



Adam Griffith, policy officer at the Advice Services Alliance, highlights disturbing new evidence about current eligibility levels for civil legal aid.

Dramatic drop in civil legal aid eligibility

Overall eligibility

Figures produced by the Ministry of Justice (MoJ) suggest that eligibility levels for civil legal aid nearly halved between 1998 and 2007, with a particularly sharp decline between 2005 and 2007.¹ The MoJ estimates eligibility by using a model based on the Family Resources Survey; a random survey of about 28,000 households. Its estimates are as follows:

Year	Estimated proportion of the population of England and Wales eligible for civil representation
1998	52%
1999	51%
2000	50%
2001	46%
2005	41%
2007	29%

The MoJ has suggested the following reasons for the decline in eligibility:²

- Average earnings have increased at a faster rate than inflation, leading to more people earning above the eligibility threshold.
- A model developed to forecast new matter starts for family work suggests that, between 2000 and 2005, about half of the change in eligibility can be attributed to changes in the age, sex and partnership status of the population.
- The 2005 budget put an additional £1 billion into working tax credits and child tax credits. This increased the value of these payments to families on low to moderate incomes and reduced eligibility

levels by at least three per cent (but probably more).

■ The 'New focus' reforms to civil legal aid, which came into force in April 2005, were estimated to reduce eligibility levels by about five per cent.³ The combined effect of income growth and the 'New focus' changes is estimated to have reduced eligibility levels by closer to eight per cent.

The reduction in eligibility cannot be accounted for by a fall in the number of people receiving passportable benefits. Although the number of claimants who are receiving income support and income-based jobseeker's allowance has declined, this has been more than compensated for by the introduction of pension credit in 2003, which has led to a significant increase in the size of the passported population.

The MoJ estimates that, of the 29 per cent of households which were eligible in 2007, 70 per cent were passported, nine per cent were non-contributory and 21 per cent were contributory. Department for Work and Pensions statistics suggest, in turn, that half of those receiving passported benefits are pensioners.⁴

Variations in eligibility

The 2006 English and Welsh Civil and Social Justice Survey considered the experience of justiciable problems reported by those respondents who were likely to be eligible for legal aid. The survey used a benefits and income-related proxy (composed of respondents who receive unemployment-related benefits or

Dr Ashok Kumar: To ask the Secretary of State for Justice how many people were eligible for legal aid in each of the last ten years?

Maria Eagle: Legal aid covers a number of different areas of justice, and the extent to which applicants' financial circumstances are taken into account in granting legal aid varies considerably across these areas. It is therefore not possible to give figures for the number of people eligible for legal aid as a whole.

However, some estimates of the likely number that would be eligible are available for certain areas ... The ... table [see left] provides estimates of the proportion of the population of England and Wales that were in principle financially eligible for civil legal aid in those categories for which financial circumstances are taken into account in each of the past ten years where figures are available.

■ See Hansard HC Written Answers cols 779W–780W, 20 February 2008.

national insurance credits or income support, or have a household/personal income of less than £15,000) and compared this with the wider population of those experiencing justiciable problems.⁵ The survey had 3,087 adult respondents. The table below sets out the number of respondents who reported different problems, the number of them who were

likely to be eligible and the proportion of those experiencing different types of problems who were likely to be eligible.

The percentage figures in this table are not comparable with the overall estimates of eligibility produced by the MoJ, since they are considering different things. The figures do show, however, that eligible respondents make up a far larger percentage of those experiencing some problems than they do of others. This is hardly surprising in itself but the figures themselves are quite alarming; they suggest, for example, that approximately 40 per cent of those experiencing welfare benefits problems are unlikely to be eligible and over 50 per cent of those experiencing money or debt problems are unlikely to be eligible. In addition, the figures suggest that the ability of the legal aid system to help victims of the credit crunch has been curtailed significantly as a result of the overall drop in eligibility levels.

Conclusion

The evidence discussed in this article suggests that we should be extremely concerned about the proportion of the population that is eligible for civil legal aid, the make-up of that population, the extent to which it varies depending on the types of problem being experienced, and the extent to which the legal aid scheme is able to act as a safety net for those experiencing financial difficulties.⁶

1 The figures are contained in an answer to a parliamentary question by Dr Ashok Kumar MP, *Hansard* HC Written Answers cols 779W–780W, 20 February 2008, available at:

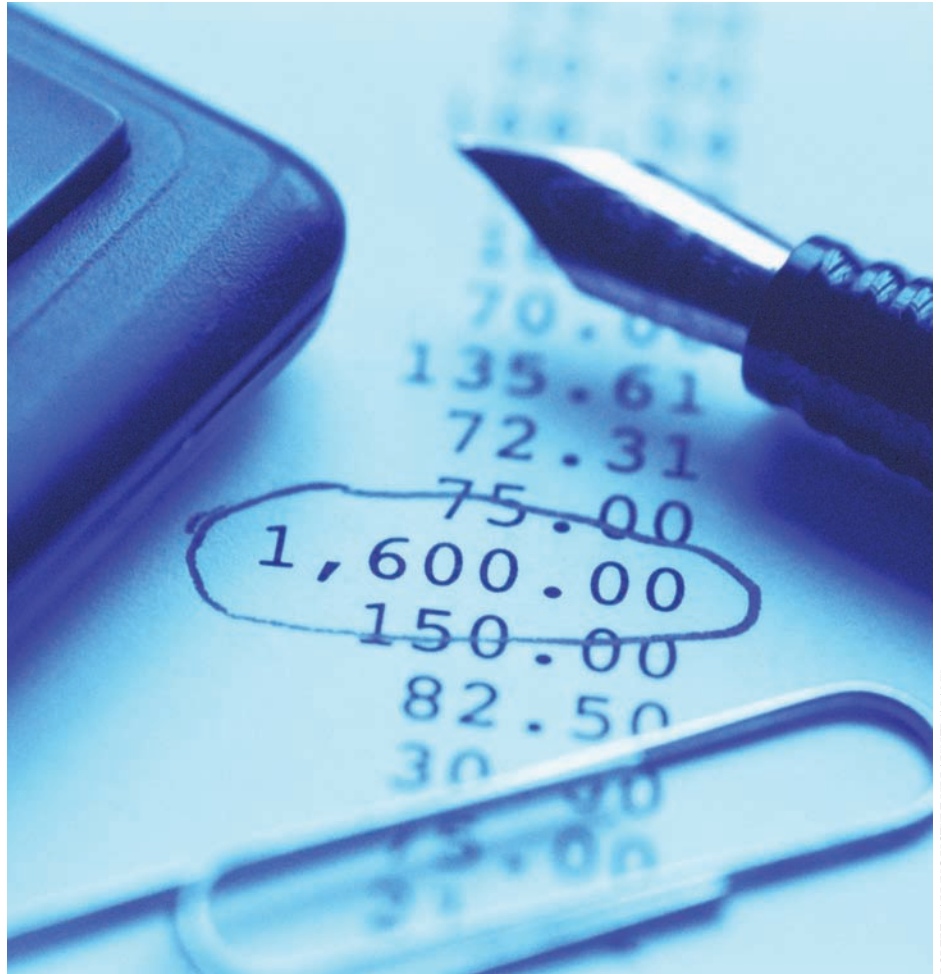
www.publications.parliament.uk.

- 2 Information provided to the author by the MoJ.
- 3 The 'New focus' reforms (see *A new focus for civil legal aid*, LSC, 2004) aligned the disposable income limits for civil representation and Legal Help by introducing a new uniform upper disposable income limit

of £632; a slight increase for Legal Help (previously £621) but a significant reduction for Legal Representation (previously £707). The income thresholds had not themselves been up-rated in 2004.

- 4 *Income related benefits estimates of take-up in 2006–07* estimates that there were approximately 2m recipients of income support, 0.6m recipients of income-based jobseeker's allowance and 2.6m recipients of pension credit in that year. Available at: www.dwp.gov.uk/asd/income_analysis/jun_2008/0607_Publication.pdf.
- 5 Pascoe Pleasence, Nigel Balmer and Tania Tam, *Civil justice in England and Wales. Report of the 2006 English and Welsh civil and social justice survey*, Legal Services Commission (LSC), 2007, is available at: www.lsrc.org.uk/publications/csjs2006.pdf.
- 6 It should be remembered, however, that the eligibility rules do not apply in relation to some priority areas of work that are not means-tested (notably advice and representation before the Mental Health Review Tribunal and public law children matters), in housing duty possession schemes funded by the LSC, and that there is an eligibility waiver for domestic violence cases.

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Problem type	Incidence (general)	Incidence (eligible)	Proportion of those experiencing problems who were likely to be eligible
Mental health	9	7	78%
Homelessness	35	27	77%
Discrimination	63	42	67%
Immigration	9	6	67%
Housing (rented)	99	61	62%
Welfare benefits	93	57	61%
Domestic violence	25	14	56%
Children	59	31	53%
Relationship breakdown	49	23	47%
Neighbours	276	128	46%
Money/debt	169	77	46%
Unfair police treatment	28	13	46%
Employment	165	73	44%
Personal injury	112	49	44%
Divorce	68	29	43%
Consumer	371	143	39%
Housing (owned)	61	24	39%
Clinical negligence	61	24	39%