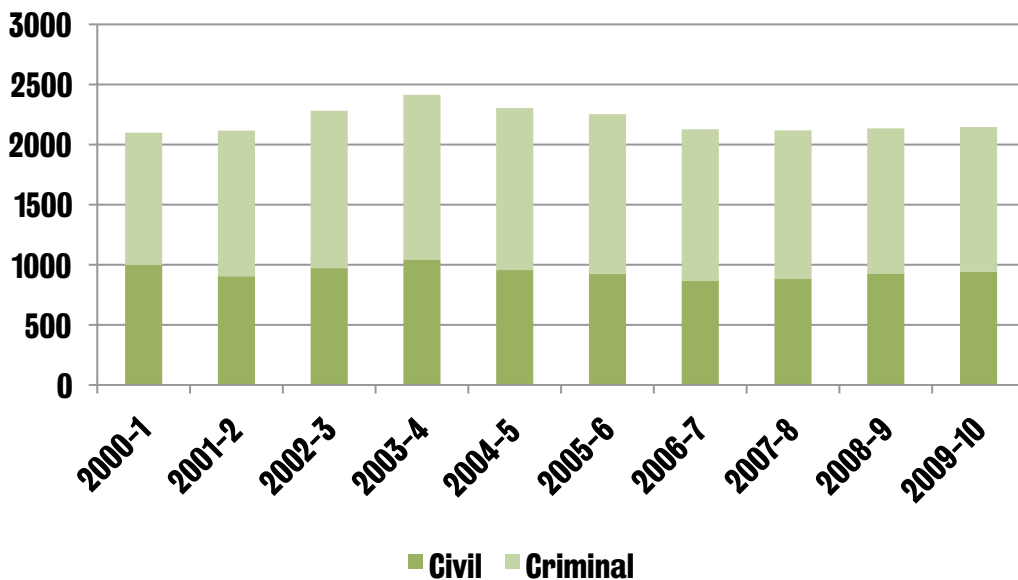
- 2.12 The aim of this report is, therefore, to fill this void by attempting to identify and quantify the *“likely impact on spending from the public purse”*. While it will be impossible to state with certainty the knock-on costs of the proposed reforms it is equally impossible for the Government to state that these reforms will reduce public expenditure by the entire savings predicted.
- 2.13 The key contribution of this report is therefore to generate debate around the knock-on costs of the proposals and to establish an order of magnitude for these as yet unquantified knock-on costs. In particular, this report will focus on the impacts of the scope changes on the public purse. By identifying key areas of knock-on cost, further in-depth research can be conducted to establish the true size of these costs.
- 2.14 To achieve this aim, the report maps the options for people who have civil justice problems that no longer fall under the scope of legal aid but who would have previously received legal aid to help resolve their problems. The counterfactuals are therefore mapped – what avenues are available for these people – and the likely knock-on costs to the state of these choices. However, it will not be possible to identify or measure all of the costs given the limited data publicly available.
- 2.15 While the existing evidence is inconclusive as the policy has not been trialled, it is important to quantify the costs for which there is evidence available and to identify those which require further research.

# 3. The Context

## 3.1 Trends in legal aid expenditure

- 3.1.1 Various figures are reported for legal aid expenditure and volume depending upon the definition chosen for “volume” and the method used to calculate expenditure, but they show similar trends.
- 3.1.2 Figure 1 shows the real (adjusted to 2009 prices) expenditure on legal aid over the past 10 years. Over that period real expenditure on civil legal aid has fallen by 6 percent while criminal legal aid spending has increased by 9 percent in real terms. The overall effect is an increase in total expenditure of approximately two percent over the period.

**Figure 1: Legal Aid Net Expenditure (£ millions) 2000-2010 (in 2009 prices)<sup>4e</sup>**



- 3.1.3 Whilst this two percent increase in legal aid spending is for England and Wales only, to put the figures into context, the UK economy grew by approximately 15 percent (in real terms) over the same 10 year period<sup>f</sup>. In

<sup>e</sup> The data used to produce this figure were extracted from the Justice Select Committee’s report on the Government’s legal aid reform proposals (Table 2, page 9). However, the data are incorrect as 2003-4 is missing from the table and the remaining data are mislabelled. The data above have been corrected by using data from LSC Statistical packs.

<sup>f</sup> Based upon the inflation-adjusted GDP data available from ONS for Q2 2000 to Q2 2010.

comparison, police spending in England and Wales increased by 50 percent in real terms over the 10 years to 2010.<sup>13</sup>

**Table 1: Civil & Family Legal Aid Net Expenditure (£ million) 2004–2010 (in 2009 prices).<sup>4g</sup>**

Expenditure (£m)	2004-5	2005-6	2006-7	2007-8	2008-9	2009-10
Family	554	598	590	609	634	597
Mental Health	54	31	30	33	32	36
Immigration	193	113	88	91	89	89
Debt	9	28	26	22	27	33
Housing	53	54	56	54	60	60
Welfare Benefits	12	26	25	23	24	28
Employment	6	8	6	6	6	8
Community Care	5	3	4	4	5	6
Actions Against Police	7	6	6	5	5	5
Consumer	7	3	1	0	3	2
Clinical Negligence	32	32	28	29	28	16
Education	6	6	5	4	3	3
Personal Injury	-1	-1	-6	-7	-4	-4
Public Law	8	6	6	6	9	7
Misc.	12	12	5	7	9	55
<b>Total</b>	<b>957</b>	<b>925</b>	<b>870</b>	<b>886</b>	<b>930</b>	<b>941</b>

3.1.4 As Table 1 illustrates, the general decline in civil legal aid expenditure conceals the underlying change in the composition of civil legal aid expenditure. Expenditure on cases relating to social welfare law including housing matters, debt advice and welfare benefits increased over the period. This has largely been the result of a significant increase in the number of – and expenditure on – legal help cases.

3.1.5 As the Justice Select Committee noted, there were some underlying changes that are not reflected in Table 1. Family law expenditure includes both private and public law. Therefore, while expenditure on private family law has fallen in recent years the increase in the number of public family law cases in the aftermath of the “Baby Peter” case has resulted in a general

<sup>g</sup> The totals in Table 1 differ from the civil aid totals presented in Figure 1 due to rounding within the individual categories of law in the original data source.

increase in family law expenditure. As public family law remains in scope, the legal aid reforms will do nothing to stop this increase in expenditure.

- 3.16 Overall, in the past 10 years, expenditure on legal aid has increased by a small fraction, attributable to an increase in criminal legal aid spending. As a proportion of Gross Domestic Product (GDP) this expenditure actually fell.

## 3.2 *The Proposals*

- 3.2.1 The MoJ proposes to save up to £450 million<sup>h</sup> per annum from the legal aid fund.<sup>5</sup>
- 3.2.2 Savings will be achieved through reforms to the scope of legal aid (what cases are covered), financial eligibility for legal aid (who is covered and what they have to contribute), and legal aid fees (the amount paid to lawyers and experts). In addition, the introduction of a Community Legal Advice telephone helpline as the primary gateway for many civil legal aid services and the introduction of a Supplementary Legal Aid Scheme (SLAS) will also realise minor savings.
- 3.2.3 The most significant savings, an estimated £270 million, will be made by changing the scope of legal aid by removing many cases from coverage.
- 3.2.4 This report considers the consequential cost to the public of the Government's legal aid reforms to the scope of legal aid. The projections for the knock-on costs are based upon the MoJ's Impact Assessment<sup>14</sup>. Areas of law which will be removed from scope under the proposals are summarised in Table 2.
- 3.2.5 Cases or areas of law which were already out of scope will remain out of scope. Cases which will remain in scope are reported in Annex 2 of MoJ Impact Assessment.<sup>14</sup>
- 3.2.6 The proposals include a provision to amend the exceptional funding scheme to provide legal aid for cases that are excluded from scope under the definitions in Table 2 but which require funding in order for the UK to meet domestic or international legal requirements (e.g. under the European Convention on Human Rights) or where there is a "*wider public interest*".<sup>14</sup>
- 3.2.7 The impact of the changes to legal aid scope reported in Table 2 on legal aid case volume and expenditure was estimated by the MoJ in their Impact Assessment. These figures are restated in Tables 3 and 4 for simplicity. Both tables use legal aid volumes and expenditures from 2009-10 as the baseline.

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<sup>h</sup> £450 million saving is made up for £270 million (net of mediation) from scope changes, £160 million from fee reforms (including £100m criminal, £50m civil/family and £10m expert fees), £10 million from eligibility changes, £7 million from the Supplementary Legal Aid Scheme, and £1-2 million from telephone advice.

3.2.8 The MoJ predicts total savings of £280 million (gross) from the 2009-10 baseline figures but anticipates a cost of £10 million per annum resulting from an increased use of mediation services within private family law cases. A net saving of £270 million is therefore projected.

**Table 2: Areas of Law to be Removed from Scope<sup>1</sup>**

Area of Law	Exceptions (where)
[All]	There is a need to meet “[...]domestic and international legal obligations, including those under the European Convention on Human Rights (ECHR, in particular article 2 and article 6).” <sup>1</sup>
Asylum support Clinical negligence Consumer and general contract (Criminal) Injuries Compensation Authority cases Debt Employment Education Housing  Immigration  Miscellaneous (specified as): appeals to the Upper Tribunal from the General Regulatory Chamber of the First- tier Tribunal, cash forfeiture actions under the Proceeds of Crime Act 2002, legal advice in relation to a change of name, actions relating to contentious probate or land law, court actions concerning personal data, action under section 14 of the Trusts of Land and Appointment of Trustees Act 1996, and legal advice on will- making for (i) those over 70 (ii) disabled people (ii) the parent of a disabled person and (iv) the parent of a minor who is living with the client, but not with the other parent, and the client wishes to appoint a guardian for the minor in a will; Private Family Tort (and other general claims) Welfare benefits	Accommodation is claimed  Immediate risk to home  Special Education Needs are involved Immediate risk to home (but not “squatters”); homelessness assistance; housing disrepair involving serious health risk; county court anti-social behaviour cases Detention cases; proceedings before the Special Immigration Appeals Commission         Cases of domestic violence or child abuse

<sup>1</sup> Source: 1. Ministry of Justice. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10. London: The Stationery Office, 2010.

**Table 3: Reductions in absolute amounts of legal aid (from 2009-10)<sup>j</sup>**

Area of Law	Legal Help		Legal Representation	
	Volume	Expenditure (£m)	Volume	Expenditure (£m)
Family	210,000	50	45,000	120
Welfare Benefits	135,000	25	0	0
Housing	52,000	10	1,200	3
Debt	105,000	20	50	0
Immigration	53,000	20	290	1
Mental Health	0	0	0	0
Employment	24,000	5	70	0.5
Education	2,800	0.5	70	0.5
Community Care	90	0	0	0
Misc.	3,300	0.5	580	3
Actions Against Police	1,900	0.5	320	1
Clinical Negligence	2,500	0.5	1,500	10
Consumer	3,100	0.5	470	3
Personal Injury	1,700	0.5	760	3
Public Law	240	0	10	0
<b>Total</b>	<b>594,630</b>	<b>130</b>	<b>50,320</b>	<b>150</b>

3.2.9 Family law faces the largest absolute cut in expenditure from the scope changes, with £170 million being saved by removing most of private family law from scope. However, as relatively expensive public law legal representation will remain in scope total expenditure on family law legal representation is only reduced by 22 percent. Other areas of law that face significant impact include housing, welfare benefits, debt and immigration with large absolute cuts in legal help. As a proportion of current spending, consumer, immigration, welfare benefits and personal injury will fall significantly.

3.2.10 The Impact Assessment acknowledges that the actual savings will depend upon the behavioural responses of people who no longer receive legal aid, and on the costs and effectiveness of these responses. However, the Government believes that the evidence in this respect is inconclusive.<sup>14</sup> It therefore does not estimate knock-on costs of behaviour change resulting from the legal aid scope changes.

<sup>j</sup> Source: 15. Ministry of Justice. Reforms of Legal Aid in England and Wales Impact Assessment Annex A: Scope. London: Ministry of Justice, 2011.

**Table 4: Reduction in relative amount of legal aid (from 2009-10)<sup>k</sup>**

Area of Law	Legal Help Expenditure		Legal Representation Expenditure	
	Volume	(£m)	Volume	(£m)
Family	79%	78%	40%	22%
Welfare Benefits	100%	100%	0%	0%
Housing	40%	38%	11%	12%
Debt	74%	75%	13%	13%
Immigration	92%	90%	20%	24%
Mental Health	0%	0%	0%	0%
Employment	78%	76%	95%	95%
Education	58%	32%	29%	50%
Community Care	1%	1%	0%	0%
Misc.	85%	82%	60%	63%
Actions Against Police	48%	44%	70%	59%
Clinical Negligence	75%	75%	65%	64%
Consumer	100%	100%	99%	99%
Personal Injury	91%	91%	81%	80%
Public Law	14%	16%	1%	1%
<b>Total</b>	<b>66%</b>	<b>50%</b>	<b>38%</b>	<b>24%</b>

3.2.11 This report attempts to identify and map the responses of clients who will no longer qualify for legal aid under the scope changes and to isolate best available data on the likely costs of these responses to the public purse. These responses and the likely costs are presented in the next two sections.

3.2.12 The report will focus on three broad areas of law that together will account for 85 percent of the total savings from the proposals: family law (61 percent); social welfare law (21 percent) including housing, welfare and debt law; and clinical negligence (4 percent)<sup>l</sup>.

<sup>k</sup> Source: 15. Ibid.

<sup>l</sup> The percentages add to more than 85 percent due to rounding.

# 4. Civil Justice in England & Wales

## 4.1 Introduction

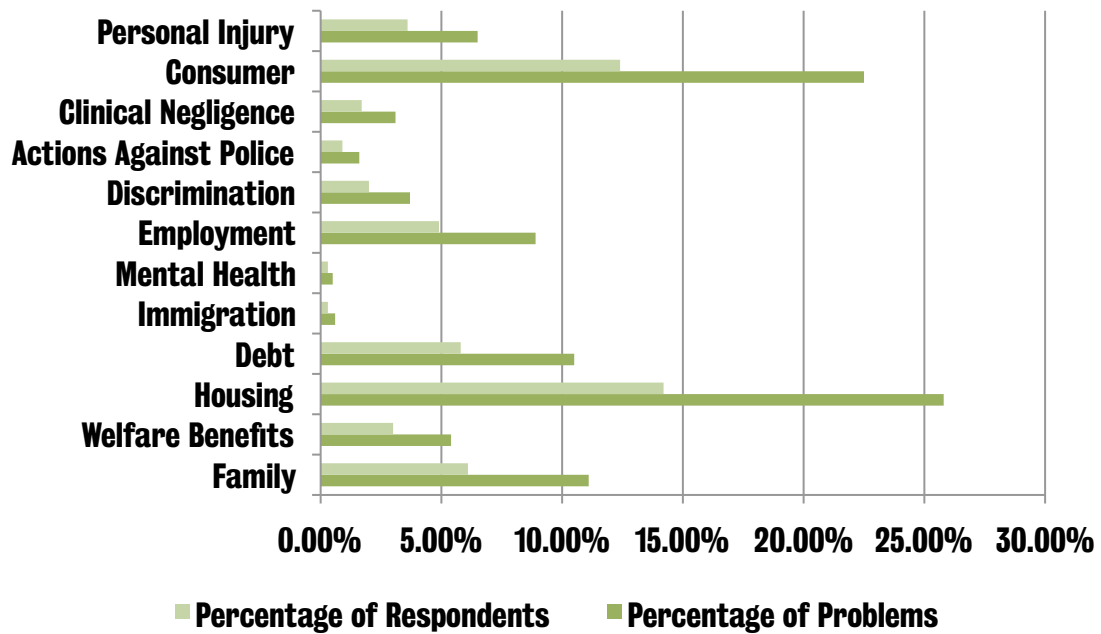
- 4.1.1 The English and Welsh Civil and Social Justice Survey (CSJS)<sup>m</sup> studies people's experiences of civil justice problems and the strategies adopted to deal with them.<sup>16</sup>
- 4.1.2 The latest version of the CSJS reported in 2009 using data from 2006-2009. It contained responses from 10,537 adults from 6,234 randomly selected households, and was "*broadly representative of the residential household population of England and Wales*"<sup>16</sup>
- 4.1.3 Of the respondents, 36 percent (3,752) experienced one or more "*difficult to solve civil justice problems*"<sup>16</sup> A total of 5,815 justice problems.
- 4.1.4 The CSJS dataset is made available on the MoJ website<sup>n</sup> and was downloaded for analysis. Figure 2 shows the distribution of problems across the legal aid areas of law.
- 4.1.5 Housing problems account for the largest proportion (26 percent) of problems, followed by consumer (23 percent), family (11 percent) and debt (11 percent) problems.
- 4.1.5 The CSJS survey provides useful information on the responses to civil justice problems by respondents, some with legal aid funding and some without access to legal aid funding. Further, it asks questions that help identify "counterfactuals" such as what the respondent would have done if their first choice advisor did not exist, and how much they would have been prepared to pay to solve the problem.
- 4.1.6 This sections presents an analysis of the CSJS data to help provide information on the likely responses of clients who no longer receive legal aid funding, as well as the types of adverse consequences that can result.

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<sup>m</sup> The CSJS is managed by the Legal Services Research Centre (LSRC), the independent research division of the Legal Services Commission (LSC), who in turn run the legal aid scheme in England and Wales. The LSC is an executive, non-departmental public body of the Ministry of Justice.

<sup>n</sup> <http://www.justice.gov.uk/publications/research-and-analysis/lsrc/research-projects/english-and-welsh-civil-and-social-justice-survey/key-facts.htm>

**Figure 2: Incidence of Civil Justice Problems 2006-9<sup>o</sup>**



## 4.2 Responses to Civil Justice Problems

4.2.1 It is important to understand how people resolve civil justice problems today, and how this will change after the legal aid reforms because this will determine where the “knock-on” costs will occur.

4.2.2 Figure 3 reports the responses adopted by respondents to tackle these problems in 2006-9. Approximately half of respondents sought advice. The most common areas of law where respondents sought advice were clinical negligence (70 percent), welfare benefits (62 percent) and family law (59 percent).

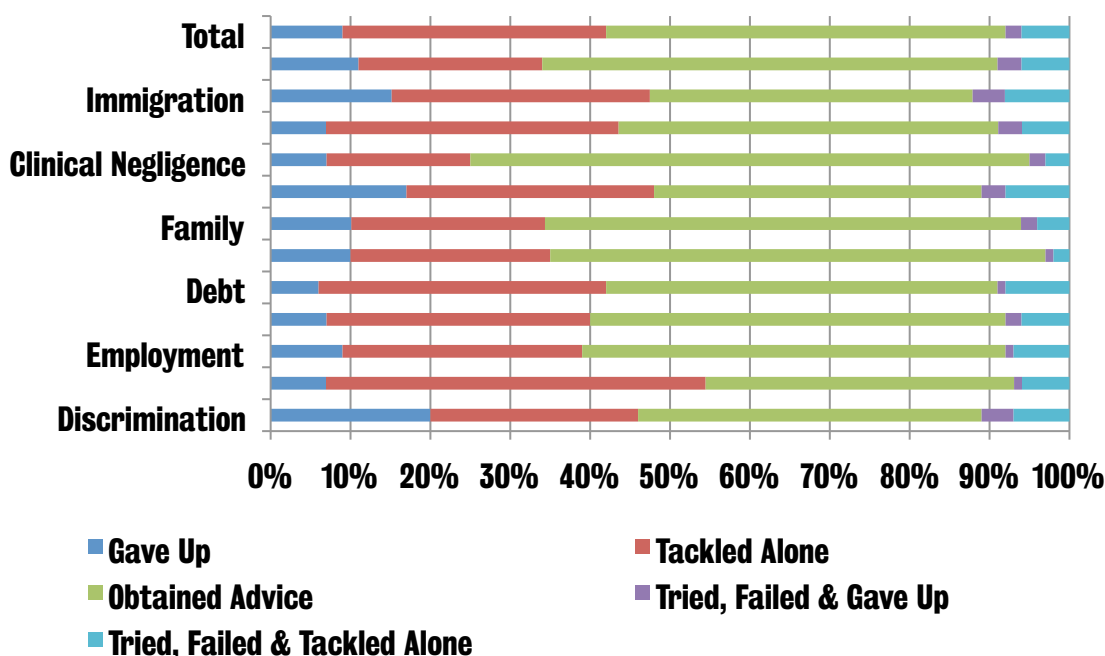
4.2.3 A third of respondents tackled their justice problems on their own. Consumer law cases were most likely to be tackled without advice by a substantial margin, followed by mental health and debt problems. Within the areas of law covered in this report, this was closer to a quarter of respondents, with the exception of housing problems where 36 percent tackled them alone.

4.2.4 Overall 11 percent of respondents gave up resolving their problem, a small fraction of which was after failing to obtain advice. Cases involving discrimination, personal injury and immigration problems were most likely to be given up by respondents.

<sup>o</sup> Using data from CSJS (2009)

- 4.2.5 Approximately eight percent of respondents tried and failed to obtain advice, of which, overall, one quarter gave up and three quarters subsequently tackled their problems on their own. There is a slight variability across areas of law: 83 percent people who failed to obtain advice tackled a social welfare problem on their own, in comparison to 67 percent for family law and 60 percent for clinical negligence.
- 4.2.6 From Table 5, solicitors were the most common source of advice (19 percent), followed by the Citizens' Advice Bureau (12 percent) and the police (12 percent). In terms of broad categories of advice, the Council was the most common category (23 percent), followed by lawyers (20 percent) and then advice agencies (16 percent). Excluding consumer problems, lawyers were the most popular source of advice.

**Figure 3: Responses to Civil Justice Problems 2006-9<sup>p</sup>**



- 4.2.7 One estimate of what people will do when legal aid funding is no longer available is to use the responses to the following question from the CSJS survey: *Which of the following would you have done if [adviser] hadn't existed?*
- 4.2.8 Figure 4 reports the responses to this question for the respondents who used a solicitor as their first choice of advisor to tackle a family, social welfare or clinical negligence problem. Of 209 respondents, 11 percent would not seek alternative advice (margin of error:  $\pm 4.8$  percent<sup>q</sup>) and 13 percent didn't know. Grouping the other responses together, between 75 and 89 percent

<sup>p</sup> Housing is an amalgamation of housing (rented), housing (owned), homelessness and neighbours problems as listed in the CSJS.

<sup>q</sup> Margin of error is calculated as a 95 percent confidence interval for the proportion which is approximated by  $\pm 2 \times [p(1-p)/n-1]$ .

would seek alternative advice depending upon where the “don’t know” responses are included. Among the subset of respondents who reported having free or partially free legal advice, 10 percent (margin of error:  $\pm 6.7$  percent) said that they would not seek alternative advice. And finally, among the subset who reported having this legal advice paid for by legal aid, the percentage of respondents who would not seek alternative advice was 11 percent (margin of error:  $\pm 10$  percent)<sup>r</sup>. Including all areas of law, 20 percent (margin of error:  $\pm 2.6$  percent) of clients would not seek any advice and 16 percent “don’t know”, of 890 respondents to this question.

**Table 5: Sources of Advice 2006-9**

<b>Sources of Advice</b>	<b>% of Problems</b>	<b>% of Obtained Advice</b>
<b>Local Council</b>	<b>17%</b>	<b>23%</b>
General Enquiries	5%	7%
Council Advice Service	3%	4%
Trading Standards	3%	4%
Another Council Dept.	7%	9%
<b>Advice Agency</b>	<b>12%</b>	<b>16%</b>
CAB	9%	12%
Law Centre	1%	1%
Another Advice Agency	2%	3%
<b>Trade Union/Professional Body</b>	<b>4%</b>	<b>5%</b>
<b>Lawyer</b>	<b>14%</b>	<b>20%</b>
Solicitor	13%	19%
Barrister	1%	1%
<b>Other</b>	<b>25%</b>	<b>36%</b>
Police	8%	12%
Employer	4%	6%
Insurance Co.	3%	4%
Doctor or health professional	6%	8%
Job Centre staff	1%	2%
Social Worker	1%	2%
Politician	2%	3%

4.2.9 Therefore the proportion of people not seeking alternative advice when legal aid is no longer available will be 11 percent (confidence interval: 6-15 percent). If all of the don’t knows did not seek advice then this proportion could increase to 24 percent (confidence interval 18-30 percent). In either case the vast majority of people will seek alternative advice and the upper

<sup>r</sup> As the sample size decreases in each of the subsamples considered, consequently the standard error and therefore the margin of error increases.

figure will be used<sup>s</sup>. As 4.2.8 shows, this proportion is remarkably stable across the subsamples relevant to this research.

- 4.2.10 The CSJS also asks respondents who received free advice how much they would be willing to pay for the advice they received. Only 19 percent of those receiving free advice from a solicitor (in the areas of law under study) would be willing to pay more than £100 for the advice they received. Only seven percent were willing to pay £500 or more.
- 4.2.11 This free advice was paid for by a variety of organisations as shown in Figure 5. According to Figure 5, the principal sources of funding were legal aid (13 percent), the advisors themselves (12 percent) and conditional fee arrangements (9 percent). There could have been some confusion between responses as people who arranged “no win, no fee” could have responded to either of these choices. One in ten respondents “didn’t know” who paid for their advice.
- 4.2.12 Figure 6 shows the distribution of responses for how much respondents would have been willing to pay for the (free) advice they had paid by funder. Due to the large variation and their uncertainty in the responses there is no statistical difference by source of funding, but in all cases the median amount responders would have been willing to pay is low. Pooling those respondents who were willing to pay more than £100 for the advice generates a median of £300 (interquartile range: £200-£1,000) and pooling all respondents who were willing to pay a positive amount, the median fell to £200 (interquartile range: £100-£625).
- 4.2.13 Although the average legal aid claim for advice in 2009-10<sup>17</sup> for many areas of law was less than £300 including family, housing, debt and welfare law for instance, the average claim was much higher in some areas including mental health (£885), employment (£323), education (£698), public law (£368), and immigration (£616) for example. Further, this is advice provided at controlled rates. Private sector legal advice is generally significantly more expensive. For example, in 2010 the Master of the Rolls provided guideline hourly costs for solicitors of £111 to £409 per hour depending upon the geographic location and the number of years post qualification experience<sup>18</sup>.
- 4.2.14 Given that 80 percent of legal aid recipients are in the bottom income quartile this result is expected<sup>27</sup>. Very few people who received free legal advice are willing to pay reasonable sums for legal advice. While around 19 percent were willing to pay more than £100, only seven percent were willing to pay £500 or more. A recent enquiry into the cost of advice for an undefended divorce petition where both parties already agreed found that private costs were approximately £500 (in Southampton) and over £1000 (in London)<sup>19</sup>.
- 4.2.15 Given the small number of respondents to some of these questions, the results are highly uncertain but remain unbiased due to the sampling method used in the CSJS. Therefore they must be used with caution but lacking any

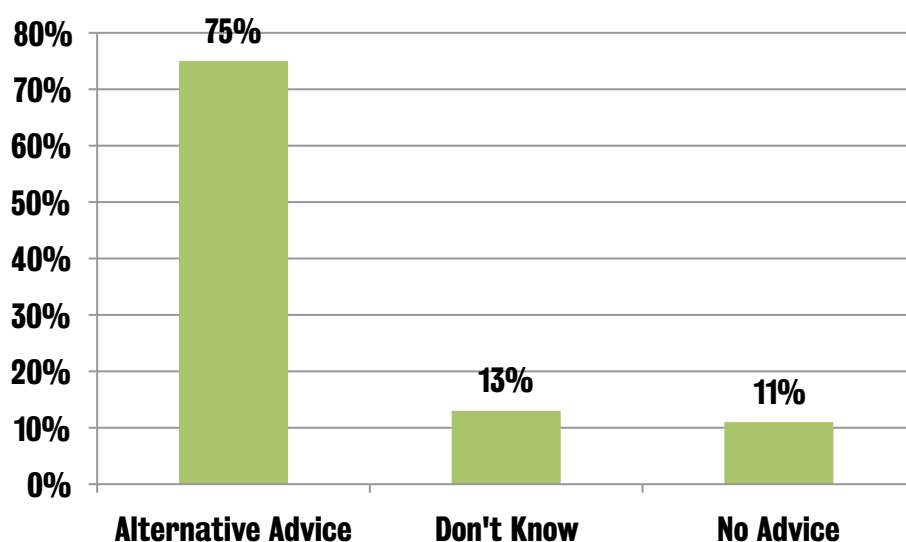
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<sup>s</sup> The respondents who “didn’t know” could either seek advice from an alternative provider or not seek advice.

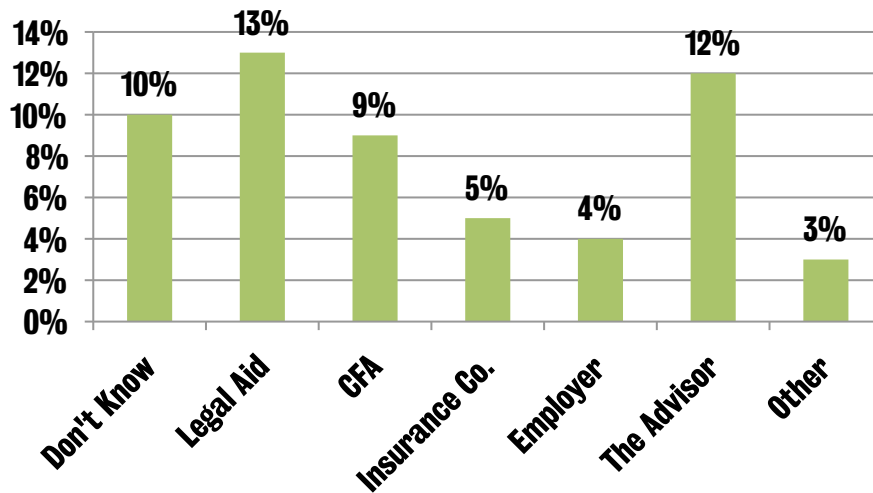
other data sources they are the best available data. Where appropriate measures of uncertainty have been provided.

- 4.2.16 So far the analysis has focused on the alternative responses to legal aid being removed from scope for legal advice. Some cases will end up in court. As Figure 7 illustrates, the proportion of cases being resolved through legal proceedings varies by area of law. For example, almost 40 percent of family law cases involving respondents to the CSJS ended up in court. The “outcomes” in Figure 7 provide estimates of the proportion of cases which are resolved in court, settled out of court or just given up on. These data can be further broken down by response strategy (e.g. obtaining advice), see Figures 8 and 9.
- 4.2.17 For those who do not receive legal representation paid for by legal aid there are few options available. The principal options will be to self-represent or to pay for private legal counsel.
- 4.2.18 Only nine respondents in the entire survey received free advice from a barrister. Of these 22 percent (margin of error:  $\pm 33$  percent) were willing to pay for that advice had it not been free. Given the very small sample, this is consistent with the proportion that was willing to pay for legal advice from a solicitor (19 percent). Therefore, approximately 80 percent of people would self-represent. Again, given the small sample sizes caution must be used.
- 4.2.19 In some areas of the law, there may be alternatives including an increased use of conditional fee arrangements in clinical negligence cases. This would reduce the number of people self-representing.

**Figure 4: Responses to Advisor Unavailability**



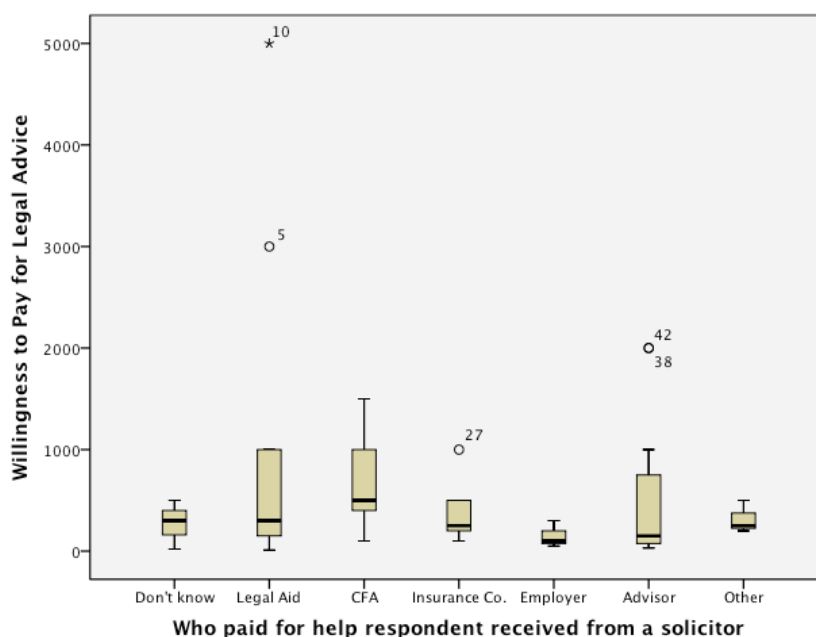
**Figure 5: Sources of funding for free legal advice**



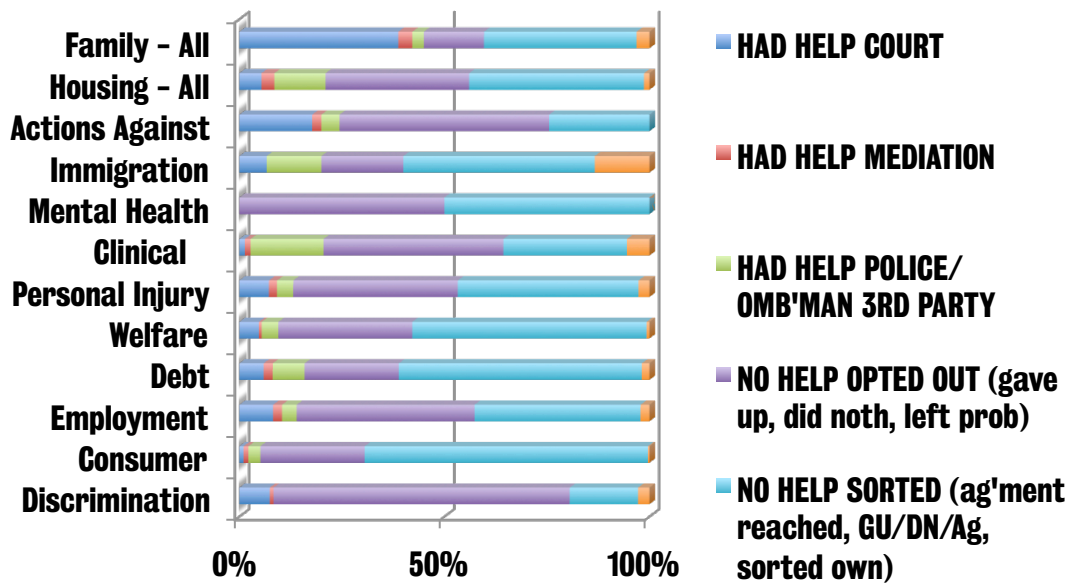
4.2.20 There is little difference between the three broad categories of response (to obtain advice, to tackle alone and to do nothing) in terms of whether respondents reported the problem “resolved,” as Figure 8 illustrates. However, this distorts the picture as many respondents who reported the problem “resolved” had simply “given up” or “moved on.” This is shown in Figure 9 where “doing nothing” produces substantially inferior outcomes for respondents.

4.2.21 There is also a small difference in the perceived fairness of the outcomes between response strategies with tackling alone increasing the likelihood of an outcome being “unfair” by 5 percentage points. This is illustrated in Figure 10.

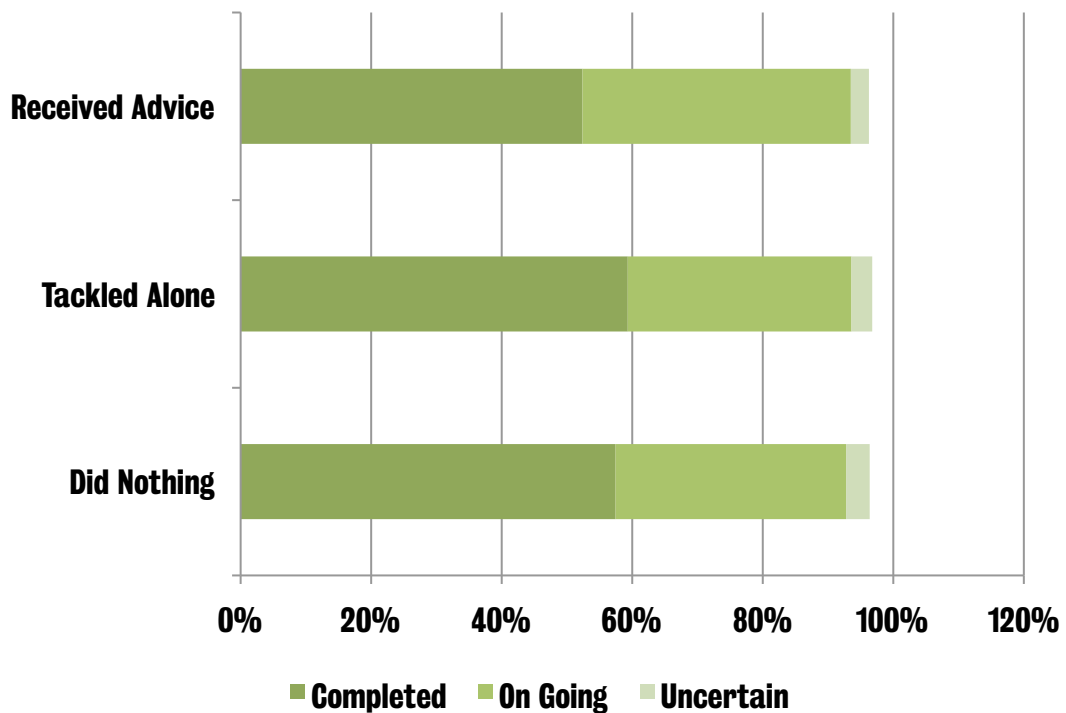
**Figure 6: Willingness to Pay for Legal advice**



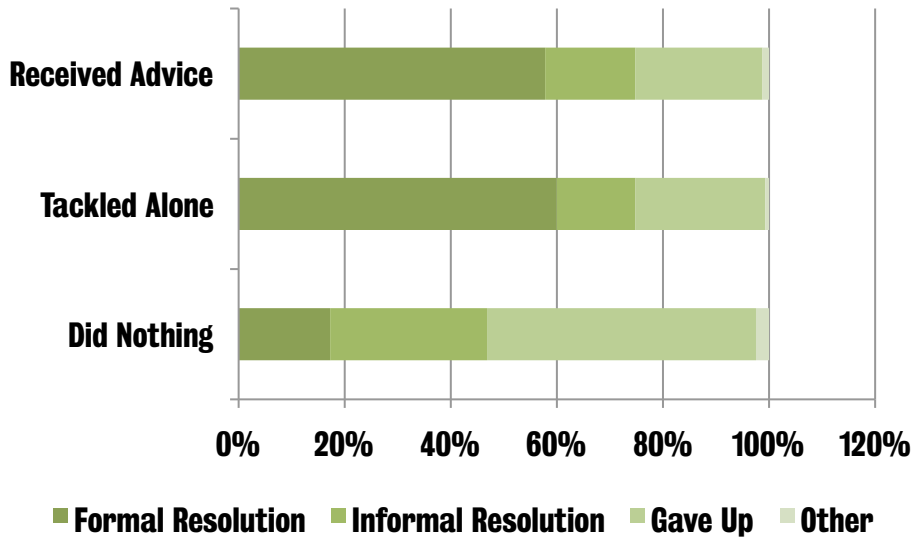
**Figure 7: How social justice problems were resolved by law area 2006-9**



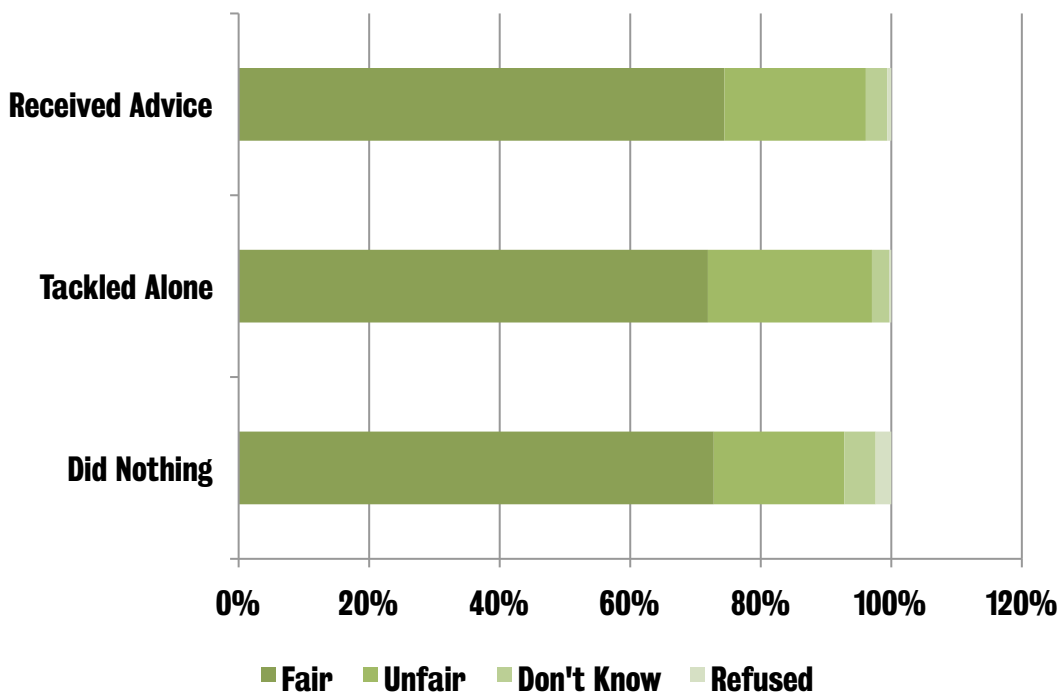
**Figure 8: Proportion of Problems Reported "Resolved" by response 2006-9**



**Figure 9: How social justice problems were resolved by response 2006-9**

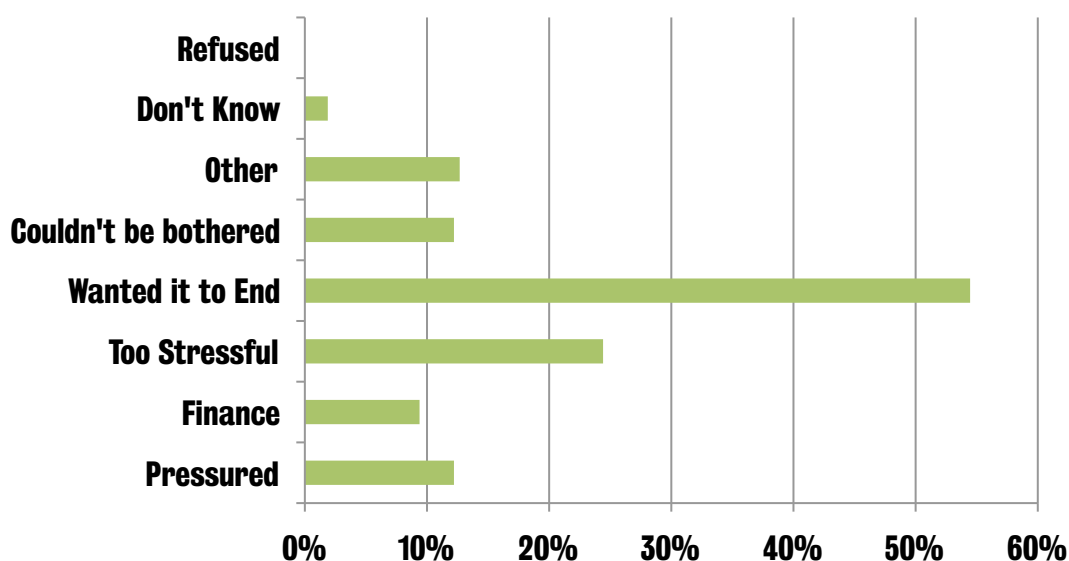


**Figure 10: Perceived Fairness of Resolution by Response 2006-9**



4.2.22 An important question is why do respondents accept outcomes or agreements which they consider to be “unfair.” Figure 11 provides a summary of the responses to this question from the CSJS. The emotional and physical impact that unresolved legal problems have on people is clear from the responses. Over 80 percent of people who believed the outcome was unfair accepted it because the ongoing legal problem was “too stressful” or they just “wanted it to end.”

**Figure 11: Reasons for Accepting Unfair Outcomes 2006–9 CSJS.**



### 4.3 Impact of Civil Justice Problems

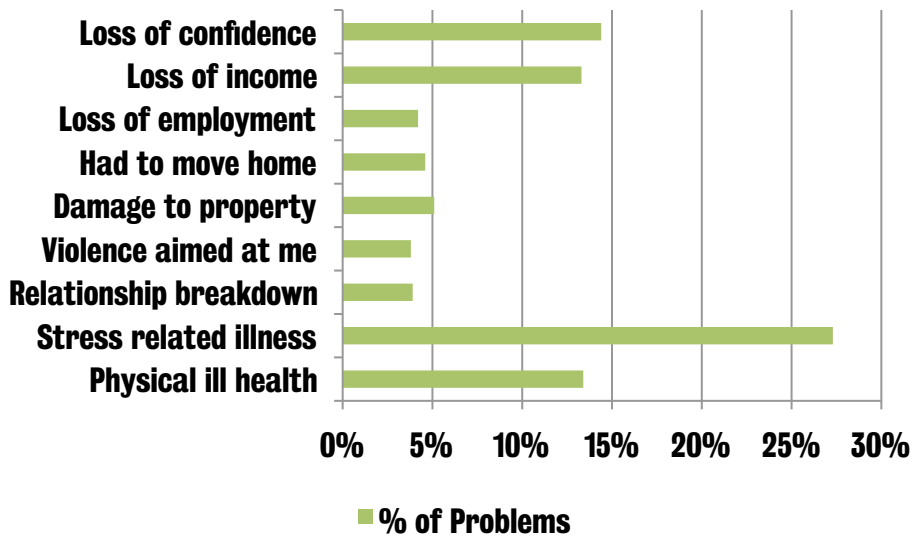
4.3.1 Earlier versions of the CSJS survey have been used in previous research on the impact of justiciable problems on people, and in particular to measure the adverse consequences of these problems. Figure 12 shows that a significant proportion of problems generated one or more adverse consequence for respondents. Across all the three areas of law under study, stress (34 percent), physical ill health (27 percent), loss of confidence (17 percent), and loss of income (14 percent) were the most commonly reported adverse impacts.

4.3.2 An LSRC paper, *Mounting Problems*<sup>20</sup>, used data from the 2004 survey to estimate the economic cost of the adverse consequences to the public purse. For example, 66 percent of survey respondents reported visiting their GP regarding a physical health problem resulting from their legal problem, which the LSRC estimated incurred an average cost of £113 per visit.<sup>20</sup>

4.3.3 Table 6 presents the commonly reported adverse consequences reported in the CSJS by area of law. Not surprisingly, clinical is most likely to generate physical ill health consequences, while family law problems are most likely

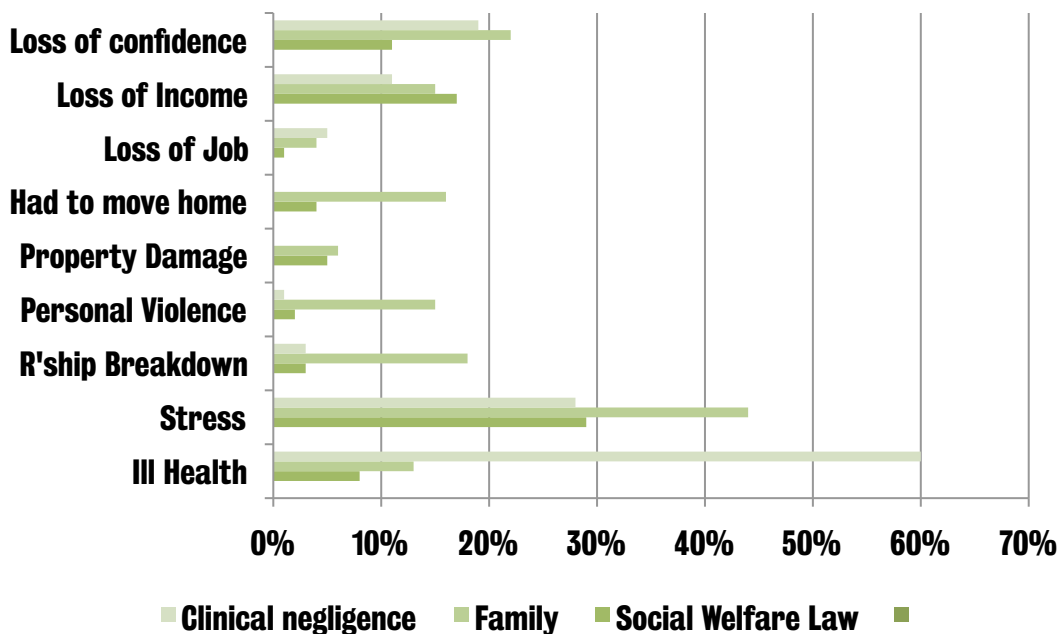
to generate stress. A loss of income is most commonly found in welfare benefits cases.

**Figure 12: Adverse Consequences of Civil Justice Problems 2006-9**

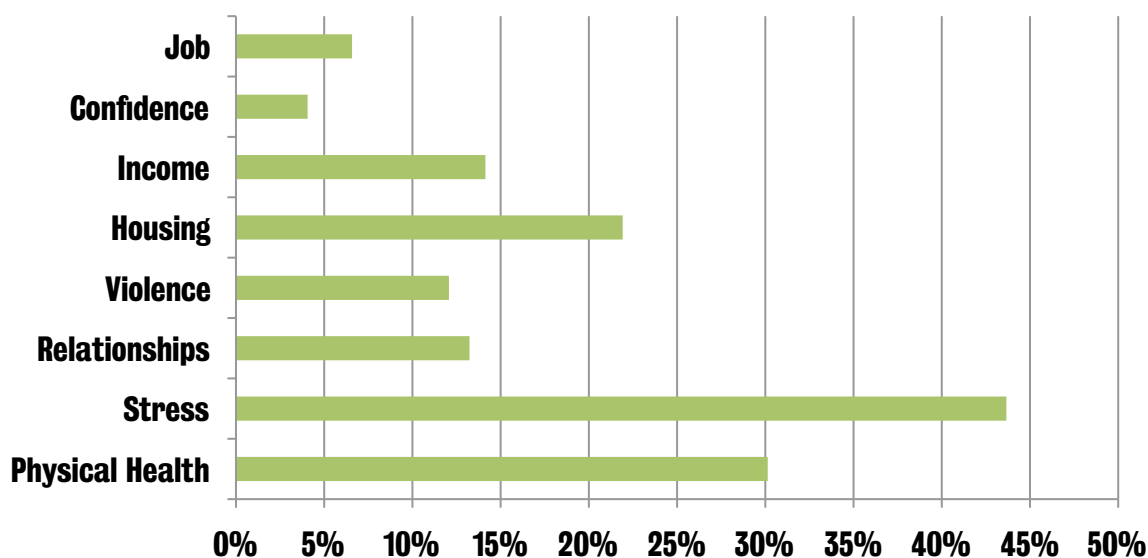


4.3.4 The average cost per person of these adverse consequences are reported in Table 7 and are calculated using cost data reported in Pleasance *et al*<sup>20</sup>. These are estimates based upon responses to the CSJS questions relating to the impact of the adverse consequences on respondents and their use of public services as a result of these impacts.

**Table 6: Adverse Consequences of Civil Justice Problems by Area of Law (2006-9)**



**Figure 13: Improvements in Adverse Consequences after Obtaining Advice**



- 4.3.5 It is not possible to calculate the adverse consequences or impact of ‘giving up’ on a justiciable problem compared to obtaining advice or tackling the problem alone as clients are not observed under both situations. Instead only the reported improvement in the adverse consequence following advice is reported.
- 4.3.6 Figure 13 reports the proportion of respondents who witnessed an improvement in their “adverse consequences” having obtained advice. Almost half (44 percent) of people suffering from stress reported an improvement, almost a third (30 percent) reported improvements in their physical health problems and approximately a quarter (22 percent) improvements in their housing situation.
- 4.3.7 The prevalence of the adverse consequences (Table 6), the improvement in these adverse consequences following advice (Figure 13) and the cost of the adverse consequences (Table 7) will be used to produce a crude measure of the cost to the public purse of ‘giving up’ on a justiciable problem.

## *4.4 Mediation*

- 4.4.1 A particular feature of the changes to legal aid scope is the emphasis on the role that mediation and alternative dispute resolution can play in replacing the need for legal advice and legal representation. It is therefore important to understand the numbers who may adopt this response.
- 4.4.2 According to Government sources, 14,500 people used mediation for family law problems in 2009-10.<sup>1</sup> In the same document, the Government claims

**Table 7: Economic Costs of Adverse Consequences**

<b>Adverse consequence</b>	<b>Average Cost</b>	<b>% Improvement<sup>t</sup></b>	<b>Value of Improvement<sup>u</sup></b>
Physical ill health	£440 <sup>v</sup>	30	£132
Stress-related illness	£100 <sup>w</sup>	44	£44
Personal violence	£255 <sup>x</sup>	12	£31
Property damage	£126 <sup>l</sup>	N/A	£0
Costs of moving home	£5,640 <sup>y</sup>	22	£1,236
Loss of Jobs	£1,057 <sup>z</sup>	7	£70
Loss of employment as GDP loss	£8,140 <sup>aa</sup>	7	£536

Source: Mounting problems, LSRC (2006) and CSJS (2009)<sup>bb</sup>

t Using the data from Figure 13 on the proportion of respondents who reported an improvement in their adverse consequence after receiving advice.

u Multiplying the second and third columns of Table 7 generates a crude measure of the value of improvement which will be used as a measure of the 'cost' of 'giving up' on the assumption that clients who give up on their problem do not realise this benefit or improvement.

v Of respondents who reported physical ill health resulting from their justiciable problem 66 percent visited a GP (£113), 43 percent visited a hospital as an out-patient (£528), 13 percent visited another healthcare worker (£319) and 11 percent were treated at a hospital as an in-patient (£883). The figures in parentheses are the average costs of this treatment based upon 2004 NHS Reference Costs and using responses from the CSJS to estimate the number of 'visits' and the length of these visits. All of these costs exclude respondents who reported a personal injury or clinical negligence problem. For patients who reported one of these legal problems the in-patient hospital cost was £1,938 and the out-patient cost £1,842. The average cost of ill health in these cases was therefore £1,103 and the value of improvement £331. A full explanation of the costing methodology is in Pleasance et al20. Pleasance P, Balmer N, Buck A, Smith M, Patel A. Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems. In: Pleasance P, Buck A, Balmer N, editors. *Transforming lives: law and social process*. London: The Stationery Office, 2007.

w Of respondents who reported stress resulting from their justiciable problem 22 percent visited a GP (£113), 4 percent visited a counsellor (£258), 2 percent a Community Psychiatric Nurse (£2,224) and 2 percent another healthcare worker (£319). The figures in parentheses are the average costs of this treatment using Pleasance et al.13

x Pleasance et al13 estimated the cost of physical assault and property damage as £255 and £126 per case respectively based upon data from Duoborg and Hamed21. Duoborg R, Hamed J. Estimates of the economic and social costs of crime in England and Wales: Costs of crime against individuals and households 2003/4. *Online Report 30/05 2005*.

y Of respondents who reported a loss of home as an adverse consequence, 46 percent of them were unable to move into a new home immediately and had to spend time in temporary accommodation. Pleasance et al estimate the cost of rent provided by the local authority as £150 per week or a total of £5,640 per instance.

z Loss of employment often results in a claim for state benefits and this is more likely for clients eligible for legal aid as they are less likely to have savings or alternative income sources. For respondents claiming unemployment benefit resulting from losing a job as a result of a social justice problem, the average claim length was 19 weeks at an average cost of £1,057.

aa Unemployed people also represent an opportunity cost to society in terms of the economic output they have not produced. Pleasance et al use annual GDP per capita data from ONS and multiply by 19/52 to generate the economic cost of the average unemployed spell as £8,140.

bb The costs reported here are based upon those reported in Pleasance et al and use 2003 or 2004 price data combined with responses to 2004 CSJS on the impact of social justice problems. The responses to 2004 survey are indistinguishable from those to 2009 survey in this respect.

that the success rate of mediation is 66 percent. LSC figures report that 60 percent of mediation cases are fully settled, and 70 percent are fully or partially settled<sup>4</sup>.

- 4.4.3 Approximately 5 percent of CSJS respondents who tackled their family law problem alone reported resolving their problem via mediation, while a little over 3 percent of respondents who obtained advice for their family law problem finally resolved their problem using mediation. Thus uptake is currently low.
- 4.4.4 Recent changes have increased the uptake in mediation services, including making it mandatory to partake in a mediation assessment prior to issuing court proceedings. This has increased the numbers using mediation. A recent project found that 72 percent of people undertaking an in-court mediation assessment opted for mediation.<sup>22</sup> In comparison, the target for LSC funded mediation providers for conversion from mediation assessment to substantive mediation was 60 percent in 2010<sup>23</sup>.
- 4.4.5 Given the prominence given to mediation as a settlement tool by the Government, the £350 of legal aid support being offered alongside mediation, the high success rate (approximately 70 percent) of mediation, and the need for providers to cover the financial gap left by the removal of legal aid it, a high take up of mediation should be expected and 72 percent is a reasonable estimate.

## 4.5 *Summary*

- 4.5.1 This section has used the Civil and Social Justice Survey to find ballpark figures for the flows of people through the civil justice system, and to predict the likely response to the legal aid scope changes proposed by the MoJ.
- 4.5.2 The key findings are that the majority (circa 89 percent) of people will seek alternative advisers if legal aid advice is not available.
- 4.5.3 Relatively small proportions of people (roughly a fifth) would be willing to pay for private legal advice and a similar proportion would not seek advice. Approximately a fifth of people would be willing or able to pay for legal representation, which predicts a large increase in self-representation.
- 4.5.4 People who do nothing are highly likely to not formally resolve their problem, and people who tackle the problem themselves are slightly more likely to perceive the final outcome as unfair.
- 4.5.5 People who obtained advice reported significant reductions in the adverse consequences that were originally caused by their legal problems.
- 4.5.6 In the case of family law there should be a significantly larger proportion of people seeking mediation services than predicted by the Government.

# 5. Unintended Consequences

## 5.1 Introduction

- 5.1.1 The MoJ's Impact Assessment stated that the reform's aims were to:  
*"a) discourage unnecessary and adversarial litigation at public expense; b) target legal aid to those who need it most; c) make significant savings in the cost of the scheme; d) deliver better overall value for money for the taxpayer"*<sup>24</sup>
- 5.1.2 To *"make significant savings"*, the MoJ must ensure that the reforms do not generate knock-on costs.
- 5.1.3 This report seeks to quantify some of the unintended consequences of those aims, using research on the use and reform of civil legal services, the Government's own Impact Assessment on the bill, various responses to consultation from interested parties, and recent data from the Civil and Social Justice Survey.
- 5.1.4 The wide-ranging nature of civil law and the variety of groups likely to be affected by the reforms mean that unintended consequences could be far-reaching and sometimes difficult to quantify, not least because *"[t]he Ministry [of Justice] does not yet understand, in sufficient detail, the costs of its activities within its prisons, the probation service and the courts"*, according to a 2010 National Audit Office report.<sup>11</sup>
- 5.1.5 The unintended consequences will depend upon what alternative actions clients take, as the Government notes:  
*"The overall implications [of legal aid reform] will depend on the behavioural responses of clients who no longer receive legal aid and upon the nature and effectiveness of different ways of addressing disputes aside from using legally-aided service providers."*<sup>24</sup>
- 5.1.6 The previous section identified these behavioural responses using data from the CSJS survey. This section discusses these potential responses in more depth and attempts to quantify the costs of these actions to the state.
- 5.1.7 Key 'nodes' are identified that reflect activities or outcomes for litigants and cases under a reformed legal aid system. Each node carries a quantifiable direct or indirect cost to government (and often a direct or indirect cost to the individual) for every case that passes through it. In each area of law to be removed from scope the costs at each node are identified, and likely flows of cases through the nodes. The product of these flows and costs in all key areas of law is the total cost to government, anticipated and otherwise.
- 5.1.8 The nodes are: Telephone-based gateway; Legal aid advice; Alternative (free, not for profit) advice; No advice; Legal aid representation; Self-representation (litigant in person); Private legal representation; Unfair outcome; Give up.

- 5.1.9 Four nodes pose the greatest risk of generating additional costs: Alternative advice, Self-representation, Unfair outcome, and Give up. Additionally, in the case of family law mediation could also generate significant cost if many clients opt to use it.

## 5.2 *Telephone Gateway*

- 5.2.1 The Government has proposed a telephone<sup>cc</sup> ‘gateway’ for incoming legal aid enquiries. The service will act as a triage service directing qualifying clients (and/or cases) to appropriate legal aid providers. Those not qualifying for legal aid will be directed to alternative advice or support services, including mediation in private family law cases, and not-for-profit alternative advice services.
- 5.2.2 An additional proposal not considered in this report is to provide the majority of this ‘specialised’ legal aid advice via telephone to realise per cost savings of approximately 40 percent.
- 5.2.3 The cost of this triage service represents an additional or knock-on cost to Government compared to the current legal aid system because the clients who will no longer be eligible for legal aid under the scope changes must be filtered out of the system.
- 5.2.4 Following the consultation exercise, the Government is now proposing the mandatory single gateway for four areas of law initially (debt where it remains in scope, special educational needs, discrimination and community care). The outcome of this will determine whether the scheme is widened to other areas of law. Whether or not this telephone gateway is adopted, ineligible clients will still need to be screened out of the new system at a cost to Government that has not been identified in the Impact Assessment for the scope changes. It is likely that the proposed telephone gateway would do this at lowest cost and therefore any alternative system adopted is likely to increase our estimates of the knock-on cost. Further, it is possible that people may call the telephone gateway regarding areas of law that are outside its scope simply because they have failed to locate alternative advice themselves.
- 5.2.5 The MoJ estimates the average cost of a ‘triage’ call to the telephone gateway would cost £8 per call (<sup>25</sup> p.11, para.45). There are also one-off costs involved in establishing the telephone system: procurement to cover expansion in case volume and areas of law is estimated to cost around £1 million, and marketing of the new service is assumed to cost £1 million (<sup>25</sup>, p.10, para.42-43).
- 5.2.6 There is an additional risk that these estimates for the implementation of a single telephone gateway may understate, or fail to anticipate, additional

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<sup>cc</sup> Alternative services will be provided to those unable to use a ‘phone-based system

costs and consequences of creating such a complex information service. The NAO's response to the Green Paper noted:

*"Our 2009 report noted that in October 2007 the [Legal Services] Commission began managing legal aid claims through an on-line Supplier Management System, which cost £9.4 million to develop. The system collapsed shortly after introduction and took ten months to restore at a cost of £6.3 million.*

*When implementing changes in the administration of legal aid, and increases in the use of electronic working, the risk of system failure needs to be mitigated by proper management of the project, testing and piloting."*<sup>26</sup>

- 5.2.7 A further consequence of the telephone gateway is that serious issues (e.g. domestic violence) may not be unearthed in an initial 'consultation.' This problem is articulated by The Association of Lawyers for Children, which claims that:

*"[...] our members are well aware, on a daily basis, of the discrepancy between the problem as it first appears when a potential client explains what their problem is (in order to obtain a face to face appointment) and the problem, or range of family problems that emerges at the subsequent face to face interview."*<sup>27</sup>

## 5.3 *Legal aid advice*

- 5.3.1 Funding for legal aid advice will fall by half across civil private and public law (see Table 4). However, unexpected costs may be generated by stated exemptions to removal from scope (Table 2), and some of these costs may be significant.
- 5.3.2 An important exemption to the removal from scope are cases where there is a need to meet "[...]domestic and international legal obligations, including those under the European Convention on Human Rights (ECHR, in particular article 2 and article 6)." [Table 2] In other words, if an individual litigant's rights were to be curtailed by virtue of his lack of access to subsidised legal advice he would be entitled to that advice. It is not clear the extent to which claims under this exemption may be made.
- 5.3.3 Another important exemption relates to discrimination, which may be found in many areas of law but is frequently found in employment and education. The proposal to retain in scope "*only to the extent of any discrimination element of the claim*" is impractical, liable to cause confusion, and has the potential to provide incentives to create or exaggerate an issue of discrimination in order to gain some legal aid for the problem.
- 5.3.4 For example, The Free Representation Unit (FRU) points out that discrimination in employment law cases is rarely the issue in its own right – it tends to go hand-in-glove with other problems, and is often cited as a cause of, say, unfair dismissal or improper wages<sup>28</sup>. Such claims under a reformed legal aid system, say the FRU, will suffer from differences in quality of advice and in the drafting of the claim between the discrimination element and other elements of the claim. Further, the FRU claim that:

*“[h]uman nature dictates that discrimination issues will be brought into claims more often, and more prominently, than they should be. This in return can only raise the temperature on discrimination issues and encourage people to focus on age, gender, race and so on even if they are not in fact relevant. This is likely, in our opinion, to increase prejudice rather than reduce it.”*

- 5.3.6 If funding in family civil justice issues is only retained for cases where abuse is present, there may exist a perverse incentive to exaggerate or invent instances of abuse in order to obtain legal aid help, and thereby escalate problems. This would hopefully be exceptional. It is not unfair to suggest that outcomes in such legal aid-assisted cases are more likely to be damaging to children, and their future relationships with parents, than if private legal advice, alternative advice, or no advice was sought.
- 5.3.7 The exemptions under housing law (e.g. for cases involving a serious risk to ill health) may lead to an increased burden on the legal aid system, as cases are left to escalate into more expensive and vexatious ones, which remain funded by legal aid, rather than being “nipped in the bud” at a lower cost when they first arise.
- 5.3.8 The Government provided estimates of the proportion of excluded cases that could be included under the exceptional funding scheme<sup>15</sup>. For example, in family law this estimate is five percent or 2,250 cases<sup>dd</sup>. However, the Government has not included this cost in the ‘cost’ of the reforms, unlike the additional mediation cost. These ‘exceptional’ cases will attract both legal help and legal representation, and average case costs from 2009-10 have been used alongside the Government’s own estimates of exceptional funding volume to obtain knock-on costs.
- 5.3.9 However, the costs of the exceptional funding scheme could rise. As the scheme will be separate from the main legal aid scheme it will involve additional overheads. They could not be included as details of the scheme are not available. It is also possible that the exceptions are widened before the Bill is passed bringing more cases into scope and increasing the cost of the scheme. For example, one amendment discussed in the House of Commons’ Public Bill Committee (Amendment No. 226) proposed extending exceptional funding to any case involving a child party or involving a party who lacks the mental capacity to conduct their own case properly. The estimated cost of this particular amendment was £10 million per annum<sup>29</sup>.

## 5.4 *Alternative advice*

- 5.4.1 One of the reasons stated for removing areas of law from scope is the availability of so-called “alternative sources of advice”. The availability of this alternative advice is key to mitigating the impact of the reforms. In

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<sup>dd</sup> Based upon 45,000 clients falling out of scope.

some areas of law, specifically family law, advice services may not be able to offer adequate advice. For example, a recent Citizens Advice Bureaux (CAB) survey found that over half of people seeking advice had to be referred on to a solicitor<sup>30</sup>.

- 5.4.2 Almost all of this “alternative” advice is free at point of use, and offered by not-for-profit or charitable organisations. For example, Citizens Advice Bureaux. The MoJ anticipates that these organisations will “take up the slack” generated by the legal aid reforms.
- 5.4.3 Despite their importance to the proposals, Advice Services Alliance<sup>ee</sup> argue that their budgets will be severely compromised by the reduction in legal aid funding, and that they have no spare capacity to absorb the likely rise in the numbers seeking such free, independent advice.
- 5.4.4 For instance, in housing law, the Government’s Green Paper suggests that Shelter could provide alternative advice. The housing charity have suggested in their response to the consultation that... *“[i]f the present proposals are implemented in full[...] they could face a reduction of 70% in their income for legal aid advice work.”*<sup>31</sup> Shelter would be unable to fill the funding gap created, they claim. Shelter, in turn receive 21 percent of their income from Government grants plus a substantial sum (circa 9 percent) from contracts with the LSC<sup>32</sup>.
- 5.4.5 While alternative advice is usually free at the point of use, it is rarely free of cost to the providing organisations, which are often funded via the state. Therefore, while an increase in the use of alternative advice may not directly cost the MoJ through legal aid expenditure it may lead to an increase in funding from other Government sources. For example, the Government announced in early 2011 that the Financial Inclusion Fund, that provides around 500 specialist advisors to people with debt problems, will be funded for another year. The service costs around £27 million to run and helps 100,000 people each year, at a per-client cost of £270.<sup>33</sup> For instance, in 2010, Citizens Advice received almost 80 percent of its income from Government sources<sup>34ff</sup>.
- 5.4.6 The Government has recently acknowledged the potential for a shortfall in the provision of publicly funded advice services. In a June Commons debate at the Second Reading of the Legal Aid, Sentencing and Punishment of Offenders Bill, the Justice Minister responded to a concern about where to send constituents for advice (in the absence of legal aid help) by pledging to: *“[...]improve the efficiency and effectiveness of the advice services available to the public, and we will provide up to £20 million of additional funding in this financial year to help achieve that. We are also, of course, mindful of the impact of reforms beyond this financial year and will continue to consider the issues arising from that.”*<sup>35</sup> The Justice Minister

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ee The parent organisation for many not-for-profit independent advice providers.

ff Other organisations are less reliant on Government funding and grants. For example, Money Advice Trust which provides the National Debtline service receives approximately 40 percent of its income from the state. Debt is a particular example where the private sector is willing to support advice charities and there is less likelihood of support in other areas of advice such as family law, welfare benefits advice or even housing advice. Moreover, as most alternative advice providers are registered charities donations from the private sector may generate a loss in tax receipts for HM Treasury.

implies that this or a similar fund may need to be extended beyond one year, further reducing the MoJ's long-term savings.

- 5.4.7 It is difficult to ascertain the true cost of alternative advice because most advice agencies do more than simply offer advice (e.g. campaigning or offering grants themselves), and because they receive huge levels of volunteer time which is difficult to account for correctly. For example, CAB calculates that it receives £86 million of 'volunteer hours' each year.<sup>34</sup>
- 5.4.8 CAB estimates the cost of giving advice (specifically debt advice) at between £67 and £454<sup>36</sup>. Based upon 2009-10 client numbers and total service costs reported by CAB, a crude average cost of £85 per client<sup>gg</sup> across all areas of advice is established. Similarly, using expenditure on 'housing services' and client numbers from Shelter<sup>37</sup> produces a crude average cost of £130 per client<sup>hh</sup>. The NAO<sup>38</sup> when evaluating the Financial Inclusion Fund stated that the average cost of providing face-to-face debt advice to 270,000 people was £311 (range £201 to £377<sup>ii</sup>). However, in the second wave of funding the target cost of advice is £265 per client. In comparison, the NAO reported that telephone based advice cost an average of £51 per person (from National Debtline), while internet counselling and management costs approximately £16<sup>38</sup>.
- 5.4.9 Deriving an appropriate measure of cost for alternative advice is therefore difficult. Given that the clients under analysis would have previously required specialist legal advice for their social welfare problems, it is a reasonable assumption that their particular problems are towards the complex end of the spectrum. Given the robustness of the data the figure of £265 per client is the baseline figure adopted for the cost of alternative advice.
- 5.4.10 However, the Government would not be liable for this total cost. The Government provides support for charitable advice organisations in a number of ways. First, through core grant-aid to organisations such as Citizens Advice. Second, through specific funding for advice projects and partnerships such as the Financial Inclusion Fund. And third, through Gift Aid<sup>jj</sup> for charitable donations<sup>kk</sup>. Taken together a conservative estimate is

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gg Derived from figures quoted in 36. Citizens Advice Bureau. Towards a Business Case for Legal Aid. *Legal Services Research Centre 8th International Research Conference*. London, 2010.

hh According to the 2010-11 annual report, Shelter spent £20.7 million on providing housing services and serviced 159,000 clients including 94,000 face-to-face, 60,000 over the telephone and 5,000 via email. In addition, 1.1 million people visited their 'Get Advice' web pages. However based upon evidence from the Financial Inclusion Fund, providing face-to-face advice can cost five times as much as telephone-based advice.

ii The average cost is the total project cost divided by the number of people helped, while the average cost range for the 16 organisations delivering the advice was £201 to £377 per person. However, there were two phases to the project and average costs were £370 and £265 in each of the two phases.<sup>38</sup> National Audit Office. *Business, Innovation and Skills: Helping over-indebted consumers*. London: House of Commons, 2010.

jj Gift Aid is a matching system where charities are able to claim tax relief (at the base rate of 20 percent) on every donation from net (i.e. taxed) income. This equates to 25 pence in every £1.

kk It is also worth noting that higher rate taxpayers are entitled to claim back the difference between their tax rate and the base rate (as used in the Gift Aid programme) on the gross donation. For example, donating £100 will actually be a gross donation of £125 (at the 20 percent base rate) to the charity. A 40 (50) percent taxpayer can then claim back tax relief of 20 (30) percent on this £125 gross donation, or £25 i.e. 25 pence in every £1. In total the Government has 'lost' £50 in tax revenue. All of this is subject to the taxpayer having paid enough taxation. See HMRC<sup>39</sup>. Her Majesty's Revenue & Customs. *Gift Aid*. London, 2011. for further details.

that alternative advice will cost the Government 55 percent<sup>ll</sup> of this rate, or £146 per client.

- 5.4.11 Finally, not all advice is equal. The likelihood that an individual would recommend a source of advice in solving a particular problem varied hugely by the source, especially for non-legal advice. Of those who obtained advice from Jobcentres, social workers, and the local council, 28 percent, 32 percent, and 51 percent, respectively, would ‘definitely’ recommend them to others in the same situation. This compares to 80 percent of those who took advice from a solicitor or barrister. Equivalent figures for a Citizen’s Advice Bureau and Law Centres were over 75 percent, and 90 percent<sup>16</sup>. In the absence of legal aid help through CAB or law firms, many will be forced to use other, less satisfactory, sources of advice and risk giving up or receiving an unfair outcome as a result.

## 5.5 *No advice*

- 5.5.1 ‘No advice’ describes the situation where an individual does not seek any advice, legal or “alternative”. Not seeking advice may be a conscious response or it may result from legal aid not being available. The reduction in the availability of legal aid is likely to increase the number of clients who do not seek advice. Responses to the Civil and Social Justice Survey indicate that 20 percent of people who received legal advice would not seek any advice had their advisor not been available.
- 5.5.2 Not getting advice may lead to a client giving up on finding a remedy for their problem, or it may result in them tackling their problem themselves. Of those who obtained advice (according to Civil and social Justice Survey data) fewer than 20 percent gave up attempting to resolve the problem. Whereas, of those who tried and failed to get advice, and those who handled the problem alone after failing to get advice, the proportions who gave up were over 65 percent and 35 percent, respectively. These proportions differed slightly by areas of law as reported in 4.2.5.
- 5.5.3 Giving up on resolving their problem is *likely* to lead to any adverse consequences that resulted from their justiciable problem persisting, although there are no data to provide such a comparison. Instead there are figures on the degree to which people who received advice reported their adverse impacts improving. These were reported in Figure 13 of section 4.3 and together with the costs of these adverse impacts reported in section 4.3 they will be used as the cost of giving up in the absence of better data.

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<sup>ll</sup> Government funding of advice charities is complex and changing from year to year. In 2010, Shelter reported 21 percent (37. Shelter. Annual Report 2010/11. London: Shelter, 2011.) of income coming from Government grants, while Citizens Advice (34. Citizens Advice Bureau. Annual Reports and Accounts 2009/10. London: Citizens Advice Bureau, 2010.) received approximately 80 percent of its income for the parent organisation from the Government (which falls to roughly 30 percent of the entire network’s income.) These are some of the largest providers in the sector and therefore a 25 percent contribution from Government has been assumed.

- 5.5.4 For example, where individuals fail to seek, or receive legal advice and help they are a potential burden on health and social services if the stress resulting from their justiciable problem continues. Financial, housing, and employment problems tend to be followed hard by poor mental and physical health, and many doctors are said to ‘prescribe’ debt advice to patients suffering from stress<sup>40</sup>. Analyses of Civil and Social Justice Survey data by Pleasence *et al* have shown that good advice (legal or otherwise) improves recipients’ feelings of well-being and reduces stress that is directly associated with such problems.<sup>20</sup>
- 5.5.5 The same research compared the average loss to the wider economy from each debt problem of £1000 with the average cost of legal aid debt advice of £196. It found that such advice generally reduced recipients’ stress and level of concern and helped reduce their overall debt burden.<sup>20</sup> Where a justiciable (or otherwise) issue exists the absence of any advice has measurable knock-on costs and consequences.
- 5.5.6 Tackling a problem without legal advice *may* lead to ‘unfair’ outcomes in comparison to the outcome that may have been secured with advice. Again such a comparison is not possible with existing data but Figure 10 reports whether CSJS respondents believed their outcome was ‘fair’ by strategy. A greater proportion (5 percentage points) thought that the outcome was ‘unfair’ who tackled their problem alone compared to respondents who obtained advice. It has not been possible to monetise these ‘unfair’ outcomes with the currently available data.
- 5.5.7 There may be an increase in the number of weak cases going to trial because they have not received advice that their case is weak. As discussed below in section 5.6, litigants in person are a consequence of legal aid reform with potentially significant unexpected costs and consequences. In models of the proposed legal aid system, the majority of litigants in person (and the majority of the increase in litigants in person) arise from an increase in the numbers receiving no advice, either from being refused advice or help at the proposed legal aid telephone gateway, or through inaction and uncertainty about their entitlements under the proposed legal aid system. Reducing the numbers of individuals who receive no advice will likely reduce the numbers choosing to self-represent if their case ends up in court or tribunal.
- 5.5.8 Where cases end up in court or tribunal, expert prior advice can mitigate costs to HM Courts and Tribunals Service (HMCTS). Yvonne Fovargue, MP, pointed out in recent evidence to the Commons Justice Select Committee that, in respect of Welfare law: “*Preparing cases for tribunals helps to reduce the time needed for tribunal hearings.*” In this respect, she said: “[...] *experienced advisers and welfare benefits advice actually save money.*”<sup>41</sup> Clients in dispute over welfare or employment may be motivated to seek redress, by virtue of the potential losses of income and security, but unable to afford private advice that would mitigate later tribunal costs, much of which will be borne in costs to HMCTS, government lawyers, and so forth.
- 5.5.9 In the Impact Assessment, the Government raised the possibility of “increased criminality” as one of the potential unintended consequences of

the changes. Presumably this would happen as a result of people taking actions into their own hands when they have felt let down by the justice system, for example because of a (perceived) unfair outcome or because they have been denied access to justice. It is impossible to estimate such costs at this time.

## 5.6 *Litigant in person*

5.6.1 Self-representation, or more formally a litigant in person (LiP) is a situation where an individual (litigant) has no formal legal representation in court or tribunal.

5.6.2 A 2003 study established a positive relationship between the unavailability of legal aid and self-representation<sup>42</sup>. Self-representing is, according to respondents to the Government's consultation on legal aid reform and the Government's own Impact Assessment, likely to be a greater feature of our courts and tribunal services following the reforms.<sup>24</sup> The Impact Assessment then noted:

*"[...]in general, being unrepresented is likely to impact on the outcome of the case."*

and,

*"[a]ny significant change in case outcomes may be associated with social and economic costs if this leads to wider economic and social issues arising... There may then be associated costs to the Ministry of Justice, other government departments or public bodies or to society as a whole."*

5.6.3 Two factors will lead to an increase in self-representation. First, removing funding for legal advice may increase the number of people who will issue proceedings rather than being deterred by legal advice of the merits of their cases. Second, even where good private or alternative advice has been sought, removing legal representation for many cases will increase the likelihood that motivated litigants with meritorious cases, but without the funds for private representation, will pursue their cases to court or tribunal themselves.

5.6.4 In certain key respects a rise in litigants in person will have noticeable, material unintended consequences to Government: poorer outcomes for litigants, greater burden on HMCTS, greater legal costs for legal aid-represented litigants and for government-run organisations such as the NHS.

5.6.5 Research on LiPs indicates that they may be a lower burden on the court system *where they are inactive or passive* participants in the court process. For example, in non-contentious divorce proceedings. However, active LiPs are a significant burden on courts<sup>43 44</sup>. The emotive nature of issues in family law is liable to make for more active and engaged LiPs with over 60 percent of adoption and divorce cases already involving active unrepresented litigants.<sup>43</sup>

- 5.6.6 Evidence suggests that almost 80 percent of cases which will fall out of scope under the reforms will relate to people in the bottom income quintile, and whom are unversed in court procedure.<sup>43</sup> A rise in unrepresented litigants therefore risks “[...] cases taking longer, particularly where the applicant or both parties were unrepresented.”<sup>43</sup>
- 5.6.7 Richard Moorhead,<sup>45</sup> correcting the use in the Government’s legal aid Green Paper Impact Assessment<sup>24</sup> of his original report for the Department for Constitutional Affairs,<sup>44</sup> argues that the evidence indicates a significant impact on the courts from LiPs in family law cases:
- “What the research essentially shows is not that litigants in person gum up the courts with vexatious cases and applications (though some do) but that most struggle to participate in their cases if they participate at all. Where they do participate, the evidence suggests they do so sporadically; they sometimes damage their own interests as a result; and they probably create more work for their opponents and the courts themselves. [...] where LiPs do [not] (sic) participate they will increase the workload of opponents, court staff and judges. This is most likely, I would surmise, in family cases where applicants are sufficiently motivated (or desperate) to represent themselves.”<sup>45</sup>*
- 5.6.8 This is echoed by The Association of Lawyers for Children who state that, contrary to the Government’s interpretation, Moorhead and Sefton<sup>44</sup> found a significant difference between cases conducted by a litigant-in-person and those in which clients were represented by lawyers, in terms of court time in all areas of family law proceedings they looked at, apart from divorce petitions.<sup>27</sup> Lord Dyson, a supreme court judge has said:
- “There are some very good litigants in person but there are an awful lot who, understandably, don’t know what they are doing. They feel frustrated, angry. They are not lawyers. They make masses of bad points. They waste a lot of the court’s time. And it’s a growing trend.”<sup>46</sup>*
- 5.6.9 Cases with active LiPs are also less likely to be settled.<sup>42 44 47 48</sup> Clinical negligence disputes can cost hundreds of thousands of pounds in fees to solicitors, experts, and the like. Settling early yields significant savings for both parties. Estimates provided by a clinical negligence solicitor suggest that settling a case before trial in such cases can save between £100,000 and £170,000<sup>49</sup>.
- 5.6.10 Cases presented by un-represented litigants are more likely to be thrown out. The Advice Services Alliance, in their Response to Consultation, pointed to research by the Law Council of Australia, which noted that 54 percent of unrepresented litigants and 34 percent of represented parties had their cases dismissed.<sup>31</sup>
- 5.6.11 In cases involving children where both parents are self-representing there is likely to be an increase in the number of r16.4 appointments<sup>mm</sup> of guardians which will increase costs to Cafcass both in terms of their officers’ time and their own legal costs.

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mm Rule 16.4 of the Family Procedure Rules 2010 available from:  
<http://www.legislation.gov.uk/ukxi/2010/2955/article/16.4/made>

- 5.6.12 A final impact of LiPs is on other court users. If cases involving LiPs take longer, this could generate longer waiting lists for hearing dates and a higher prospect of hearings being adjourned due to over-running cases. Where these users are legal aid funded clients or Government parties it will generate a knock-on cost for the state. Further, in some cases and particularly in family cases this delay may lead to a change in circumstances requiring further evidence (e.g. Cafcass reports) including refreshed expert evidence. To the extent that organisations such as Cafcass are state funded this could generate a knock-on cost.
- 5.6.13 It is clear therefore, that LiPs generate knock-on costs. The consultation response from The Council of Her Majesty's Circuit Court Judges estimated that the increase in time, and therefore cost of LiPs, as being between 30-50 percent depending upon the type of hearing.<sup>50</sup> In Canada<sup>51</sup> and Australia<sup>52</sup> a "conservative estimate" of 20 percent has been used although there seems to be little empirical basis for this.
- 5.6.14 The upper estimate of a 50 percent increase in costs for cases involving LiPs will be adopted for the following reasons: (i) while an increased hearing length will increase court costs it will also delay other court users who could themselves be funded by the state (or be the state) therefore generating a further spillover effect not captured by simply measuring the increased case length, (ii) the crude average case cost<sup>nn</sup> measure adopted will significantly underestimate the cost of 'contentious' cases as it was not possible to differentiate between contested and uncontested cases, where the later significantly outweigh the former, and (iii) in a number of cases involving children there will also be a knock-on cost to Cafcass but this will not be a linear relationship with the length of time the case costs and will not be true for all cases. Using this estimate, each LiP is expected to generate a knock-on cost of £273.50<sup>oo</sup> per person.
- 5.6.15 In these respects the Government may have underestimated the impact of LiPs with additional knock-on costs for represented litigants, and increased strain on HMCTS, especially when over-running cases lead to cancellations or deferrals of other scheduled proceedings. Where these cases involve public bodies or legal aid funded clients this will add to a further knock-on cost to the state. In summary, the figure adopted is more likely to be an underestimate rather than an overestimate of the true cost.

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<sup>nn</sup> Published family court statistics are not useful for determining the average case cost. Cases involving adults are reported by the number of applications, while cases involving children are reported by the total number of children. To collapse this data into the number of cases all applications involving children will be divided by 1.9 – the average number of children per household. While this generates a crude measure of the total number of cases it does not help provide a very accurate measure of average cost as the court cost is usually determined by the length and complexity of case. For example, many applications for ancillary relief are uncontested and should take very little court time. Using the Family Matters statistics the estimated number of family law cases in 2009-10 was 310,529. 53. Ministry of Justice. Family Matters - Annual Court Statistics, 2010.

<sup>oo</sup> According to the Family Justice Review the private family law courts cost £170 million per annum to run 54. Family Justice Review. Final Report - November 2011. London: Ministry of Justice, 2011. Again, this is an estimate they calculated based upon the average case length and volume for public and private family law cases and the total family court costs. Together with the estimated total number of cases, this generates an average cost of £547 per case. A 50 percent knock-on cost would result in a £273.50 per person cost.

5.6.16 Additionally, HMCTS may suffer a reduction in fee income if LiPs are granted fee remissions, as these fees would have been paid under the legal aid scheme previously. The Government estimated the total impact of fee remission on HMCTS at £8 million<sup>15</sup>. No detail is provided on how this figure was generated, nor is it possible to calculate the impact for each area of law based upon the current fee tariff. A crude weighted by area of law is therefore created using the proportion of the total legal representation expenditure is being saved in each law. For example, in family law this is 80 percent,<sup>pp</sup> and for social welfare law this is two percent<sup>qq</sup>.

## 5.7 *Private Legal Advice / Representation*

- 5.7.1 An increase in the uptake of private legal representation would appear to pose little risk to projected Government savings from legal aid reform. This is largely true, except where the use of private legal representation is liable to change how cases proceed through the courts system. The area of law that may give rise to significant unintended consequences in respect of private legal representation is clinical negligence.
- 5.7.2 Spending on legal aid representation in clinical negligence cases is likely to fall by 64 percent or £10.5 million (Table 4). Clinical negligence cases are costly to both parties in a dispute but it is likely that, in the absence of legal aid representation for litigants in clinical negligence cases, there will be an increase in the uptake of conditional fee arrangements (CFA) risks passing knock-on costs to the NHS and, thereby, to the Department of Health. This will occur through two mechanisms: After the Event (ATE) insurance premiums and lawyers' success fees.
- 5.7.3 The CFA (colloquially 'no win, no fee') funding model requires that a success fee is charged to defendants on successful cases to offset the losses on unsuccessful cases. Cases supported via legal aid do not need to charge success fees and therefore any clients who now use CFA will generate a knock-on cost to the defendants (usually the NHS) of the success fee multiplied by the success rate. As success fees can be up to 100 percent of the base legal fees and the average success rate for legal aid funded clients is 69 percent (in 2009-10<sup>55</sup>) this cost could be substantial.
- 5.7.4 Packaged alongside the legal aid reforms in the Bill are changes to litigation funding which will force claimants to pay the success fee out of their damages, which in turn will be increased by 10 percent to fund this change. This will also increase the costs to the NHS by 10 percent on both the cases that will no longer be funded by legal aid and those that remain in scope. Whatever litigation funding mechanism is used there will be a substantial knock-on cost to the NHS.

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pp £120 million saving for family law /£150 million total legal representation saving  
qq Owing exclusively to housing cases.

5.7.5 The cost of disbursements such as expert fees are covered by the legal aid scheme for funded client. Those who are no longer funded will require ATE insurance to cover this expense. The ATE premium is recoverable from the defendant in success cases, and will remain so even under the proposed reforms. Action against Medical Accidents (AvMA) put it thus in a recent press release:

*“[I]f all 1,457 cases successfully litigated with the help of legal aid (Legal Services Commission, 2009-2010) were to be successful under the reformed ‘no-win no-fee’ arrangements, the NHS would become liable for the cost of after the event insurance for medical expert reports. Given the complex nature of most cases taken under legal aid (child brain injury etc) we estimate this would cost between £5,000 and £10,000 per case. Even at £5,000 per case this would total £7.2 million extra incurred by the NHS.”<sup>32</sup>*

5.7.6 The NHS Litigation Authority (NHSLA), charged with handling such medical negligence claims against the Health Service, itself raised concerns in June 2011 that legal aid reforms would: “[...]lead claimants to make greater use of conditional fee agreements (CFAs), which would increase the legal costs the NHSLA would have to pay when it lost a case.”<sup>56</sup>

5.7.7 In the September 2011 Public Bill Committee debate on the Legal Aid, Sentencing and Punishment of Offenders Bill, Andy Slaughter, the shadow Justice Minister, summarised the issue more bluntly: “Now we find the NHS’s own lawyers are saying it is immoral and economically misguided to prevent brain-damaged children and adults from getting justice.”<sup>41</sup>

5.7.8 Private advice and representation may have unexpected consequences to Government in family law. Women going into divorce proceedings risk impoverishing themselves by paying for advice or representation. Women are historically more likely to access legal aid in family law cases. Divorced women have a poverty rate three times that of their former husbands<sup>57</sup>; women’s incomes fall by an average of 17 percent, and women are 40 percent more likely to enter poverty than men, following a divorce<sup>58</sup>. All these make women particularly vulnerable to financial pressures before and after a divorce, whatever the outcome. Such women, and any children they receive custody of, are a greater potential cost to Government in welfare support and other services.

5.7.9 As in paragraph 5.6.16, people who pursue proceedings with private legal representation may be entitled to fee remissions. This is especially likely given their financial eligibility for legal aid. This will have a knock-on cost to HMCTS, which was discussed in detail in 5.6.16.

## 5.8 *Mediation*

5.8.1 A key aim of the reforms in relation to family law is to incentivise mediation over litigation in divorce and relationship breakdown, especially where children are involved.<sup>1</sup> The rationale being that mediation is less combative, reducing emotional distress. Publicly funded mediation has been proposed as

a cost-effective and less damaging alternative to litigation. But, as the House of Commons Justice Select Committee noted in 2011, mediation “[...]is not a panacea. Further work needs to be done on how difficult and unresolved cases can be dealt with if legal aid is not available.”<sup>59</sup>

- 5.8.2 At a maximum cost of £1,700<sup>rr</sup> per case, mediation is more cost-effective than court time. The Government predicts that its outlay on mediation services will not exceed an additional £10 million (net) on an extra 6,000-10,000 cases per annum. If legal aid reforms provide unexpected incentives to send a case to mediation (rather than, say, through private legal advice) the predicted costs of mediation could be much higher than Government predictions.
- 5.8.3 Fee caps and legal aid funding cuts will likely reduce incomes for many small legal firms of solicitors and independent advisors. With funding provided for private family law mediation such firms will have incentives to encourage potential clients to mediate, even where they may otherwise seek private advice or representation, because mediation costs will be met by the Government. As such, uptake of Government-funded mediation could be much higher than predicted. The Justice Select Committee<sup>4</sup> and The Law Society<sup>62</sup> have cast doubt on the Government’s forecasts for mediation utilisation post-reforms, and evidence from the recent Family Justice Review<sup>54ss</sup> on the introduction of a pre-application protocol in the family courts highlights potentially strong demand for mediation services.
- 5.8.4 Further, the Government suggests that, following divorce or relationship break-down: “in the vast majority of cases parents agreed contact arrangements informally without resort to the courts,” suggesting that mediation is generally sufficient and that legal advice or representation is unnecessary, or even counterproductive, in such situations. The Association of Lawyers for Children argue that the research has been misrepresented, stating:
- “This is a wholly misleading picture [...] and the research in fact shows that 74 percent of those who had been able to reach an agreement without a court order, explained that they had in fact done so with the advice and assistance of lawyers, judges, CAF/CASS officers and other members of the existing family justice community.”<sup>27</sup>*

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rr The figure of £1,700 per mediation case is generated by summing (i) the legal fees promised in the consultation paper of £150 per person, (ii) the additional £200 of legal fees to draft an order as promised in the response to the consultation exercise, and (iii) the £1,200 mediation cost reported in the Impact Assessment. This £1,200 cost was calculated by taking the £10 million identified as the additional cost of mediation in the Impact Assessment plus the £2 million saved from not performing 60,000 willingness tests, and dividing by 10,000 new cases. The Impact Assessment reported a range of 6-10,000. If we used 6,000 as the number of additional cases, the per mediation cost would increase to £2167 (£500 + £1667). As a comparison, £16.2 million was spent in 2009-10 funding 14,500 full mediation cases, and 55,000 willingness tests which is broadly comparable<sup>60</sup>. Quartermain S. Sustainability of Mediation and Legal Representation in Private Family Law Cases: Analysis of Legal Aid Administrative Datasets. *Ministry of Justice Research Series 8/11* 2011. Further, the MOJ website states the approximate case cost is £1,000.61. Ministry of Justice. Features: Family mediation - an alternative to courts, 2011.

ss The Family Justice Review (final report, p. 154) reports a 22 percent increase in mediation information and assessment meetings in the period April-June 2011 (compared to the same period in 2010) following the introduction of compulsory attendance at a mediation information meeting before applicants are allowed to take their case to court.

The argument is, in effect, that agreement was reached in such cases precisely *because* legal advice and representation was available, and “*as a result of engaging with the present family justice system*”, not in spite of them.

- 5.8.5 Mediation services may occupy an uncertain zone between alternative, non-legal, advice, and help from a solicitor. In this respect it may end up costing more than legal aid advice but do less to mitigate downstream costs:

*“Mediators can then go no further in indicating what is likely to happen if the matter went ahead at court. [...] Mediators are unable to give any strong steer or direct encouragement of any terms on which to settle.”*<sup>59</sup>

- 5.8.6 Ultimately, mediation is likely to be more popular than the Government has anticipated in its Impact Assessment because it offers access to legal aid funded advice as well as a potential solution.

- 5.8.7 While the per case cost is easily established as £1,700 (as established in 5.8.2) the per person cost is less easy to establish. At present, the Government funds mediation where either (or both) party is eligible for legal aid support. Thus if every legal aid client was mediating with somebody who is not eligible then the per person cost to the legal aid budget would be £1,550<sup>tt</sup>, and where both parties were legal aid eligible it would be £850. A further complication is that the £200 of funding available for drawing up an order based upon a settlement is only payable if the mediation is successful. In reality 58 percent of publicly funded mediation cases involve two legal aid funded clients<sup>60</sup>. This results in an average mediation cost of £909 per legal aid funded client plus an average of £126 per legal aid funded client if the mediation is successful.

- 5.8.8 Although the Impact Assessment and related policy documents make no mention of mediation assessments, it is assumed that these will continue to be funded at the current rate of £87 (plus VAT) for one person and £130 (plus VAT) if the couple attend together.

## 5.9 Summary

- 5.9.1 This section has considered the unintended or knock-on costs of the Government’s proposed legal aid scope changes. In many instances it is not possible to quantify these costs, for example the cost of ‘unfair’ outcomes for people who no longer seek legal advice because legal aid has been withdrawn. Therefore the knock-on costs of the proposals are likely to be an understatement.

- 5.9.2 Some of the knock-on costs will be borne by the MoJ, the principal ones being the increased costs to HMCTS, the costs of mediation and the implementation of the telephone gateway (or alternative triage service).

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<sup>tt</sup> Assuming that the legal aid fund will not provide the £150 of legal advice to the ineligible party and that the legal aid scheme pays the £200 to produce an order on the mediated agreement.

5.9.3 Other knock-on costs will be faced by other Government departments but the worst affected will be the Department of Health who face increased use of the NHS from increased or prolonged adverse impacts and from the changes to clinical negligence law.

# 6. Family Law

## *6.1 Introduction*

- 6.1.1 Family law is one of the most significant areas of law to be affected by the proposed legal aid cuts in terms of the absolute value of the expenditure savings. It will generate 60 percent<sup>uu</sup> of the total savings generated by the scope changes, and 71 percent of the scope changes considered in this research.
- 6.1.2 Based upon 2009/10 data, the MoJ anticipates saving £170 million (gross) from excluding all private family law cases from scope unless they involve domestic violence, child abuse or child parties<sup>14</sup>. An estimated 210,000 people will be affected<sup>14</sup> by these changes.
- 6.1.3 According to Table 4, this change of scope will reduce the volume of legal help cases by 74 percent and the volume of legal representation cases by 40 percent. Overall, the family law budget will only be reduced by 28 percent because public family law will remain in scope<sup>vv</sup>.
- 6.1.4 The Government argues that, in the absence of domestic violence, parties should be directly involved in resolving their cases through mediation rather than from litigation. It also believes that these cases are not overly complex and that, in comparison to cases involving physical safety or liberty, they are not a priority.
- 6.1.5 In the Impact Assessment<sup>15</sup>, the Government identifies net costs of £6-10 million resulting from an increased use of publicly funded mediation services<sup>ww</sup>. The net saving from the scope changes are therefore stated as £160 million per annum. No other knock-on costs were estimated although a potential increase in self-representation has been acknowledged<sup>63</sup>.
- 6.1.6 This section argues that this is an underestimation of the true costs of the reform, which should include higher mediation utilisation figures as well as knock-on costs to the family justice system that will bear the burden of an increasing number of unrepresented litigants.

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<sup>uu</sup> From the MoJ's Impact Assessment<sup>14</sup>. Ministry of Justice. Consultations on Legal Aid, Sentencing and Punishment of Offenders Bill - Annex A: Scope. London, UK: Ministry of Justice, 2011. changes to family law will generate £170 million of savings from a total of £280 million.

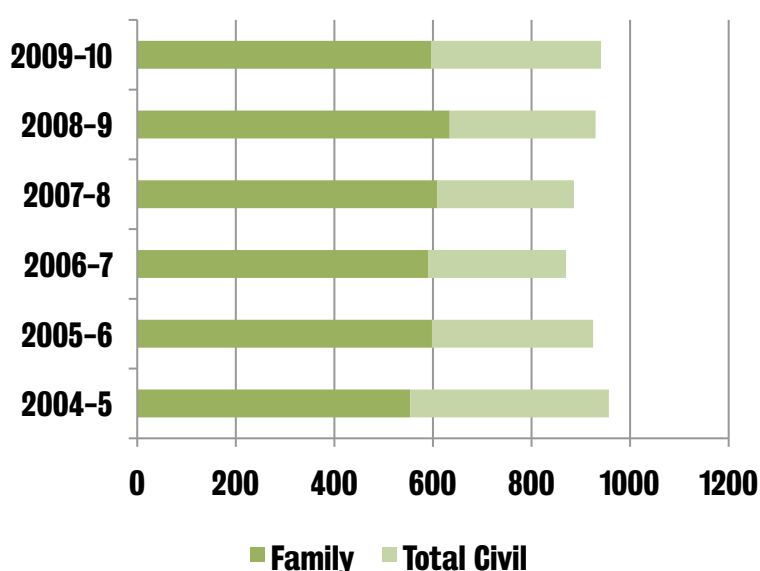
<sup>vv</sup> Total family law expenditure reductions were calculated using the MoJ Impact Assessment expenditure cuts restated in Table 4 as follows: (i) Total 2009-10 family expenditure: £609m = £50m/78% + £120m/22%, and (ii) Overall reduction: 28% = (£170m /£609m)\*100.

<sup>ww</sup> The gross cost of 10,000 additional mediation cases appears to be £12 million but the Government is saving approximately £2 million by not commissioning 60,000 mediation willingness tests. The net cost as reported in the Impact Assessment is £10 million per annum.

## 6.2 Key Facts and Figures

- 6.2.1 As Table 1 and Figure 14 illustrate, expenditure on family law legal aid has been relatively stable, but there has been an increase of approximately 8 percent in real terms over the past six years. As Figure 15 demonstrates, this appears to be the result of an increasing caseload.
- 6.2.2 Over the same period, the proportion of the total civil legal aid budget spent on family law cases has increased by five percentage points but reached a peak of 69 percent during 2007-8 as overall civil legal aid expenditure declined significantly.
- 6.2.3 There is clear evidence that family law represents a considerable portion of all civil legal aid expenditure, and it is therefore not surprising that it faces the largest absolute cuts under the proposed reforms.
- 6.2.4 Evidence presented to the Justice Select Committee<sup>4</sup> suggests that the increase in family law expenditure was driven by a dramatic increase in the number of public law cases following the publicity surrounding the “Baby Peter” case. This is supported by Figures 16 and 17 that illustrate falling volumes and expenditure for private family law over the past five years compared with rising public law volumes and expenditures.

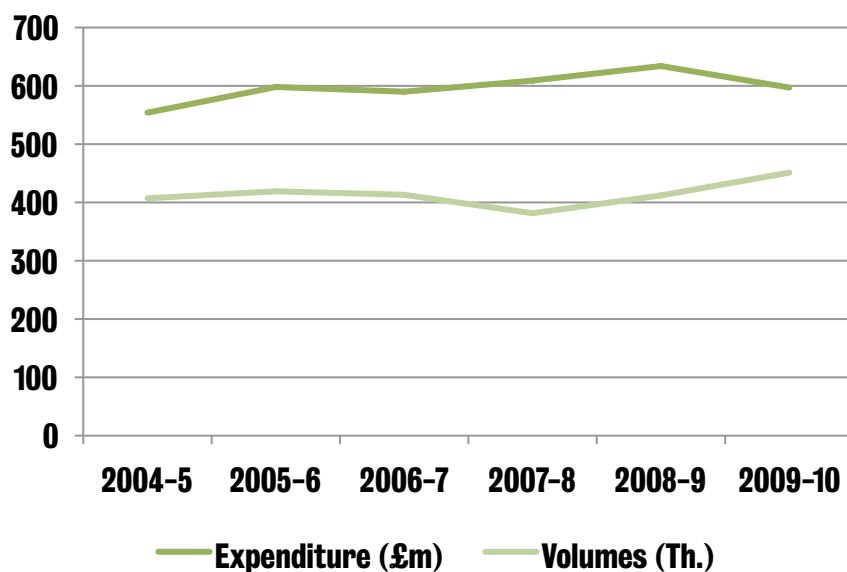
**Figure 14: Family Legal Aid Expenditure (£m) Relative to Total Civil Legal Aid (2009 prices)<sup>xx</sup>**



<sup>xx</sup> Taken from Table 1

- 6.2.5 There are a number of potential explanations for this downward trend in private law cases. ONS<sup>64</sup> data indicate that the divorce rate fell in 2009 by 6.3 percent to its lowest rate since 1977. This combined with a change towards funding ancillary relief cases through alternative means, and an increase in the use of mediation or alternative dispute resolution mechanisms could account for the decline in private family law volume.
- 6.2.6 Lastly, there has been a significant drop in the number of firms doing family legal aid in recent years<sup>65</sup>. For instance, the latest LSC tender figures show a six percent fall in the number of offices offered a new contract from February 2012<sup>66</sup>. One explanation for this is the availability of alternative funding mechanisms for ancillary relief where firms are able to take on ancillary relief clients who might technically qualify for legal aid, whereas poor clients with children disputes still need a legal aid lawyer and would be referred on. In effect, therefore, some cases that would have been legally aided historically and arguably still could be are never reaching a legal aid lawyer<sup>65</sup>.

**Figure 15 Law Expenditure & Case Volume Trends<sup>4</sup>**

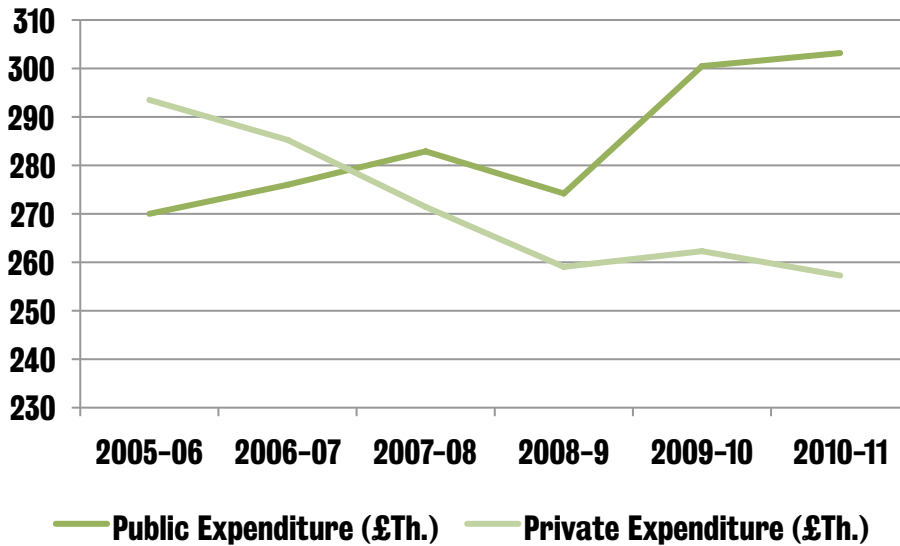


### *6.3 Costs to the Public Purse*

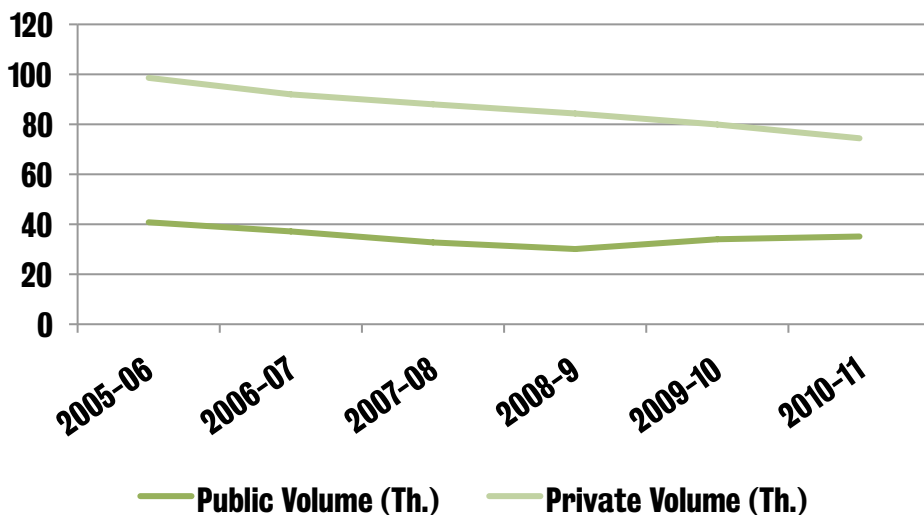
- 6.3.1 There is likely to be a significant knock-on cost to the public purse as a result of excluding most private family law cases from scope. While the net effect of the proposals may be positive (i.e. a saving) this is likely to be substantially less than the Government's initial estimates.
- 6.3.2 Figure 18 maps the flow of the clients who no longer receive legal aid support through the private family justice system. The flows (as percentages) are based upon the responses to the CSJS reported in section 4 and validated by data from the LSC on outcomes for legal aid cases in 2008-

9. The cost of these responses to the public purse was discussed in section 5. Knock-on costs are indicated in green lettering and the vertical dashed line separates those who do not seek advice from those that continue to seek advice.

**Figure 16: Legal Representation Expenditure by Domain (2009 prices)<sup>yy</sup>**



**Figure 17: Legal Representation Volumes by Domain<sup>zz</sup>**



6.3.3 To begin with 266,000 clients will require screening in or out of the system at a minimum cost of £8 per client using the telephone gateway. Alternative

<sup>yy</sup> The data sources used for this figure were the LSC Statistical Packs released each year and published on the LSC website.

<sup>zz</sup> *ibid*

mechanisms may cost substantially more. This generates a knock-on cost of £2.1 million.

- 6.3.4 Of the 210,000 people who no longer receive legal aid under the reforms, 89 percent may seek advice from another provider (see Section 4.2.8). Data from the CSJS indicates that only 19 percent of respondents (see Section 4.2.10) were willing to pay for the legal advice they received. The remainder will access alternative advice services, and a knock-on cost of £22.1 million is calculated based upon an average cost of £146 (see Section 5.4.10).
- 6.3.5 The remaining 11 percent of people who do not seek advice either give up (33 percent) at a cost of £2 million, or they tackle the problem alone (66 percent)<sup>aaa</sup>. Giving up may generate or prolong adverse consequences including mental and physical health problems as discussed in Section 5.5. For family law cases, this is estimated at an average cost of £263 per person<sup>bbb</sup>.
- 6.3.6 In response to a recent Justice Select Committee Report on Family Courts, the Government partially indicated how it estimated the number of additional mediation cases in the original Green Paper and associated Impact Assessments<sup>67</sup>. The MoJ argues that approximately half of the 210,000 people losing eligibility under the reforms would find mediation unnecessary either because of the nature of the problem (e.g. a name change) or because they are no longer proceeding with their problem (e.g. due to reconciliation)<sup>67</sup>. This has been included in Figure 18 by reconciling the data from CSJS on how problems are solved (reported in Figure 7) with data from the LSC on client outcomes as recorded by solicitors<sup>ccc</sup>. These outcomes are thought to apply equally to clients using private (legal) advice or alternative advice and are reported under the horizontal green brace in Figure 18.
- 6.3.7 From LSC data, approximately 14 percent of family law clients either reconcile with their partner or required advice only. This matches well with the 15 percent of respondents in the CSJS who reported that their problem had “sorted itself out” after receiving advice. From the CSJS, 17 percent of respondents give up after receiving advice, and from the LSC 17 percent of clients “cease providing instructions.” The MoJ believes that for some types of problems mediation is inappropriate, including family wills, name changes and straightforward divorces or nullities<sup>67</sup>. The proportion of these “straightforward” cases was estimated by using their proportion in the 2008-9 LSC dataset, of 29 percent. These cases will frequently end up in court (e.g. for a divorce) but they are usually non-contentious and should not create further knock-on costs to the courts. However, without proper legal advice the outcomes of these cases may be unfair or they may generate

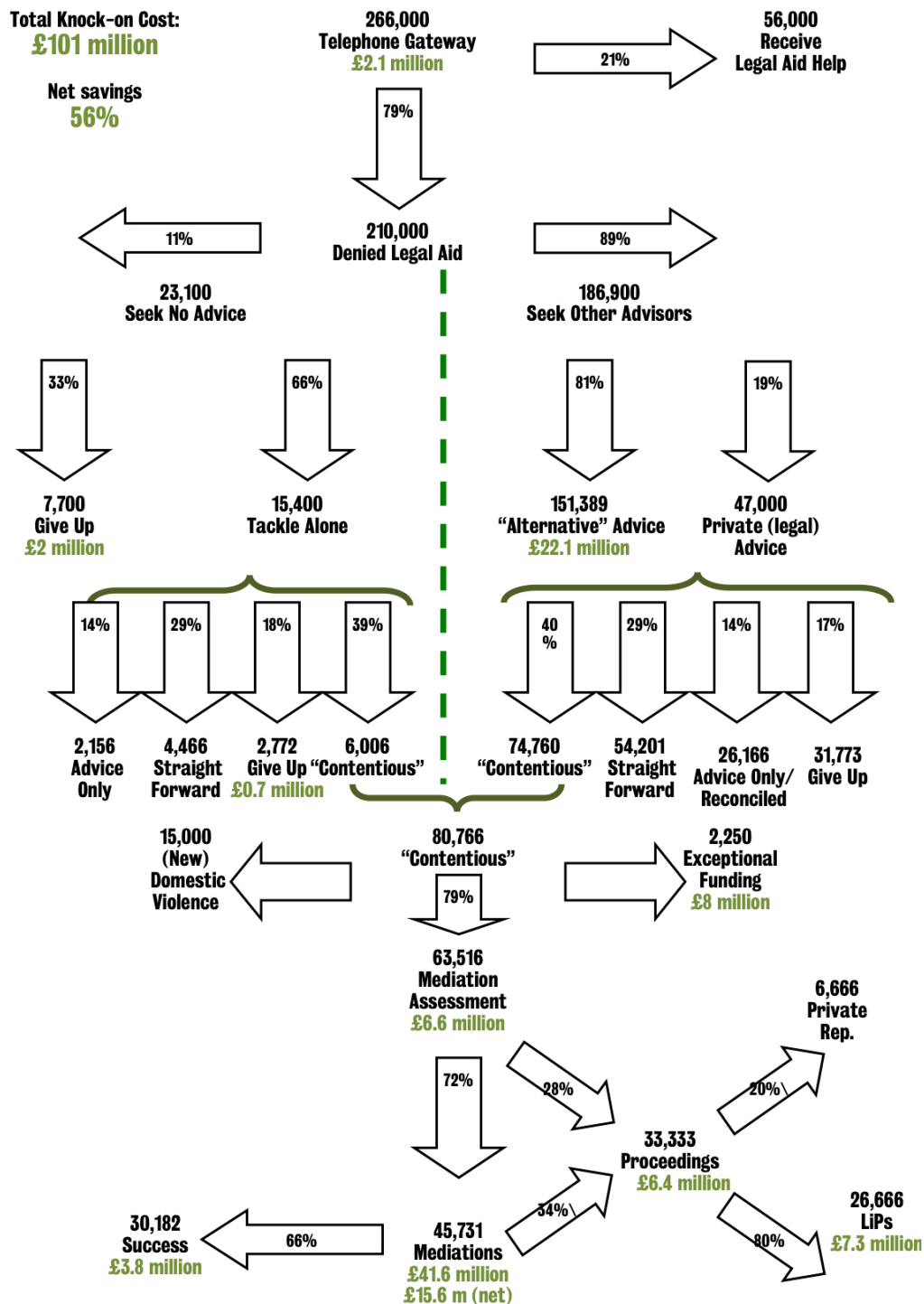
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aaa These percentages are based upon data from the CSJS presented in Figure 3 on the relative proportions of people who tackle problems alone and who give up after they can't access advice services.

bbb The estimated cost of giving up is estimated by multiplying the value of the improvement in the adverse consequences after receiving advice reported in Table 7 of section 4 by the probability of a client experiencing the adverse consequence from Table 6.

ccc The data made available are for 2008-9.

**Figure 18: Flows through the Family Law System (2009-10 Baseline & CSJS Data)**



N.B. Numbers are clients not 'cases'

additional work for court staff and the judiciary if they are unable to complete the required paperwork correctly. The remaining 40 percent of cases are labelled "contentious" and may include serious disputes (e.g. Children Act cases or divorces involving ancillary relief).

- 6.3.8 A similar approach was applied to clients who are thought to tackle their problems alone. People may seek advice online or their problem may resolve itself. Obviously the LSC does not have data for people who tackled their problem alone. However we could assume that the circumstances that resulted in their problem being straightforward, that led them to reconciliation or meant that they were just looking for advice may be the same regardless of how their problem is tackled. In contrast, the CSJS does have this information. For instance, 14 percent of respondents reported their problem had “sorted itself out” after tackling it alone. From LSC data, approximately 14 percent of clients required advice only. Again, 18 percent of people in the CSJS gave up after tackling their problem alone. This compares to 17 percent in the LSC dataset. The CSJS does not record information on the exact nature of the problem and so the LSC data must be relied upon to provide a proportion of clients who experience “straightforward” problems. The remaining 39 percent are assumed to have more contentious problems that may be suitable for mediation.
- 6.3.9 Together 40 percent of people who obtained advice and 39 percent of people who tackled their problem alone experience problems that may require court proceedings. It is assumed that 2,250 exit the flow here as part of the exceptional funding scheme to avoid double counting. The MoJ estimates that five percent of 45,000 legal representation cases no longer falling in scope will be readmitted under the exceptional funding scheme discussed in 5.3.8 and 5.3.9. At an average cost of £278 for a family legal help claim and £3,282 for the average family legal representation claim, this cost is estimated at £8 million per annum. Given the uncertainty in the final wording of the scheme this is likely to rise substantially by the time the reforms are enacted.
- 6.3.10 It is further assumed that this is where the additional cases involving domestic violence will exit the system and attract legal aid representation. The Government’s Impact Assessment estimates this figure to be approximately a quarter of the cases which do not automatically remain in scope (domestic violence and public family law cases). A figure of 15,000 cases is used here<sup>ddd</sup>.
- 6.3.11 Of the remaining “contentious” cases they are all assumed to be potentially suitable for mediation. A key assumption here is that all of these (63,516) people attend mediation assessment to determine whether mediation is appropriate. In 2010-11, there were 60,000 willingness tests, and there were targets to get 40-50 percent of these to proceed to mediation assessment, and for 50-60 percent of these mediation assessments to proceed to substantive mediation<sup>23</sup>. This is therefore a strong assumption but seems reasonable given the pre-application protocol introduced into the family court, the few alternatives available for people no longer receiving legal aid funding for advice or representation, the legal aid advice which comes

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ddd There were approximately 114,000 legal representation cases in 2009-10, of which roughly 34,000 were public family law cases and 20,000 were stated to involve domestic violence. Of the remaining 60,000 cases, 45,000 are expected to be out of scope and a quarter (15,000) to involve domestic violence or child protection issues.

attached to the mediation pathway, and finally the success rate of mediation. Mediation information and assessment sessions come at a cost of £104.40 per person<sup>eee</sup> or a total of £6.6 million.

6.3.12 A key assumption regards the proportion of clients assumed to progress from mediation assessment to substantive mediation. The current rate is approximately 60 percent<sup>23</sup> but the Government accepts that this will rise<sup>67</sup>. Given the arguments outlined in Section 5.8 it is clear the progression rate will rise but it is unclear to what extent. Recent evidence<sup>22</sup> based on in-court mediation suggests a conversion rate of 72 percent. Using this rate, an estimated 45,731 people would progress to around 29,000 mediations at an estimated cost of £41.6 million<sup>fff</sup> per annum<sup>ggg</sup>. Of these 66 percent are expected to be fully settled through mediation and will therefore attract a further £3.8 million<sup>hhh</sup> in legal aid solicitor fees.

**Table 8: Summary of Family Law Knock-On Costs**

<b>Description</b>	<b>Total Cost</b>	<b>'Unit' Cost</b>	<b>Number of Clients</b>
Give Up	£2,754,136	£263	10,472
Telephone Gateway	£2,128,000	£8	266,000
Alternative Advice	£22,102,794	£146	151,389
Mediation Assessment	£6,631,070	£104	63,516
Mediation	£41,569,479	£909	45,731
Mediation Orders	£3,802,932	£126	30,182
Litigant in Person	£7,293,151	£273.50	26,666
Fee Remission	£6,400,000	N/A	N/A
Exceptional Funding	£8,010,000	£3,560	2,250
Sub Total	£100,691,562		
<b>Net Total</b>	<b>£74,691,562</b>		

eee Current LSC approved costs for a single client is £87 plus VAT. LSC Website, 2011.

fff Based upon an average client cost of £909 derived in Section 5.8.7.

ggg This is the gross cost of the substantive mediations but the knock-on or net cost of these is £15.6 million as the Government has already made a provision of £26 million to fund 24,500 mediations – 14,500 already being funded plus a further 10,000 post reform.

hhh Based upon an average client cost of £126 as derived in Section 5.8.7.

- 6.3.13 Finally, not all cases will be successfully resolved by mediation. An estimated 34 percent are not settled. In addition, a suggested 28 percent of people will not proceed with mediation following the assessment meeting. Together these (33,333) people are expected to begin court proceedings. Based upon the responses to the CSJS survey, 80 percent of people are likely to self-represent rather than pay for private representation (see 4.2.18). Given the knock-on costs of litigants in person identified in Section 5.6, the total knock-on cost to the courts is estimated to be £7.3 million<sup>iii</sup> per annum<sup>jjj</sup>. Finally the proceedings may not attract court fees if the clients are eligible for fee remissions. This cost to HMCTS is estimated at £6.4 million<sup>kkk</sup>.
- 6.3.14 Table 8 summarises the knock-on costs shown in Figure 18. The total knock-on cost is almost £101 million per annum but removing the mediation cost already accounted for by the Government, leaves a net knock-on cost of £74 million. This generates a net saving of approximately 56 percent of the predicted saving of £170 million per annum<sup>lll</sup>.

## 6.4 Summary

- 6.4.1 Family law is the largest area of law to be affected by the changes in legal aid scope with 210,000 people no longer receiving funding. This section has attempted to model the possible responses of these clients to the removal of funding.
- 6.4.2 Approximately 57 percent of clients obtain alternative advice costing almost £22.1 million per annum. This is in comparison to the £50 million currently spent providing legal aid help to 210,000 people.
- 6.4.3 The most significant knock-on cost is the increased utilisation of mediation. This research predicts over 65,000 people in more than 41,000 mediations costing a total of £74.2 million per annum in expenditure, or an additional £48.2 million more than the Government has predicted.
- 6.4.4 Finally, an increasing number of people will self-represent in the family courts which is expected to increase court costs. This is estimated at over £10 million per annum, but due to the crude nature of the average court costs this is likely to be an underestimate.
- 6.4.5 Other areas of significant knock-on cost include the exceptional funding scheme (circa £8 million per annum) and the loss of court fees (at over £6 million per annum). The former in particular is likely to be an underestimate as Parliament wrestles over the exact provisions of this scheme.

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iii One counterargument is that court fees could be increased to cover this additional expense. However, the recoverability of family court fees is notoriously low, circa 40 percent 54. Family Justice Review. Final Report - November 2011. London: Ministry of Justice, 2011. Further, being legal aid eligible originally these clients are likely to be exempt from court fees.

jjj Based upon an average knock-on cost of £273.50 per LiP as derived in Section 5.6.13.

kkk Based upon the calculations derived in 5.6.16

lll The gross savings figure is used because the additional mediation cost of £10 million has already been removed from the knock-on cost.

- 6.4.6 Overall, the knock-on costs amount to £100 million per annum set against a saving of £170 million proposed by Government. Based upon these figures, the Government is expected to save roughly 40 percent of its original forecast.
- 6.4.7 Great uncertainty exists around these figures both in relation to the responses that will actually be chosen and to the costs these responses will generate. In particular in respect to the utilisation of mediation and the true knock-on cost of litigants in person. The analysis has shown how little information is available on the costs and productivity of the courts.

# 7. Social Welfare Law

## 7.1 Introduction

- 7.1.1 Social welfare law is made up of housing, debt and welfare benefit problems. Taken together, social welfare law represents 13 percent of the total civil legal aid budget.<sup>mmm</sup> However, the MoJ estimates that changes to the scope of social welfare law will generate 21 percent of the total scope savings.<sup>nnn</sup>
- 7.1.2 Over 400,000 people received legal aid support for their social welfare problems in 2009-10 at a total cost of £121 million. Based upon 2009-10 figures, almost 300,000 people<sup>ooo</sup> will no longer receive legal aid funding for their social welfare problems generating an estimated £58 million saving per annum.<sup>ppp</sup>
- 7.1.3 This saving will be achieved by removing all welfare benefits law cases from scope without exception, all debt cases unless there is an immediate risk of homelessness and all housing cases unless there is an immediate risk of homelessness, or disrepair cases where there is a serious risk to health or life. In addition homelessness assistance and County Court anti-social behaviour cases remain in scope.
- 7.1.4 The main arguments forwarded by the MoJ for removing most of social welfare law from scope are that it relates to problems that are of lower importance than “fundamental ones of liberty or safety” and because there are alternative sources of advice.<sup>1</sup>
- 7.1.5 Many people experience social welfare problems. In 2009-10, the Citizens Advice Bureaux (CAB) helped 583,000 people<sup>68</sup> with debt problems, 278,000 people<sup>68</sup> with housing problems and 690,000 people<sup>36</sup> with benefits and tax credit problems. Demand for social welfare advice is large and growing, increasing by 23, 9 and 21 percent for debt, housing and benefits advice respectively last year<sup>68 36</sup>.
- 7.1.6 Spending patterns across all three areas of social welfare law have been very similar, which is to be expected as various sources claim that these problems cluster together<sup>4 20 36</sup>. For example, 19 percent of people with a welfare benefit problem also reported a housing problem (including six percent of homelessness) in the 2009 Civil and Social Justice Survey<sup>16</sup>. Sixteen percent of respondents with welfare benefits problems also reported experiencing

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mmm From Table 1, housing, debt and welfare benefit spending totals £121 million out of a total of £941 million, or 12.8 percent.

nnn Table 3 indicates that the scope savings will be £25 million (welfare), £13 million (housing) and £20 million (debt), a total of £58 million out of a total saving of £280 million (from changes in scope).

ooo A total of 292,000 people will be affecting according to the MoJ Impact Assessment from debt (105,000), housing (52,000) and welfare benefit (135,000) areas of law.

ppp £58 million in savings will be generated across housing (£13 million), debt (£20 million) and welfare benefit (£25 million).

debt problems. The connections are clear; for example, financial problems that may be caused or exacerbated by difficulty accessing welfare benefits, may in turn cause wider debt problems.

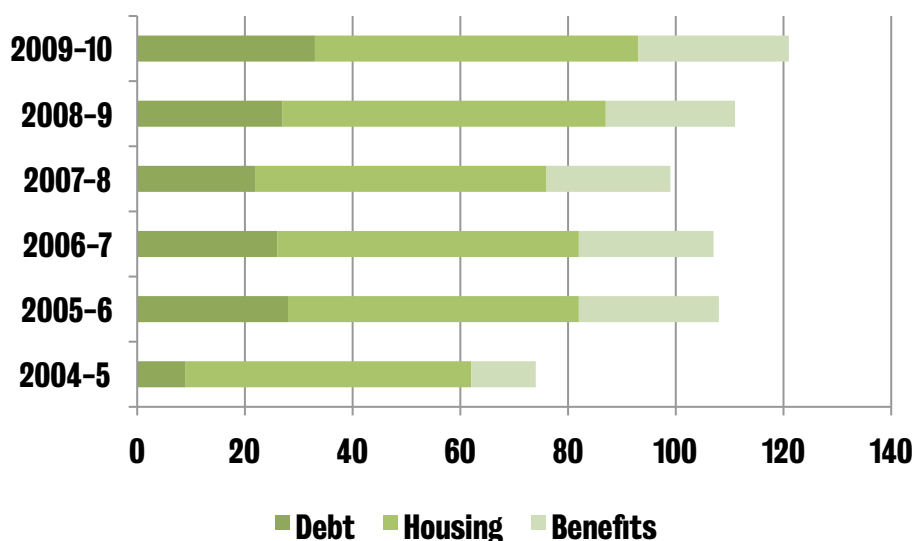
- 7.1.7 The impact of social welfare law problems on the individual are large and significant, in particular in relation to physical and mental health.<sup>36</sup> For example, of the respondents to the CSJS who had experienced a social welfare problem, approximately 30 percent reported a stress related illness, 8 percent physical ill health, 10 percent loss of income and 12 percent loss of confidence. As many as 60 percent received treatment, medication or counselling for their problems, which generates a significant cost to the state through the NHS.<sup>40</sup>
- 7.1.8 However, none of these costs were included in the the MoJ Impact Assessment. Further, no consideration is given to how alternative advice is to be funded given the likely rise in demand. These shortcomings are addressed in this section.

## *7.2 Key Facts and Figures*

- 7.2.1 As Table 1 indicates, social welfare law is a significant area of legal aid expenditure representing approximately 44 percent of civil case volume and 13 percent of civil legal aid expenditure. Housing law represents almost half of this expenditure but slightly more than a third of the case volume.
- 7.2.2 According to Figure 19, real expenditure in this area has increased by over 60 percent since 2004-5 to £121 million in 2009-10. Expenditure on housing problems has been relatively flat (increasing by 13 percent in real terms over the entire period), while real expenditure on debt advice has more than trebled, and on welfare benefits advice has more than doubled.
- 7.2.3 As Figure 20 demonstrates, this rising expenditure has been driven by rapidly increasing case volume. The number of housing and welfare benefit cases has almost doubled over the 2004-5 to 2009-10 period while the number of debt cases has increased by 150 percent.
- 7.2.4 Over this period average case cost has therefore fallen dramatically for housing law cases, from £558 in 2004-5 to £324 in 2009-10, as Figure 21 depicts. Following a steep rise in 2005-6, average case cost for debt and benefits cases has been falling steadily although there was a slight rise in 2009-10.
- 7.2.5 This increase in social law case volume (and therefore total expenditure) has likely been driven by an increase in the number of underlying social justice problems, combined by Labour's willingness to divert resources to meeting previously unmet demand.
- 7.2.6 The increase in expenditure on debt advice is likely driven by a greater demand for this service resulting from a general increase in the level of

household debt in the UK, as reported by the Office for Budget Responsibility<sup>69</sup>.

**Figure 19: Social Welfare Law Legal Aid Expenditure (£m) Trends (2009 prices)<sup>qqq</sup>**



7.2.7 Similarly, the increasing demand for housing law advice may be driven by the increasing number of mortgage possession orders, see for instance Figure 22. Trends in the domestic rental market suggest there is a growing need for legal advice and representation in rental housing issues. The Royal Institution of Chartered Surveyors reported in September that rental rates and demand, especially in London and the South-East of England, were rising<sup>70</sup>. This, combined with an increase in complaints against landlords, reported by Shelter<sup>71</sup>, will push more to rely on legal help with problems over tenancy agreements and the like.

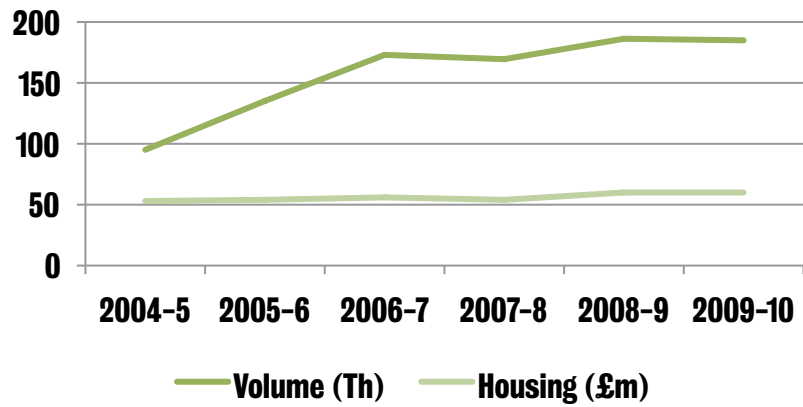
7.2.8 The increase in benefits case volume appears to be driven in turn by the numbers claiming welfare support, such as disability allowance, unemployment benefit, and so forth. Underlying these are increasing rates of poverty, ill-health, and income inequality<sup>72</sup>.

7.2.9 The Government contends that there are alternative sources of debt advice available. While this is true, the legal aid system provides funding for specialised legal advice relating to a more complex subset of problems. Thus cases tend to require legal aid subsequent to receiving generalised (non-legal) debt advice. For example, while 583,000 people received debt advice from CAB in 2009-10 only 56,990 people were funded by legal aid<sup>73</sup>.

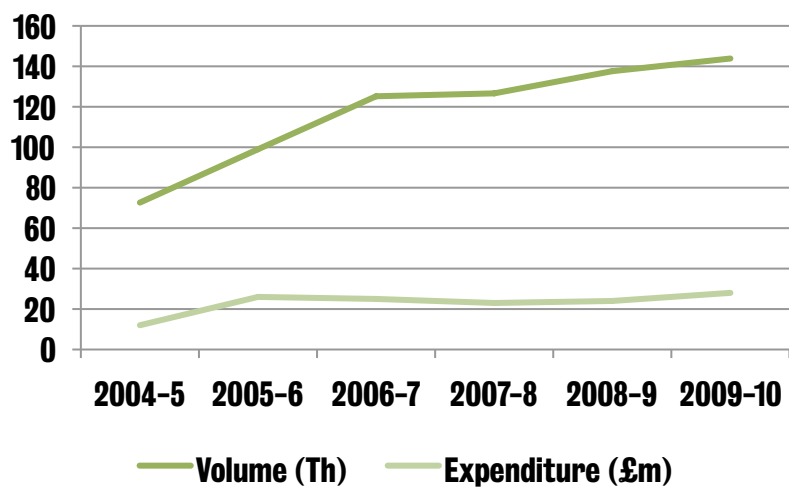
qqq Taken from Table 1

**Figure 20: Legal Aid Expenditure (£m) and Case Volumes (1,000s) in 2009 prices 2006-9**

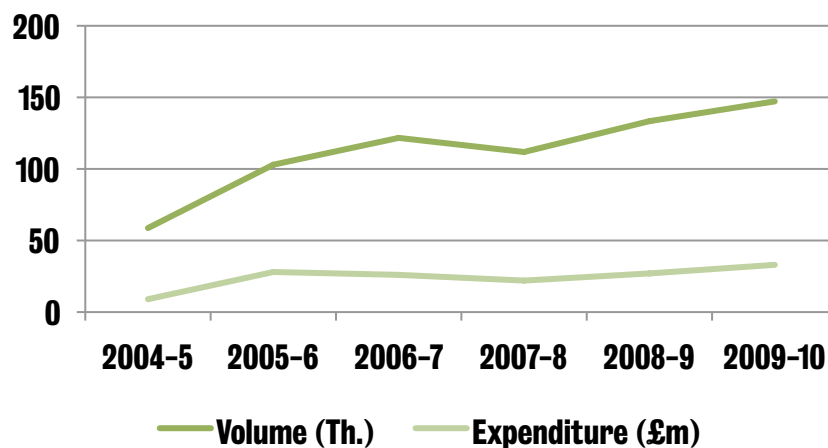
**(a) Housing Law**



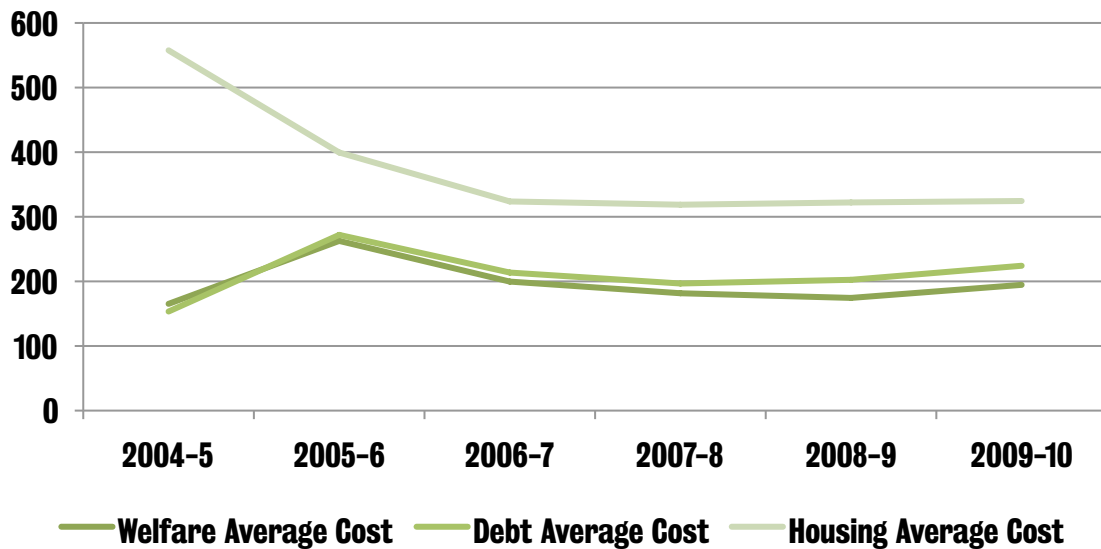
**(b) Welfare Benefits Law**



**(c) Debt Law**

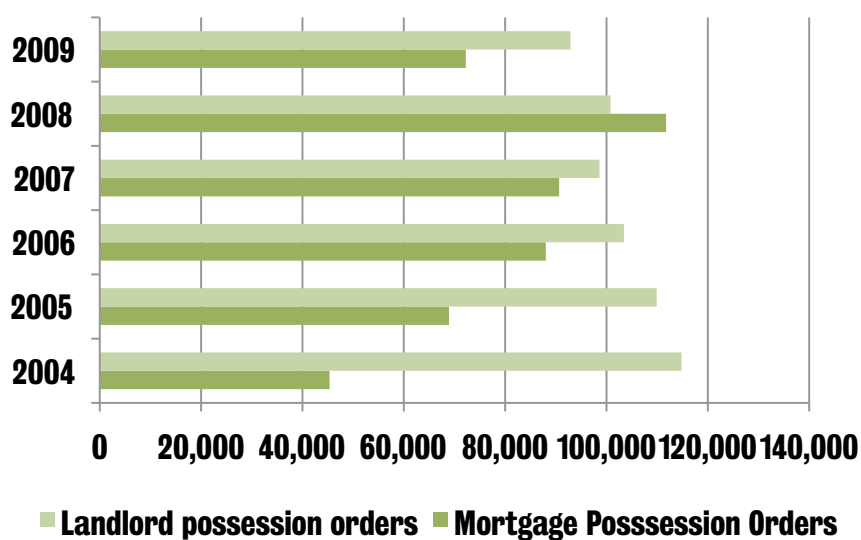


**Figure 21: Average Case Costs for Social Welfare Law 2006-9 (2009 Prices)**



7.2.10 Organisations that provide this alternative advice may also receive funding via the legal aid system. For instance, CAB receives 15 percent of its income from the LSC and £12.8 million (approximately 7 percent)<sup>rrr</sup> specifically for providing legal aid funded debt advice<sup>73</sup>. Without legal aid income these organisations may close or significantly reduce in size, reducing their capacity to fill the void created by the legal aid scope changes. CAB have stated that the loss of legal aid income would “*have a significant impact on the ability of the service to deliver not only legal aid, but also other client services.*”<sup>73</sup>

**Figure 22: County Court Possession Orders Granted 2004-9**



rrr CAB reports that £27 million is received from the LSC, representing 15 percent of their income. They also report income for debt advice from the LSC of £12.8 million. Legal aid funded debt advice therefore represents approximately 7 percent of total income.

## 7.3 *Costs to the Public Purse*

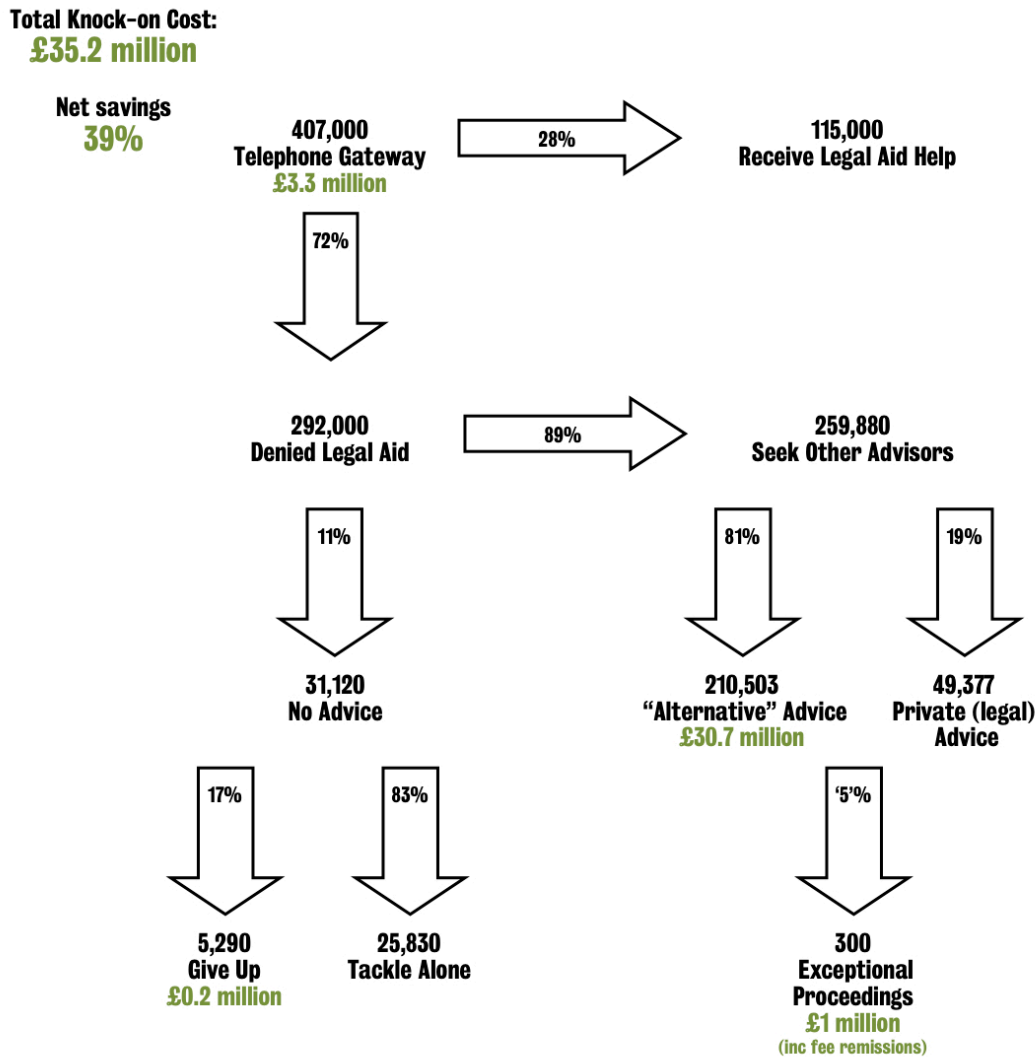
- 7.3.1 Due to the high case volume in social welfare law, there is likely to be a large knock-on cost to the state, although this is unlikely to be met by the MoJ directly. These costs are summarised in Table 9 and Figure 23, which follows the same template as the family law flow diagram (Figure 18).
- 7.3.2 Taken together, there were 407,000 social law clients who were supported by legal aid in 2009-10. If a telephone triage service is used to filter out those cases that no longer fall under the legal aid scope this could cost the MoJ over £3 million per annum.
- 7.3.3 According to MoJ projections 292,000 clients will no longer receive legal aid funded advice under the reforms. Based upon the responses to the CSJS data presented in section 4 an estimated 210,000 people will seek “alternative advice” at an approximate cost of £30.7 million. To put this into perspective, the Government continued funding the Financial Inclusion Fund for a further year which helps an average of 100,000 people a year with complex debt advice but costs £27 million.
- 7.3.4 As discussed in section 5, the knock-on cost of alternative advice is estimated at £146 per case<sup>sss</sup>. This cost could therefore fall (rise) if the true cost of advice is lower (higher), or if the Government contribution is lower (higher). Finally, if some or all of the 13 percent of respondents who answered ‘don’t know’ to what they would do when their advisor wasn’t available did nothing or tackled the problem alone then the alternative advice cost would consequently shrink, to a minimum of £26 million.
- 7.3.5 A sign that the Government accepts that their proposals will generate such a knock-on cost, and that they will have contribute to alternative advice provision, is the agreement to continue the Financial Inclusion Fund for another year, plus the agreement to consider the impact of the proposals on the advice sector more broadly. Moreover, £20 million has been earmarked for helping the sector improve the efficiency of providing advice. Based on the estimates here, funding of this magnitude may be needed in future years to fund advise agencies to fill the void left by the removal of legal aid for some clients.
- 7.3.6 A predicted 49,000 people will seek private advice based upon the results from section 4, although given the nature of many of the problems (indebtedness or access to welfare benefits) the proportion able to afford private legal advice is likely to be less than this figure. There is a risk therefore, that the knock-on cost for alternative advice could increase by a further £7.2 million, although this hasn’t been included in the summary figures.<sup>ttt</sup>

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sss This is based upon an estimated cost of £265 per client for face-to-face, complex debt advice, but where the Government is liable for only 55 percent.

ttt Of the 292,000 who no longer receive legal aid help under the reform roughly 27 percent (89% x 19%) of these clients would be prepared to pay for the advice they received, but these clients may not be able to afford

**Figure 23: Knock-on Costs Under Reforms to Social Welfare Legal Aid<sup>uuu</sup>**



7.3.7 The majority (83 percent) of the predicted 11 percent of people (31,120) who decide not to obtain advice following the removal of legal aid funding will tackle their problem alone. A small proportion of them (17 percent) will simply 'give up' – an estimated 5,290 people.

7.3.8 Using the methodology outlined in section 4, the estimated knock-on cost to the state of 'giving up' is over £200,000 per annum<sup>vvv</sup>. This is likely to be a significant underestimate. For example, Pleasance et al<sup>40</sup> estimate each

private advice. Further, alternative advice is usually offered free to service users. Therefore a further 49,377 people may seek alternative advice at an estimated average cost of £146 per case, or £7.2 million per annum.  
<sup>uuu</sup> Percentages or flows were identified in Section 4 following analysis of the Civil and Social Justice Survey. Absolute numbers are based upon the Government's prediction of 407,000 clients in 2009-10 being reduced to 292,000 as discussed in Section 3. The knock-on costs are as identified in Section 5.  
<sup>vvv</sup> Of these predicted 5,290 people who 'give up' when legal aid is unavailable, the estimated knock-on cost of welfare benefits problems is £43.50 per person, for housing problems £144 and for debt problems £40. This generates a weighted average cost of £45 per person. The methodology applied in previous sections to calculate these costs has been repeated.

debt problem costs the state £1,000. No evidence exists which helps to identify whether this cost is reduced following the receipt of legal aid (or other) advice, or on the differential outcomes by advisor on the costs to the state.

- 7.3.9 This is not a net effect because the government may be a net beneficiary of people giving up. For example, the state will save money if clients can no longer challenge (incorrect) decisions not to grant benefits. This is impossible to determine at this stage.
- 7.3.10 The knock-on costs of unfair outcomes which may occur when clients are unable to access professional legal advice is impossible to estimate. For example, clients who cannot access specialist legal advice may have worse outcomes than they would have had. Similarly, those who tackle their problem alone may do worse.
- 7.3.11 The Government estimates that up to 25 percent of housing legal representation cases may be re-admitted under the exceptional funding scheme<sup>15</sup>. At a current average cost of £2,542 for legal representation and £220 for legal help, this could generate a knock-on cost of £0.8 million per annum<sup>17</sup>. Additionally, HMCTS fee remissions for housing cases no longer funded by legal aid are estimated at £160,000 per annum.
- 7.3.12 As reported in Table 9, the total knock-on cost of these proposals within social welfare law is over £35 million per annum, generating a net saving of 39 percent of that predicted by the Government.
- 7.3.13 Should the Government's contribution to alternative advice be higher as discussed in 7.3.4 then this total cost could rise. Further, should clients favour alternative advice over private advice then this figure could rise by another £7.2 million to £42.4 million. This would generate a net saving of a little over a quarter (27 percent) of the Government's original prediction.

**Table 9: Summary of Knock-on costs for Social Welfare Law**

Description	Client No.	Unit	
		Cost	Total Cost
Telephone	407,000	£8	£3,256,000
Giving Up	5,290	£45	£238,050
Alternative Advice	210,503	£146	£30,733,438
Exceptional Proceedings	300	£2,762	£828,600
Fee Remissions			£160,000
<b>Total Cost</b>			<b>£35,216,088</b>

## 7.4 Summary

- 7.4.1 Over 400,000 people per annum benefited from legal aid advice for their social welfare legal problems in 2009-10. Several million people experience problems with debt, their housing, or access to state welfare benefits every year. By removing most social welfare law cases from the scope of legal aid, the Government predicts an annual saving of £58 million.
- 7.4.2 A key argument in support of the removal of social welfare law from scope is the well-established and diverse network of alternative advisors working in this area. Based upon the analysis of CSJS data, a significant proportion of clients no longer receiving legal aid help are predicted to seek the advice of these alternative advisors. Based upon an estimated knock-on cost of £146 per case to Government, this advice alone is expected to cost the Government around £31 million per annum.
- 7.4.3 This is the most substantial knock-on cost of the proposals and where the Government directly or indirectly provides funding for these organisations, this knock-on cost will be largely borne by the Government. In particular, HM Treasury will have lower tax receipts and departments such as the Department for Business, Innovation and Skills (debt advice), Department for Communities and Local Government (housing), Department for Work and Pensions (benefits) and local authorities may also have to increase (or maintain) expenditure in support of these activities.
- 7.4.3 The total knock-on cost of the changes in social welfare law scope is estimated at approximately £35 million, generating a net saving of 39 percent of that predicted.
- 7.4.5 The uncertainty in this estimate and the underlying assumptions were explained. Two particular areas are noteworthy: (i) it was not possible to estimate the cost of unfair outcomes resulting from not receiving specialised legal advice, and (ii) the costs of giving up are likely to be an underestimate. The literature on the benefit of receiving advice shows considerable benefits, which is suggestive that the cost of not receiving advice, and in particular of giving up would be great. However, there is no concrete evidence relating to the specific costs of giving up.

# 8. Clinical Negligence

## 8.1 Introduction

- 8.1.1 Litigants in clinical negligence cases have suffered as a result of medical and dental malpractice and seek financial damages. At the extreme end of the spectrum it can involve, for example, children who have suffered serious brain injury necessitating 24-hour care<sup>74</sup>.
- 8.1.2 An estimated one in ten people are victims of clinical negligence whilst being treated by the NHS every year<sup>75</sup>. Yet only 7,472 acts of assistance were funded by legal aid in 2009-10 including 3,446 acts of legal representation<sup>17</sup>; there is not a “*compensation culture*”, even if politicians have claimed that the fear of such a culture exists<sup>63 76</sup>.
- 8.1.3 Clinical negligence is a comparatively expensive area of law. For example, the NHS Litigation Authority (NHSLA) paid out over £787 million<sup>www</sup> in damages and legal costs in 2009-10 alone<sup>77</sup>. In the same year, the average case cost of legal representation met from public funds was £7106<sup>xxx</sup>. This high cost reflects the complexity and high stakes where medical error or malpractice has cost an individual their life or wellbeing. Clinical negligence cases typically take a long time to resolve. For instance, in 2009-10 the average duration for the 2,307 cases of legal representation paid out of legal aid funds was 34 months, and for the 1,488 cases met by opponents was 55 months<sup>17</sup>.
- 8.1.4 From Table 3, the proposal will save £10.5 million through the removal from scope of most clinical negligence law. These savings will be largely in legal representation saving twenty times the £0.5 million to be cut from spending on legal help.
- 8.1.5 A total of 2,500 people will be affected by the proposals, a reduction of 75 percent in the number of cases of legal help and a 65 percent fall (1,500 clients) in the number of cases receiving legal representation (see Table 3). Legal aid funded clinical negligence cases frequently involve children. For example, of the 1,263<sup>55</sup> legal aid funded cases which were ‘settled with

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www An important distinction exists between lump sum damages payments and periodical payments. As of 31 March 2011 the NHSLA is making periodical payments in 930 cases and has provisions for £2.4 billion in relation to these damages<sup>77</sup>. NHS Litigation Authority. Report and Accounts 2010. London: The Stationery Office, 2010..

xxx On an accruals basis, derived from LSC statistics based upon a total cost of £16.4 million for 2,307 cases. However, an average cost of £51,621 was met by opponents for 1,488 cases. 17. Legal Services Commission. Legal Services Commission: Statistical information pack for financial year 2009-2010. London: Legal Services Commission, 2010.

damages' in 2009-10, 36 percent<sup>yyy</sup> (449) were on behalf of a minor involving over £581 million in payments<sup>78</sup> (damages plus costs)<sup>zzz</sup>.

- 8.1.6 The main argument for removing clinical negligence from scope is that the costs can be met through Conditional Fee Arrangements (CFAs), commonly called 'no win, no fee' cases or 'success fee' cases. In this situation, the burden would be shifted to the defendant, usually the NHS, therefore not reducing the cost to Government. The success fee can be up to 100 percent of the legal base costs to offset the risk of losing cases.
- 8.1.7 However, the future of CFA is uncertain with the 2009 Jackson Review<sup>79</sup> recommending serious reforms to the system of litigation funding. The majority of the proposals in The Jackson Review are being implemented alongside the legal aid scope changes in *The Legal Aid, Sentencing and Punishment of Offenders Bill*. Lord Justice Jackson however argued that no changes should be made to the availability of – or eligibility for – legal aid funded litigation for clinical negligence, and his proposals were made on this basis.<sup>79</sup>
- 8.1.8 The Government recognises that, whilst clinical negligence claims seek financial reward, many are about “very serious issues”, and their litigants are often vulnerable<sup>1</sup>.
- 8.1.9 This section seeks to address the extent to which the proposed savings will be realised by analysing the knock-on costs to the public purse, and in particular to the NHS Litigation Authority, through the removal of clinical negligence from scope.

## 8.2 Key Facts and Figures

- 8.2.1 The volume of clinical negligence legal aid cases fell in the period 2004-2010, from 9,322 to 7,472 in terms of acts of assistance<sup>aaaa</sup>. However, real expenditure halved in the same period, from £32 million to £16 million.
- 8.2.2 Halving the expenditure on clinical negligence cases over the period resulted in a dramatic fall in the proportion of civil legal aid spent in this area from 3.34 percent to 1.70 percent.
- 8.2.3 As Figure 24 shows, clinical negligence cases are very expensive: 7,472 acts of assistance cost £16 million, an average cost to the state of £2,286 or if split between legal help and legal representation this average cost is £294 and

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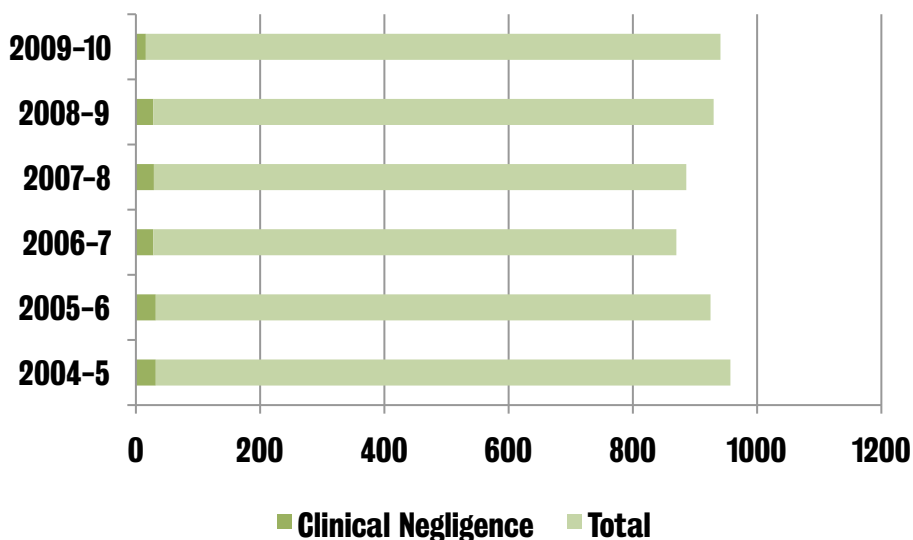
yyy The Government reported this as 33 percent based upon NHSLA data showing a total of 446 legal aid funded claims made by minors in 2009-10 against a total of 1,341 legal aid funded claims that year.<sup>78</sup> House of Commons. House of Commons Written Answers (Simon Burns) Debate 08/06/11 c359W & c360 W. 2011.  
zzz £106.5 million paid to 349 clients that had cases settled with damages and closed in 2009-10, and a further £475.4 million paid to 100 clients settled as periodical payments. These periodical payments have been summed as though they were paid in a lump sum. This is how they were reported.<sup>78</sup> Ibid. All payments include damages and costs.

aaaa This includes legal help, legal aid representation met from public funds and legal aid representation paid for by public funds but ultimately met by opponents.

£7106. However, the majority of the costs were actually paid by the “opponents.” In 2009-10, the total cost of legal aid funded, completed cases was over £93 million, but only £16.4 million came from public funds<sup>bbbb</sup> - over 80 percent of the total cost was borne by the other party.

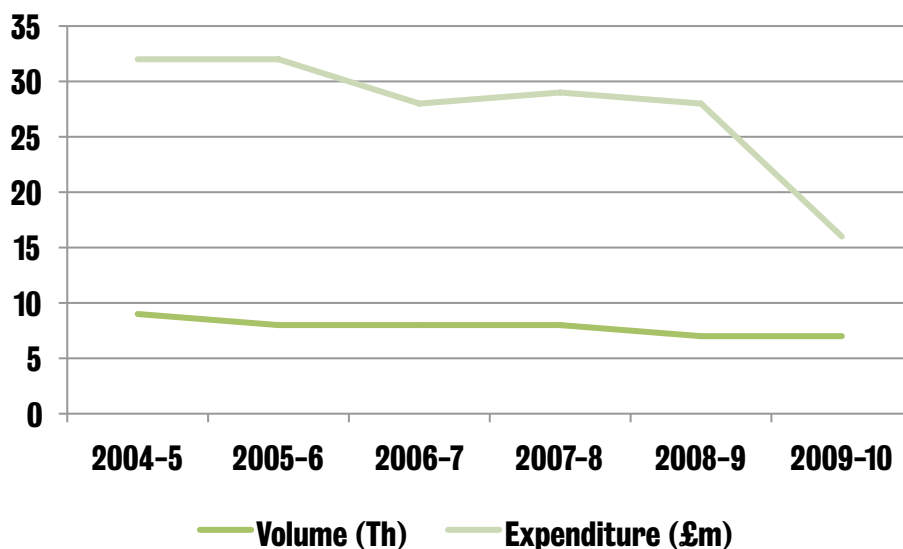
- 8.2.4 The falling expenditure figures for clinical negligence are therefore driven, at least in part, by an increasing proportion of the costs being recovered from the other party. Another explanation is the growing awareness of CFA among the general public (both via media coverage and provider advertising), which could be attracting potentially legal aid eligible clients.
- 8.2.5 The NHSLA<sup>80</sup> recorded an increase in clinical claims of almost 32% in 2010-11 compared to 2009-10. Figures such as this have generated the label of a ‘compensation culture,’ which is widely propagated<sup>81</sup>. However, the fall in the number of legal aid funded clinical negligence cases illustrated in Figure 25 undermines any claim that this is being driven by the availability of legal aid funding.
- 8.2.6 Changes to litigation costs are also being packaged (in the same Bill) as changes to legal aid scope. The Jackson proposals will reform CFA (‘no win, no fee’) that the Government has suggested would fill the gap left by the removal of clinical negligence from scope. At the same time Lord Justice Jackson’s proposals are based upon there being no change to the availability of legal aid for litigation cases: *“I stress the vital necessity of making no further cutbacks in Legal Aid availability or eligibility.”*<sup>82</sup>

**Figure 24: Clinical Negligence Legal Aid Expenditure (£m) Relative to Total Civil Legal Aid (2009 prices)<sup>cccc</sup>**



<sup>bbbb</sup> Data taken from Tables CLS8 and CLS9 from LSC 2009-10 Statistical Pack.17. Legal Services Commission. Legal Services Commission: Statistical information pack for financial year 2009-2010. London: Legal Services Commission, 2010.  
<sup>cccc</sup> Taken from Table 1

**Figure 25: Clinical Negligence Legal Aid Expenditure (£m) and Case Volumes (1,000s) in 2009 prices**



8.2.7 The changes to litigation costs are intrinsic to the analysis of the impact of the changes to legal aid scope because exemptions have been made for clinical negligence cases. For example in respect to retaining the recoverability of After The Event (ATE) insurance premiums for expert reports in clinical negligence cases. It makes it very difficult to separate the impact of the legal aid scope changes and the changes to the fee arrangements.

### *8.3 Costs to the Public Purse*

8.3.1 The Government predicts saving £10.5 million by removing legal aid support for clinical negligence cases. The knock-on cost of removing legal aid funding for clinical negligence is large and easily outweighs this potential saving. These costs are summarised in Table 10.

8.3.2 These additional costs will most likely be borne by the Department of Health via the NHSLA.

8.3.3 The cost of the telephone triage service is estimated at approximately £27,000 per annum. As in the case of family law, some system will be required for filtering out legal aid fundable cases from those no longer under scope and for directing enquirers to suitable advisors. Overall, given the small number of clients affected this cost is insubstantial.

- 8.3.4 A major source of knock-on cost will be the ATE premium for expert fees and reports, which remains recoverable for clinical negligence cases<sup>dddd</sup>. Lord Jackson recently commented that this was: *“the most expensive and inefficient mechanism which it is possible to devise in order to achieve the policy objective.”*<sup>82</sup> Given the frequently complex nature of the injuries sustained, the difficulties in ascertaining causation, and the need to assess the long term impact or care needs of claimants, expert reports are usually in-depth, numerous and therefore expensive. Total ‘disbursements’ (such as expert reports) are strongly associated with the stage that the case proceeds to before being settled<sup>49</sup>.
- 8.3.5 AvMA have reported<sup>cccc</sup> that the cost of this premium would be in the region of £10-15,000 per case<sup>83</sup>, based upon the expert advice of a legal insurance specialist and the head of clinical negligence at a major law firm<sup>84</sup>. This premium would not have been required under legal aid funding as such disbursements would have been covered by the LSC, therefore it is an additional cost of the scope changes, and will be incurred by the NHS for the proportion of cases that it unsuccessfully defends. This could generate a knock-on cost of £12.9 million per annum for the NHSLA.<sup>ffff</sup>
- 8.3.6 A key part of the Jackson reforms are to make ‘success fees’ recoverable out of the damages awarded (up to the lesser of 25 percent of the award or 100 percent of the legal base cost<sup>79</sup>), but to increase the damages paid by 10 percent to fund this. Thus while the MoJ will generate savings of £10.5 million by removing much of clinical negligence law from scope, it will pass this cost onto the NHS by increasing the amount it has to pay in damages on *all* successful cases not only those no longer funded by legal aid. While the NHSLA no longer has to pay success fees in addition to the claimant’s base legal fees for cases funded by CFA, it never paid success fees to the LSC. Therefore, both cases that remain funded by legal aid and cases that are no longer funded will generate knock-on costs. This would have been avoided if these cases were retained in scope and legal aid cases were exempt from the 10 percent damages increase. These knock-on are estimated to be £15.6 million based upon 2009-10 data from the NHSLA<sup>gggg</sup>.

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dddd Clause 43 of the Legal Aid, Sentencing and Punishment of Offenders Bill will introduce a new provision, Section 58C, into the Courts and Legal Services Act 1990 imposing a statutory bar on ATE premium recoverability with the limited exception of expert report fees in clinical negligence cases.

eeee Original estimates for ATE premiums supplied by AvMA were £5-10,000<sup>32</sup>. Action against Medical Accidents. Press Release: Ken Clarke’s legal aid cuts would cost more as well as damage the NHS, patients’ rights and patient safety. London, 2011..

ffff 1,500 cases will no longer receive legal representation within the area of clinical negligence based upon 2009-10 data. The success rate with damages was 69 percent for legal aid funded cases in 2009-10 or 1,035 potential cases resulting in a potential knock on cost of £12.9 million using an average ATE cost of £12,500 per case. Using the range provided generates knock-on costs of £10-15.5 million per annum. 55. House of Commons. House of Commons (Mr Simon Burns) Written Answers 08/12/10: c342W, 2010. This is based upon the assumption that the cases which continue to receive legal aid funding do not use ATE insurance and therefore do not attempt to recover this from the defendant.

gggg Total (clinical negligence) damages paid out by NHSLA in 2009-10 were £556.7 million which would increase by 10 percent or £55.7 million under the proposed damages uplift<sup>85</sup>. NHS Litigation Authority. Supplementary written evidence from the NHS Litigation Authority (CAL 11A). *Health Select Committee*. London: House of Commons, 2010. Of these, 28 percent funded via legal aid and therefore did not need the

- 8.3.7 According to the CSJS some clients will “give up” seeking justice when their first choice of advisor is no longer available. This may reduce the number of people successfully claiming for clinical negligence. Therefore, the knock-on costs generated by the 10 percent increase in damage payments and the recoverability of ATE premiums may be an overestimate. This will occur if people are denied access to justice as a result of the scope changes. If there is an increase in the number of claimants giving up, substantial knock-on costs could be generated such as increased use of welfare benefits, medical treatment and lost output. For example, where a parent has to become a permanent carer for a disabled child.
- 8.3.8 Alternatively, clients that may have been prevented from bringing an unmeritorious claim by the screening process that legal aid provides may now bring spurious actions against the NHS. Providing that these cases are genuinely spurious they should not succeed and therefore should not generate these particular knock-on costs. They will however increase the NHSLA’s defence costs, which would no longer be recoverable under the proposed system of Qualified One-way Cost Shifting.
- 8.3.9 Without further information, and to avoid “double counting” the knock-on costs for giving up or for spurious claims have not been estimated. Therefore the implicit assumption is that all cases which were formerly supported by legal aid would continue their claim under the reformed “no win, no fee” arrangements currently under consideration by Parliament. A further assumption is that the success rate is the same as at present, and finally that no additional unmeritorious cases are generated.

**Table 10: Summary of Knock-On Costs of Clinical Negligence**

<b>Description</b>	<b>No. of clients</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Telephone Gateway	3,333 <sup>hhhh</sup>	£8	£26,664
ATE Claims	1,035	£12,500	£12,937,500
10% Damage Premium	1,592 <sup>iiii</sup>	£9,791	£15,588,000
<b>Total</b>			<b>£28,552,164</b>

additional 10 percent in damages. This extra cost of £15.6 would be reduced to £10.1 million if the Government did not increase the damages by 10 percent for cases, which will remain in scope.<sup>55</sup> House of Commons. House of Commons (Mr Simon Burns) Written Answers 08/12/10: c342W, 2010.

hhhh 2,500 will no longer receive legal aid advice and 1,500 will longer receive legal representation. It is assumed that these 1,500 would have first receive legal help therefore the total number of clients affected is 2,500. This represents 75 percent of the estimated number of clients – 3,333.

iiii In 2009-10 an estimated 2,308 clients received legal aid representation. At a success rate of 69 percent 1,592 clients should have received damages totalling £156 million as 28 percent of claims were by legal aid funded clients. The increase in the damages by 10 percent generates a total cost of £15.6 million or an average cost of £9,791.

## 8.4 Summary

- 8.4.1 Relatively few people benefit from legal aid support for their clinical negligence problems, but the impact of these problems can be large and the damages awarded significant. For example, in 2009-10, the NHSLA paid out over £556 million in clinical damages including an estimated £156 million to legal aid funded clients.
- 8.4.2 Given that the changes to legal aid scope for clinical negligence cases have been packaged with changes to litigation funding, it is difficult to separate the effects of the two proposals. It is evident that a number of the changes to the original Jackson proposals resulted from the removal of much of clinical negligence from scope. For example the recoverability of ATE premiums.
- 8.4.3 Overall, the knock-on costs are estimated at almost three times the predicted savings of £10.5 million per annum. Based upon this analysis the Bill would generate a net loss of approximately £18 million per annum for the Government which would largely be borne by the NHS through the NHSLA.
- 8.4.4 While opposition from lawyers, patient representatives and (ATE) insurers may be expected, it is important to note that both Lord Justice Jackson and the NHSLA<sup>41 56 82</sup> have both registered opposition to the removal of legal aid for clinical negligence. Based upon the analysis presented in this section, there is certainly no economic justification for these changes.

# 9. Summary & Conclusions

## 9.1 *The Reforms & Research*

- 9.1.1 The MoJ proposes to save up to £450 million<sup>jjjj</sup> per annum from the legal aid fund.<sup>5</sup> These proposals are currently before Parliament in the *Legal Aid, Sentencing and Punishment of Offenders Bill*.
- 9.1.2 The savings will be achieved through reforms to the scope of legal aid (what cases are covered), financial eligibility for legal aid (who is covered and what they have to contribute), and legal aid fees (the amount paid to lawyers and experts). In addition, the introduction of a Community Legal Advice telephone helpline as the primary gateway for many civil legal aid services and the introduction of a Supplementary Legal Aid Scheme (SLAS) will also realise minor savings.
- 9.1.3 The most significant savings, an estimated £280 million (gross), will be made by changing the scope of legal aid by removing many cases from coverage.
- 9.1.4 This report considered the consequential cost to the public purse of the Government's changes to the scope of legal aid, focusing on family law, social welfare law and clinical negligence. Together they represent 85 percent of the Government's proposed scope savings, or approximately £240 million per annum.
- 9.1.5 Using data including the Civil and Social Justice Survey and the Legal Services Commission data on legal aid outcomes, this research attempted to map the behavioural responses to the removal of legal aid scope.
- 9.1.6 The central aim was to identify the likely drivers of unintended costs and where possible the magnitude of these knock-on costs to the public purse. Ultimately, a key focus was to evaluate the economic justification for the reforms.

## 9.2 *Unintended Consequences: Key findings*

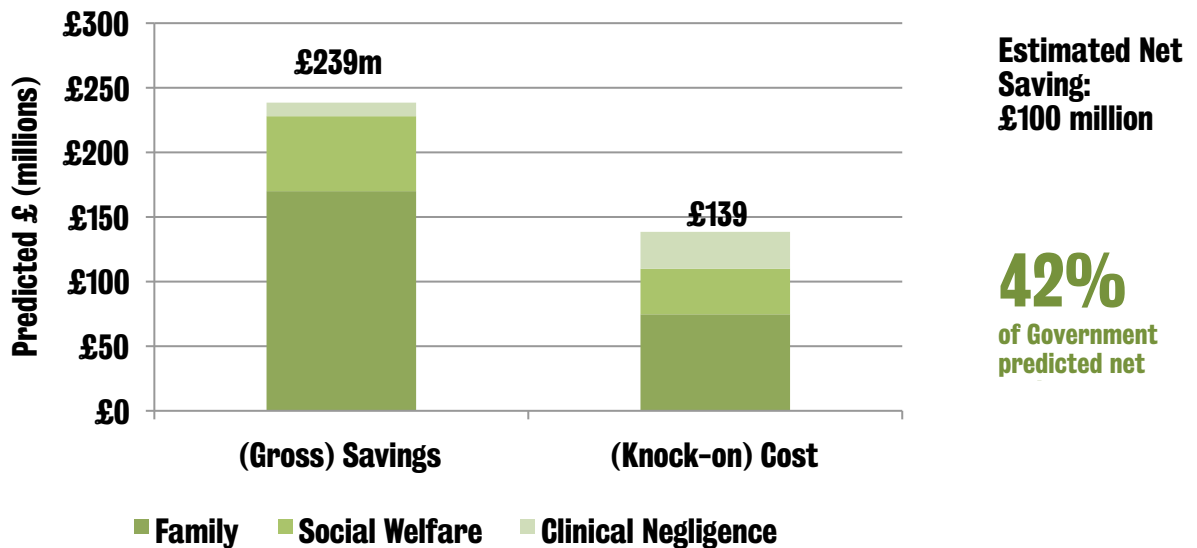
- 9.2.1 Figure 26 illustrates the overall finding of the report. Based upon the assumptions outlined in the report, total knock-on costs across the three areas of law could be £139 million per annum. Given that many costs could not be estimated because of a lack of data the overall picture is not encouraging.

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jjjj £450 million saving is made up for £270 million (net of mediation) from scope changes, £160 million from fee reforms (including £100m criminal, £50m civil/family and £10m expert fees), £10 million from eligibility changes, £7 million from the Supplementary Legal Aid Scheme, and £1-2 million from telephone advice. For full details see 7. Ministry of Justice. Impact Assessment: Cumulative Legal Aid Reform Proposals. London, 2011.

9.2.2 At this level of knock-on cost, the annual net saving to the public purse would be £100 million, or 42 percent of the net saving predicted in the Government’s Impact Assessment for these areas of law. In clinical negligence the costs may outweigh the savings based upon the findings presented in this report.

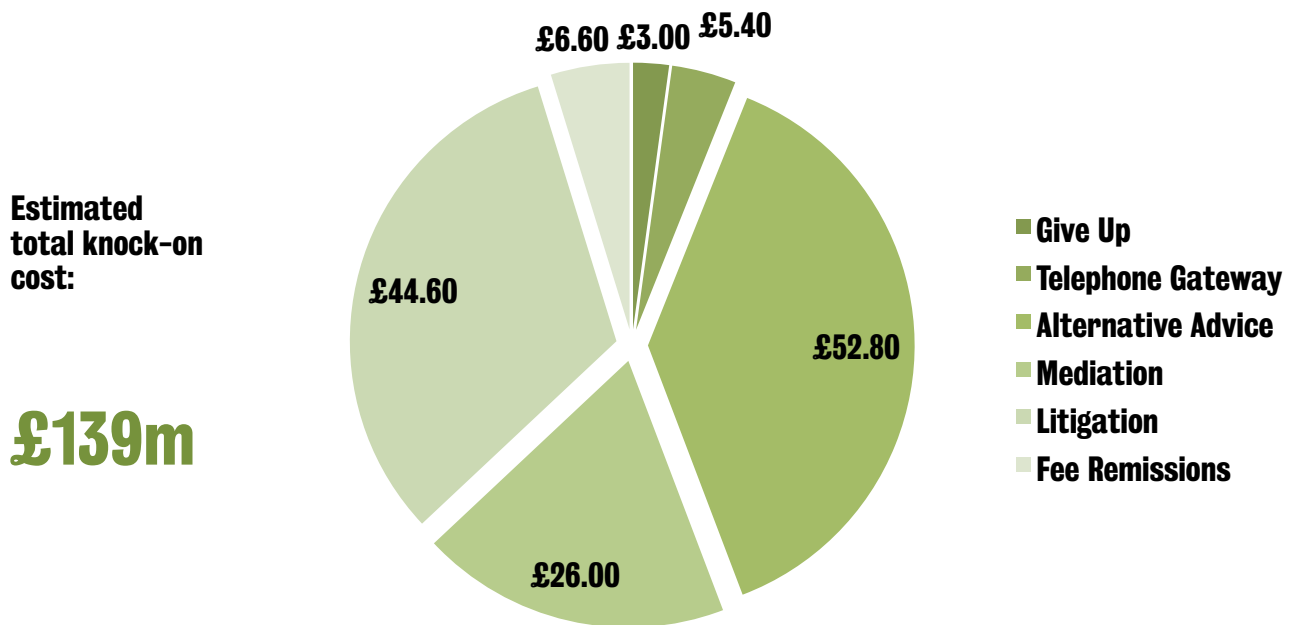
**Figure 26: Government Savings against Estimated Knock-on Cost (£ millions)**



9.2.3 Figure 27 depicts the key cost areas identified in the report. Mediation is the single largest area of cost with an estimated knock-on cost of £42 million per annum (net expenditure £16 million). In family law, the Government predicted an increase of 4-10,000 mediation cases per annum from a potential ‘demand’ of 210,000 clients no longer receiving family legal aid. However, this research estimates a doubling in the numbers of mediation cases.

9.2.4 Litigation costs are also predicted to increase by £45 million per annum. This includes an increase in clinical negligence costs of approximately £28 million per annum for the NHS due to increased cost of After The Event insurance for expert witnesses (£13 million) and a proposed 10 percent increase in damage payments to cover legal costs (£15.6 million). A further £7 million per annum increase in court costs are predicted based upon an increased likelihood of self-representation in family law cases, and almost £9 million from cases potentially eligible for the exceptional funding scheme. Almost £7 million may be lost from HMCTS in the form of court fee remissions for previously legal aid funded client

**Figure 27: Key Knock-on Costs (2009 £ millions)**



- 9.2.5 An increased utilisation of alternative advice services is likely to increase the cost to other Government departments. The report estimates this cost to be over £53 million per annum. This impact can already be observed. For example, the Government has announced that the £27 million Financial Inclusion Fund, which provides debt advice for 100,000 clients per annum, will continue for a further year despite plans to close the scheme this year. Over half of which will be shouldered by HM Treasury in the form of reduced tax receipts.
- 9.2.6 The unavailability of legal aid will cause some people to give up on their problem. The true cost of giving up on a justiciable problem and the cost of an unfair outcome (e.g. the increased reliance on state benefits of a divorcee unable to obtain a fair proportion of a former partner's pension) could not be accurately estimated but best available data leads to a figure of approximately £3 million per annum for giving up alone. This is likely an underestimate.
- 9.2.7 The final significant area of cost is the telephone gateway, a system to triage eligible and ineligible cases following the scope changes, and to route enquiries to alternative sources of advice. The cheapest solution proposed by Government is the use of a telephone gateway at an estimated cost of £8 per call.

## 9.3 Overall Impact of Reforms

- 9.3.1 The total (gross) savings from the scope changes were estimated to be £280 million. With respect to the areas of law investigated by this report, almost £240 million (gross) of savings per annum were predicted to be generated by the reforms. A knock-on cost of £10 million was predicted by the Government resulting from an additional 10,000 (maximum) cases of mediation each year.
- 9.3.2 Numerous arguments against the reforms have been made and the consultation exercise attracted over 5,000 responses, which the Government admitted were mostly negative<sup>63</sup>. The remit of this report was to focus on the claim that the reforms would generate a large saving from the MoJ budget that could contribute towards the Government-wide fiscal deficit. Figure 26 casts doubt on the ability of the proposals to deliver on this aim.
- 9.3.3 Whilst uncertainty exists, the total knock-on costs predicted in this report are in the region of £139 million compared to a gross saving of £239 million.
- 9.3.4 It is important to remember that numerous costs could not be estimated due to a lack of data. Therefore despite uncertainties over the costs included in the report it is likely that the total knock-on cost is an underestimate of the true costs.
- 9.3.5 These figures suggest a net saving in the region of £100 million per annum over the areas of law covered by the report. At approximately 42 percent of the predicted savings, this level of saving would make an insignificant contribution to the total spending cuts of £81 billion per annum that the Government plans to implement by 2014-15<sup>86</sup>. In the context of wider policy changes these substantial changes to the legal aid system will generate insubstantial savings. For instance, the recent switch from index linking benefits and public sector pensions using the Retail Price Index (RPI) to the Consumer Price Index (CPI) is estimated to save £2.2 billion per annum from 2012-13<sup>87</sup>. Further, using the average CPI for the six months to September 2011 rather than the CPI at the end of September 2011 could save £1.4 billion<sup>kkkk</sup>.

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kkkk The IFS calculated that the sharp rise in inflation to 5.2 percent (CPI at September 2011) would add £1.8 billion to the welfare benefits budget in comparison to previous forecasts (*ibid*). They estimated that freezing benefits would save £10 billion, increasing them in line with the average wage increase (of 2.5 percent) would save £5 billion, and using a six-month average CPI figure would save £1.4 billion (*ibid*). This is not to suggest that this is a good policy nor that the Government is even considering this policy, but it provides a comparison that demonstrates that the savings generated by changing the scope of legal aid are relatively small. Further, the savings generated by averaging over the previous six months inflation figures is particularly large given the recent dramatic rise in the inflation rate. However, the substantial annual saving realised by switching from RPI to CPI is large and persistent.

- 9.3.6 The impact would be worse in the short-run as the Government is budgeting additional spending during the transition period of £22 million<sup>lll</sup>, plus it will continue to fund the £27 million Financial Inclusion Fund for a further year<sup>mmmm</sup>.
- 9.3.7 This report focused on three broad areas of law but other areas of law are also facing reductions in legal aid funding. These areas are also likely to generate knock-on costs.

## *9.4 Conclusions & Recommendations*

- 9.4.1 This report considered the knock-on costs to the public purse of removing substantial areas of law from the scope of legal aid support. Family law, social welfare law and clinical negligence were the focus on this report as they represent 85 percent of the total savings predicted, or almost £240 million per annum.
- 9.4.2 The research in this report is based upon the results of a nationally representative household survey, a sample of the population. Some of the responses used in this analysis relate to hypothetical questions. Most of the costs used in this report are also estimates or average costs. Therefore the findings in this report are subject to uncertainty.
- 9.4.3 The Government's savings predictions are also based on the same level of uncertainty.
- 9.4.4 Based upon the assumptions and analysis outlined in this report, the net saving could be significantly less than half of the Government's prediction. This undermines the Government's economic justification for the changes, especially given the numerous costs that could not be estimated in this study. Given the largely negative response to the consultation exercise, the Government should re-evaluate the justification for the legal aid scope changes.
- 9.4.5 A key finding of this report is the lack of robust data on numerous elements of the civil justice system, for example on the costs and productivity of the family courts. This has been remarked upon in the Family Justice Review and acknowledged by the Government<sup>54 67</sup>. Better data on the civil justice system would be incredibly useful both for the justice system, researchers and to inform policymaking.

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lll £1 million is being allocated for the telephone gateway procurement process, plus an additional £1 million to market the service. In addition the Justice Secretary, during the second reading of the Legal Aid, Sentencing and Punishment of Offenders Bill, announced that £20 million would be available to alternative advice organisations (e.g. CAB) to improve their efficiency. This was a one year 'transition' fund but with a commitment to consider extending this into the future.<sup>88</sup> House of Commons. Second Reading of Legal Aid, Sentencing and Punishment of Offenders Bill 29 June 2011 c994: House of Commons, 2011.

mmmm As discussed in Section 5, this scheme was due to close but has been continued in the response to concerns about the ability of advice providers to handle the increase in service demand while facing an income reduction from the reform of legal aid.

- 9.4.6 Releasing the underlying assumptions and analysis which has been used to inform the projections in the Government's Impact Assessments would be particularly useful. It would increase transparency and allow the public to understand the question the basis of these assumptions. In particular, it is still not clear how the MoJ arrived at its estimation of an additional 6-10,000 mediation cases per year.
- 9.4.7 Finally, while there is uncertainty in the behavioural responses to the legal aid changes this report has identified the potential for significant knock-on costs. It is therefore imperative that the Government addresses the Justice Select Committee's request for a full and proper appraisal of the knock-on costs *before* these changes are enacted.



# 10. References

1. Ministry of Justice. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10. London: The Stationery Office, 2010.
2. Hurndall A. Legal aid and sentencing bill – Tuesday 21 June 2011. *The Butterworth and Bowcott on Law Blog*. London: The Guardian, 2011.
3. Doust LT. Foundation for Change: Report Of The Public Commission on Legal Aid in British Columbia: Public Commission on Legal Aid in British Columbia, 2011.
4. Justice Select Committee. Government's proposed reform of legal aid: Third Report of Session 2010-2011. London: The Stationery Office, 2011.
5. Ministry of Justice. Impact Assessment: Cumulative Legal Aid Reform Proposals. London: Ministry of Justice, 2010.
6. MoJ. Cumulative Legal Aid Reform Proposals Impact Assessment. 2011.
7. Ministry of Justice. Impact Assessment: Cumulative Legal Aid Reform Proposals. London, 2011.
8. Bowles R, Perry A. International comparison of publicly funded legal services and justice systems. *Ministry of Justice Research Series 14/09*. London: Ministry of Justice, 2009.
9. O'Hara M, Shepherd J. Millions meant for research projects withdrawn. *The Guardian* 2011.
10. Department for Business Innovation and Skills. Government Response to the House of Lords Science & Technology Select Committee Report "Setting Priorities for Publicly Funded Research". London: The Stationery Office, 2010.
11. National Audit Office. Ministry of Justice: Financial Management Report. Report by the Comptroller and auditor General, HC 187 Session 2010–2011. London: National Audit Office, 2010.
12. Public Accounts Committee. Report on Ministry of Justice Financial Management. London: House of Commons, 2011.
13. Mills H, Silvestri A, Grimshaw R. Police Expenditure, 1999-2009. London: Kings College London: Centre for Crime and Justice Studies, 2010.
14. Ministry of Justice. Consultations on Legal Aid, Sentencing and Punishment of Offenders Bill - Annex A: Scope. London, UK: Ministry of Justice, 2011.
15. Ministry of Justice. Reforms of Legal Aid in England and Wales Impact Assessment Annex A: Scope. London: Ministry of Justice, 2011.
16. Pleasence P, Balmer N, Patel A, Denvir C. Civil Justice in England and Wales 2009: Report of the 2006-9 English and Welsh Civil and Social Justice Survey London: Legal Services Commission, 2010.
17. Legal Services Commission. Legal Services Commission: Statistical information pack for financial year 2009-2010. London: Legal Services Commission, 2010.
18. Master of Rolls. Guideline Hourly Rates: The Judiciary of England and Wales, 2010.
19. Miller R. (Per. Comm. Email): Private Divorce Costs. In: Cookson G, editor. London, 2011.
20. Pleasence P, Balmer N, Buck A, Smith M, Patel A. Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems. In: Pleasence P, Buck A, Balmer N, editors. *Transforming lives: law and social process*. London: The Stationery Office, 2007.

21. Duoborg R, Hamed J. Estimates of the economic and social costs of crime in England and Wales: Costs of crime against individuals and households 2003/4. *Online Report* 30/05 2005.
22. Baksi C. Family mediation pilot achieves mixed results. *Law Society Gazette* 2010.
23. Legal Services Commission. Family Mediation Contract Guidance Q&A. London: Legal Services Commission, 2010.
24. Impact Assessment: Cumulative Legal Aid Reform Proposals. In: Justice Mo, editor. London, June 2011.
25. Ministry of Justice. Impact Assessment: Legal Aid Reform: Provision of Telephone Advice. London: Ministry of Justice, 2010.
26. National Audit Office. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10: NAO response. London: National Audit Office, 2011.
27. Association of Lawyers for Children. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10: Response of the Association of Lawyers for Children. East Molesey: Association of Lawyers for Children, 2011.
28. The Free Representation Unit. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10: The Free Representation Unit Response. In: Tulloch C, Baldwin E, editors. London: The Free Representation Unit, 2011.
29. Public Bill Committee. Legal Aid, Sentencing and Punishment of Offenders Bill: Clause 9. 8th September 2011, 2011.
30. Citizens Advice Bureau. Breaking up is Never Easy. London: Citizens Advice Bureau, 2011.
31. Advice Services Alliance. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10: Advice Services Alliance response: Advice Services Alliance, 2011.
32. Action against Medical Accidents. Press Release: Ken Clarke's legal aid cuts would cost more as well as damage the NHS, patients' rights and patient safety. London, 2011.
33. BBC News. Reprieve granted to debt advisers. 12 February 2011 ed: BBC, 2011.
34. Citizens Advice Bureau. Annual Reports and Accounts 2009/10. London: Citizens Advice Bureau, 2010.
35. Clarke K. House of Commons Debate, 29th June 2011. In: Commons Ho, editor. 29 June 2011 ed. London: The Stationery Office, 2011.
36. Citizens Advice Bureau. Towards a Business Case for Legal Aid. *Legal Services Research Centre 8th International Research Conference*. London, 2010.
37. Shelter. Annual Report 2010/11. London: Shelter, 2011.
38. National Audit Office. Business, Innovation and Skills: Helping over-indebted consumers. London: House of Commons, 2010.
39. Her Majesty's Revenue & Customs. Gift Aid. London, 2011.
40. Pleasence P, Buck A, Balmer N, Williams K. A Helping Hand: The Impact of Debt Advice on People's Lives. *LSRC Research Papers*. London: Legal Services Research Centre, 2007.
41. Public Bill Committee. Legal Aid, Sentencing and Punishment of Offenders Bill 2010-11 - Committee debate - 8th sitting. London: The Stationery Office, 2011.
42. Hunter R. Adversarial mythologies: policy assumptions and research evidence in family law. *Journal of Law and Society* 2003;30(1):156-76.

43. Williams K. Litigants in person: a literature review. In: Justice Mo, editor. London: MInistry of Justice, 2011.
44. Moorhead R, Sefton M. Litigants in person: Unrepresented litigants in first instance proceedings. *DCA Research Series 2/05*. London: Department for Constitutional Affairs, 2005.
45. Moorhead R. Litigants in Person: what the research actually says. In: Moorhead R, editor. *Lawyer Watch*, 2010.
46. Bowcott O. Legal aid cuts will cause courts logjam, warn top judges. *The Guardian* 2011 Tuesday 25th October.
47. Rosenbloom JD. Exploring methods to improve management and fairness in pro se cases: a study of the pro se docket in the southern district of New York. *Fordham Urban Law Journal* 2002;30(305).
48. Dewar J, Smith BW, Banks C. Litigants in person in the Family Court of Australia: Research Report No. 20. *Family Court of Australia Research*. Report No. 20 ed: Family Court of Australia, 2000.
49. Catherine Hopkins. (Per. Comm. Email): The Cost of Clinical Negligence Cases. In: Deputy CEO A, editor, 2011.
50. The Council of Her Majesty's Circuit Court Judges. Response to the Consultation Exercise. 2011.
51. Matthews S. Making the Case for the Economic Value of Legal Aid - Briefing Note: The Canada Bar Association (British Columbia branch), 2011.
52. PriceWaterhouseCoopers. Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law: National Legal Aid, 2009.
53. Ministry of Justice. Family Matters - Annual Court Statistics, 2010.
54. Family Justice Review. Final Report - November 2011. London: Ministry of Justice, 2011.
55. House of Commons. House of Commons (Mr Simon Burns) Written Answers 08/12/10: c342W, 2010.
56. Baksi C. NHS lawyers warned government that reforms would escalate its costs. *Law Society Gazette*. 11 July 2011 ed, 2011.
57. Welsh Women's Aid. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10: Welsh Women's Aid Response: Welsh Women's Aid, 2011.
58. Gingerbread. Proposal for the Reform of Legal Aid in England and Wales: Ministry of Justice, Consultation Paper CP12/10: Gingerbread response Gingerbread, 2011.
59. Hodson D. Written evidence from David Hodson, family law dispute resolution specialist (FC 16). *Justice Committee - Additional (Unprinted) Written Evidence: Operation of the Family Courts* 2011.
60. Quartermain S. Sustainability of Mediation and Legal Representation in Private Family Law Cases: Analysis of Legal Aid Administrative Datasets. *Ministry of Justice Research Series 8/11* 2011.
61. Ministry of Justice. Features: Family mediation - an alternative to courts, 2011.
62. The Law Society. Missing Millions. In: Wales TLSoEa, editor. London, 2011.
63. Ministry of Justice. Legal Aid Reform in England and Wales: the Government Response London: The Stationery Office, 2011.

64. Office for National Statistics. Divorces in England and Wales, 2009. In: Statistics OfN, editor. *Statistical Bulletin*. London: Office for National Statistics, 2011.
65. Miller R. (Per. Comm. Email): Ancillary Relief Caseloads. In: Cookson G, editor. London, 2011.
66. Miller R. (Per Comm. Email): LSC Tenders. In: Cookson G, editor. London, 2011.
67. Ministry of Justice. Government's Response to Justice Committee's Sixth Report of Session 2010-12: Operation of the Family Courts. London, 2011.
68. Citizens Advice Bureau. Client and Advice Statistics: National Issues. London, 2009.
69. Office for Budget Responsibility. Household debt in the Economic and Fiscal Outlook. London: Office for Budget Responsibility, 2011.
70. Shockley J. Demand for rental property continues to outpace supply in South East. London: Rics, 2011.
71. Cavaglieri C. Rogue landlords and agents flourish as demand for rented homes soars. *The Independent* 2011.
72. Cabinet Office. State of the nation report: poverty, worklessness and welfare dependency in the UK. London: Cabinet Office, 2010.
73. Citizens Advice Bureau. Written evidence from Citizens Advice (AJ 30). *Justice Select Committee Third Report of Session 2010-11* 2011.
74. Goodchild S. £8m payout for girl left brain damaged by NHS blunders. *London Evening Standard* 2011 28th January, 2011.
75. Health Select Committee. Sixth Report of the House of Commons Health Committee - Patient Safety. London: House of Commons, 2009.
76. Roberts L. David Cameron pledges to curb compensation culture. *The Daily Telegraph* 2010.
77. NHS Litigation Authority. Report and Accounts 2010. London: The Stationery Office, 2010.
78. House of Commons. House of Commons Written Answers (Simon Burns) Debate 08/06/11 c359W & c360 W. 2011.
79. Jackson R. Review of Civil Litigation Costs: Final Report. In: Justice Mo, editor. London: The Stationery Office, 2009.
80. National Health Service Litigation Authority. National Health Service Litigation Authority Annual Report 2010-11. London: National Health Service, 2011.
81. Bowcott O. Kenneth Clarke unveils plans to tackle compensation culture. *The Guardian* 2011 Tuesday 29 March 2011.
82. Jackson R. Speech to Cambridge Law Faculty, 5th September 2011, 2011.
83. Walsh P. (Per. Comm. Email): Cost of ATE Insurance. In: Cookson G, editor. London, 2011.
84. Catherine Hopkins. (Per. Comm. Email) Cost of ATE Insurance. In: Cookson G, editor. London, 2011.
85. NHS Litigation Authority. Supplementary written evidence from the NHS Litigation Authority (CAL 11A). *Health Select Committee*. London: House of Commons, 2010.
86. HM Treasury. Spending Review 2010. London: HM Treasury, 2010.
87. Joyce R, Levell P. The impact in 2012-13 of the change to indexation policy. *IFS Briefing Note* 2011.
88. House of Commons. Second Reading of Legal Aid, Sentencing and Punishment of Offenders Bill 29 June 2011 c994: House of Commons, 2011.

