Irish Legal Aid Board - 30th Anniversary Conference

Legal aid – experience from a nearby jurisdiction

Colin Lancaster
Director of Policy and Development
Scottish Legal Aid Board
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)
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<tbody>
<tr>
<td>CIVIL LEGAL ASSISTANCE</td>
<td>£'000</td>
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<td></td>
<td>41,330</td>
<td>39,530</td>
<td>38,976</td>
<td>39,820</td>
<td>42,623</td>
<td>47,004</td>
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<td>CRIMINAL LEGAL ASSISTANCE</td>
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<td>103,997</td>
<td>106,622</td>
<td>110,529</td>
<td>103,162</td>
<td>98,491</td>
<td>104,500</td>
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<td>CHILDREN'S LEGAL ASSISTANCE</td>
<td>1,719</td>
<td>4,216</td>
<td>4,439</td>
<td>4,529</td>
<td>4,172</td>
<td>4,925</td>
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<td>TOTAL COST OF LEGAL ASSISTANCE</td>
<td>128,677</td>
<td>147,851</td>
<td>150,169</td>
<td>155,070</td>
<td>150,166</td>
<td>150,684</td>
<td>157,900</td>
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<tr>
<td>COST IN REAL TERMS</td>
<td>128,677</td>
<td>126,045</td>
<td>123,863</td>
<td>124,343</td>
<td>117,113</td>
<td>115,833</td>
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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 is 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