

Irish Legal Aid Board - 30th Anniversary Conference

Legal aid – experience from a
nearby jurisdiction

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Development of legal aid in Scotland

- Civil Legal aid first introduced by law in 1949 – Criminal legal aid followed in 1964
- Law Society set up Legal Aid Committee and was responsible for administration of legal aid for 37 years
- The Scottish Legal Aid Board – a non-departmental public body was established in 1987
- Devolution in Scotland – 1999
- Scottish Parliament – responsible for passing legal aid primary and secondary legislation
- Scottish Ministers – responsible for legal aid policy

Legal Aid in Scotland – How is it funded?

- Funded by the Scottish Government
- Legal Aid Fund
 - Demand led and not cash limited
 - £150-160m annual costs
 - Mostly funded through Government but c.£10-12m from contributions and recoveries in civil legal aid
 - Covers the cost of cases granted by the Board or the Courts (including the cost of public defenders, employed civil solicitors, and grant funding)

Trends in Legal Assistance Expenditure

	1998-1999	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	F/cast
	£'000	£'000	£'000	£'000	£'000	£'000		
CIVIL LEGAL ASSISTANCE	41,330	39,530	38,976	39,820	42,623	47,004	48,600	
CRIMINAL LEGAL ASSISTANCE	85,600	103,997	106,622	110,529	103,162	98,491	104,500	
CHILDREN'S LEGAL ASSISTANCE	1,719	4,216	4,439	4,529	4,172	4,925	4,900	
TOTAL COST OF LEGAL ASSISTANCE	128,677	147,851	150,169	155,070	150,166	150,684	157,900	
COST IN REAL TERMS	128,677	126,045	123,863	124,343	117,113	115,833	n/a	

Legal Aid in Scotland – How is it funded (cont.)?

- Grant-in-Aid
 - Around £13m
 - Cash limited
 - Meets the cost of the Board's administration, including quality assurance schemes

Civil legal assistance – what does it cover?

- Advice and Assistance - any matter of Scots law;
- ABWOR – representation at some types of hearings e.g. tribunals;
- Civil Legal Aid – covers almost all types of civil case including appeals. Only exclusion is small claims court

Civil Legal Assistance – what does it cover (cont.)?

- Advice and Assistance and ABWOR – around 100,000 grants by solicitors
- Increases in authorised expenditure – around 80,000 applications to the Board
- Civil Legal Aid – around 22,000 applications to the Board. This is 24% increase on previous year and 38% on two years ago
- Within Civil Legal Aid
 - Around 60% are Family cases
 - Around 10% are Reparation (damages)
 - Around 10% are Housing / Recovery of Heritable Property
 - Around 8% are Adults with Incapacity

Civil Legal Assistance - who gets it?

- Advice and Assistance
 - means tested only. Fixed income (£238 / week) and capital (£1,664) limits apply;
 - Based on weekly income and outgoings 7 days before grant by solicitor
 - Contributions up to £135
- Civil Legal Aid
 - Means and Merits tests
 - Merits – probable cause and reasonableness
 - Means – based on disposable income and capital set out in regulations. Tapered contributions payable up to 100% of cost of case

Criminal Legal Assistance – What does it cover?

- Advice and Assistance – initial advice
- ABWOR – for guilty pleas where representation is required
- Criminal legal aid – for not guilty pleas

Criminal Legal Assistance – what does it cover (cont.)?

- Advice and Assistance – now around 28,000 grants by solicitors
- ABWOR – now around 47,000 grants by solicitors
- Summary criminal legal aid – around 61,000 applications to the Board
- Solemn legal aid – around 12,000 grants by the courts

Criminal legal Assistance – who gets it?

Eligibility for Criminal Legal Aid

- Advice and Assistance
 - means test only. Fixed income (£238 / week) and capital (£1,664) limits apply;
- ABWOR
 - Means tested in the same way as A&A. Plus merits test – interests of justice
- Summary criminal legal aid
 - Means test of ‘undue hardship’
 - Merits test – interests of justice
- Solemn Legal Aid
 - Means test only – ‘undue hardship’

Children's Legal Assistance

- Cases arising from Scotland's public children's law system
- Representation in sheriff court for cases referred to sheriff from children's hearings system
- Includes both offence and welfare based referrals e.g. juvenile offending and child protection

Legal aid in Scotland – How is it Delivered?

- Judicare – private solicitors' firms and law centres
 - Firms registered to provide publicly funded legal assistance: 637 civil firms / 1376 criminal solicitors and 574 criminal firms. There are a total of 827 firms registered to do legal aid
 - Firms are not contracted, they make applications for legal aid on individual cases
 - Around 12 Law Centres which are not-for-profit organisations
- Public Defence Solicitors' Office (PDSO)
 - 7 offices, 16 solicitors
- Civil Legal Assistance Offices (CLAO)
 - 4 offices, 14 solicitors
- Grant funding
 - £1.4million additional funding – 16 projects
- In-Court Advice projects
 - £0.5m funding for projects covering virtually all Sheriff Courts in Scotland

Administration of Legal Aid

- The Board is here to deliver access to justice
- Strategic Aims
 - To provide access to advice where it is needed
 - To deliver value for the taxpayer
 - To contribute to the efficient delivery of justice
- Strategic Aims delivered through
 - Timely and accurate decision making on applications and accounts
 - Effective financial management of the Legal Aid Fund
 - Ensuring the right balance between cost and quality
 - Advising Scottish Ministers on the current operation and development of legal aid

Administration of Legal Aid

- Over 300 staff – majority in applications and accounts
- We grant increases in authorised expenditure on advice and assistance
- We determine applications for civil and summary criminal legal aid
- We will determine applications for solemn criminal legal aid from Nov 2010
- We will determine applications for children's legal aid from Apr 2011
- We determine applications for the use of experts, counsel and unusual work
- We check, verify and pay accounts
- We advise Scottish Ministers on legal aid policy and research
- We provide targeted legal services through public defenders and civil legal assistance offices
- We administer grant funded legal services
- We will soon take on a new duty to monitor and report to Scottish Ministers on access to legal services in Scotland

Reforming Legal Aid in Scotland

- The use of fixed or block fees
 - Reduced administration costs for Board and solicitors
 - Faster processing
 - Encourages efficiency
- Improving the quality of legal aid suppliers
 - Peer review-based quality assurance
- Simplification of Civil Legal Aid
 - Reducing forms
- Removing the use of paper processes
 - Digital internal systems
 - Legal Aid Online

Reforming Legal Aid in Scotland

- Removing perverse incentives
 - Changing fee structures
- Slight increased use of employed solicitors to assist access to justice, provide legal aid more economically and benchmark private sector provision
- Ensuring the legal aid systems and processes support the wider justice system
 - Summary justice reform, High Court reform
- Reducing the cost of legal aid administration
- Transfer of most remaining grants from the courts to the Board

Legal Aid in Scotland – where next?

- Public expenditure challenges
 - a problem for all jurisdictions
- Delivering Access to Justice with reduced resources
 - Looking at options and experiences elsewhere
- Close working with our partners and stakeholders