

Legal aid reforms may leave welfare, employment and health disputes unresolved and actually increase the demand for court and tribunal hearings

The Legal Aid, Sentencing and Punishment of Offenders Bill currently before parliament is intended, in part, to reduce demand for 'costly litigation' in key areas of civil law. However, recent research suggests that aspects of the Bill may actually work against this aim. [Laura Bradley](#) warns the Ministry of Justice to seriously consider the risk that some of the most controversial reforms may in fact increase demand for court and tribunal hearings, and reduce the chance that people's everyday civil legal disputes end with agreement being reached.



Legal aid exists to ensure that those least able to afford legal services (advice and representation before a court or tribunal) have access to justice through the UK's legal systems. Currently administered by the [Legal Services Commission](#), the civil legal aid scheme is available for people who meet the relevant financial eligibility criteria (i.e. they are relatively poor) and whose cases are deemed to have sufficient merit in areas of law that include employment, debt, housing, family law, education and welfare benefits.

Under the legal aid scheme, public funds are used to pay specialist provider organisations, such as law firms and Citizens Advice Bureaux, who employ professional advisers (including solicitors and barristers) to advise clients and take forward their case if appropriate. The aim is to provide low-income people the same 'access to justice' that wealthier people enjoy.

In 2009 a Legal Services Commission [press release](#) stated that "At 60 (years old), legal aid shows no signs of retiring. As the country continues to deal with the economic recession, the scheme is more relevant than ever." But in 2011, at the distinguished age of 62, and in a financially uncertain world, civil legal aid in England and Wales, while not taking early retirement, may be relieved of some of its key responsibilities.

The [Legal Aid Bill](#), which has just completed the Committee stage in the House of Commons, draws together a number of proposed reforms to civil legal aid, including measures that would significantly curtail its scope. If enacted, the Bill will see much private family law and many areas of 'social welfare law' removed from the legal aid scheme completely. Other casualties would include employment law, debt and housing law (except when there is an immediate risk of homelessness), and welfare benefits law.

Reducing legal aid spending is unashamedly the key driver behind the reforms, but there are others, among them a desire to discourage 'costly' litigation and to encourage mediation and other 'alternative' methods of dispute resolution (i.e. alternatives to the courts). However, our [quantitative research](#) suggests that some of these alternative policies are also at risk of being undermined by a blanket removal of legal aid funding.

There is a risk that some of the reforms will act together to increase demand for tribunal hearings, particularly among those who would currently be eligible for legal aid, for a variety of related reasons. In our [study](#) of data from the Civil and Social Justice Survey, cases from people who are poor enough to qualify for legal aid but instead received help from other services (e.g. local authority advice services, Jobcentre Plus, Trades Unions) were more likely to reach court or tribunal than wealthier people using the same types of service. But they were also more likely to go to court or tribunal than similarly poor people *who consulted independent expert legal services* (Citizens Advice Bureaux, law centres and law firms) i.e. service that are eligible for a legal aid contract.

What does this mean? The implication is that if legal aid is cut, poorer people who currently consult expert services will need to turn to alternate services whose track record in avoiding court or tribunal is worse than that of the independent professional legal services. This may even be replicated among wealthier clients who privately pay for independent legal services, where agencies and practices rely on legal aid funding to survive.

The risk was demonstrated particularly clearly with regard to employment problems. Regardless of the type of service consulted, the employment law problems of poorer people tend to result in litigation more often than those of wealthier people. Reducing the access of poorer people to legal services professionals may do nothing to reduce the demand for tribunal hearings and may even increase it.

We also found evidence to suggest that the social welfare legal problems of poorer people may, in general, be less likely to end in agreement with the other side than richer people. There may be something about the social welfare legal problems (and especially housing problems) of poorer people that makes reaching agreement less likely. Further research is needed to pinpoint exactly what that 'something' might be, but our research shows that it is definitely not the source of legal advice per se. Reducing access to professional legal services will therefore not necessarily help reduce the demand for court and tribunal hearings.

Other results led us to conclude that if fewer people receive legal services from the likes of Citizens Advice Bureaux, solicitor firms, barristers' chambers and independent advice agencies and instead turn to other sources of help, we should not be surprised if more people give up bringing their divorce or relationship breakdown problems to a satisfactory conclusion.

People seeking help from organisations like the police, the Child Support Agency, Victim Support and even the courts give up trying to bring their divorce or relationship breakdown problem to a satisfactory conclusion at least five and a half times more often than those who are served by an independent professional legal service. This is based on the outcomes of people who made a definite decision to stop pursuing their objectives, as opposed to people who explained that they 'left the problem behind', or 'gave up and did nothing or agreed'. This finding raises the prospect that more people could find themselves in lingering and unsatisfactory situations, leaving fundamental issues of finances and child contact arrangements unresolved.

These and other potential impacts we identify do not feature in the government's own [impact assessments](#), and further investigation, particularly by the Ministry of Justice, would be highly desirable. But strategies to avoid these negative impacts are also needed. There is arguably a role for local Directors of Public Health, and local authority Health and Wellbeing Boards to get involved, given the link between access to legal services and health, including mental health. Beyond this, independent research into the extent to which legal services providers can mitigate the negative impacts on potential clients would be invaluable.