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Supplementary Briefing on Civil Legal Aid

1 Introduction

The Justice Committee received a briefing on a paper prepared by RalSE on Civil Legal Aid on 9th May 2013. This briefing note has been prepared in response to a question as to whether there is a correlation between the recession and increase in civil legal aid expenditure. The Access to Justice Review Progress Report, published in 2011, highlighted that there were signs that the recession was causing an increase in volume in certain types of case in Northern Ireland and other jurisdictions.¹ This briefing note will set out information on England and Wales, Scotland, the Republic of Ireland and Northern Ireland.

There is strong evidence that there is a link between the recession and demand for advice services but it is not clear that this translates into demand for legal aid. In Northern Ireland, there has been a notable upward trend in civil legal aid expenditure. However, in the absence of detailed data from the Northern Ireland Legal Services Commission (NILSC), it would not possible to ascertain the reasons for any correlation between the recession and these increasing legal aid costs.

¹ The Access to Justice Review Northern Ireland Progress Report, pg 6
http://www.courtsni.gov.uk/SiteCollectionDocuments/Northern%20Ireland%20Courts%20Gallery/A2J/p_A2J_Review_Progress_Report_March2011.pdf

There is evidence from Annual Reports in Scotland and the Republic of Ireland that the recession has had an effect on civil legal assistance. In the Republic of Ireland in particular, the increase in demand is explained by two main factors: the economic downturn meant that a greater number of persons are now satisfying the means test; and evidence points to a greater need for legal services in times of economic distress.

2 England and Wales

A report published by the Ministry of Justice (MoJ) in 2009, entitled *Study of Legal Advice at Local Level* highlighted the impact of the recession on the demand for legal advice. The report noted that the recession resulted in an increase in the number of people who met the threshold for legal aid eligibility.²

In addition, the evidence from the study indicated that Community Legal Advice (CLA) telephone service experienced increases in calls relating to specific categories of law:

- Debt up 39 per cent;
- Employment up 33 per cent;
- Housing up 14 per cent;
- Welfare benefits up 47 per cent.

According to the Ministry of Justice, since April 2008, the Citizens Advice Bureaux (CABx) in England and Wales have seen daily enquiries relating to redundancy increase by 125%. Daily enquiries relating to CABx from people looking for guidance on Jobseekers Allowance have increased by 66%. During the Autumn of 2008, the CABx also found that more people were seeking advice on how to manage mortgage and secured loan arrears and fuel debts as money became tighter, reporting 35% more mortgage and secured loan arrears problems in the 12 months to October 2008, compared with the previous 12 months.³

The MoJ reported, however, that many of the new clients being seen by the legal advice sector were not eligible for legal aid. The new clients were not the conventional client base; the new clients included small businessmen, self-employed and or still employed, but concerned about potential unemployment or reduced hours. Self-employed people were said to be particularly vulnerable to the impact of the recession, as they had to get mortgages in the sub-prime market.⁴

Research published in 2010 on the recession, redundancy, rights and legal highlighted that the recession “will lead through escalating job losses, to a substantial increase in the prevalence and incidence of rights problems, in demand for related legal services

² Ministry of Justice “Study of Legal Advice at Local Level”, June 2009 pg 21

³ Ministry of Justice “Study of Legal Advice at Local Level”, June 2009 pg 22

⁴ Ministry of Justice “Study of Legal Advice at Local Level”, June 2009 pg 22

and as social welfare and family related rights problems are central to increased problem prevalence and incidence, in demand for legal aid services.”⁵ The research also notes that findings indicate that around half of additional rights problems brought about by the recession are likely to lead to advice being obtained. However not all of this advice will be of a legal nature and not all will be provided by traditional providers such as solicitors, Law Centres and advice agencies. The research suggested that much of it would be and the disproportionate increase in the incidence of social welfare law and family law problems is likely to disproportionately impact on the demand for legal aid services.⁶

3 Scotland

The Scottish Legal Aid Board (SLAB) reported in its Annual Report for 2009-2010 that there had been an increase in civil legal aid applications by 24% to 22,028 over the previous year, representing the highest annual figure for 10 years. Grants of civil legal aid also increased by 24% to 15, 049. The Annual Report indicated that the economic downturn had a considerable effect on civil legal assistance. The report indicates that family and relationship matters had the largest growth, especially those involving contact and parentage.⁷ Increases were also evident in immigration and asylum cases. In 2009-10, the Scottish Government made an additional £3m available through the legal aid fund to increase access to assistance for those experiencing problems associated with the economic downturn. The aim of the fund was to increase access to assistance for those experiencing problems associated with the economic downturn and resolve debt, repossession and other issues at the earliest possible stage.⁸

The SLAB Annual Report for 2011-12 highlighted that the number of civil legal aid applications reduced by 6% to 20,015. However, this number was still relatively high and represented a 26% increase on 2007-2008 levels. There were reductions in applications involving child contact, divorce and housing. There was an increase in applications involving adults with incapacity for the fourth year in a row.⁹ Grants of civil legal aid reduced by 2.1% to 12,794.¹⁰

During 2011-12, the Board provided grants to 23 projects which reported increasing levels of business on the previous year. The projects helped 3,020 new clients and represented 629 people in court. The overall number of clients helped has been high

⁵ P Pleasance and NJ Balmer “The Audacity of Justice: Recession, Redundancy, Rights and Legal Aid” *Social Policy and Society* [2010] Vol 9:4., 484.

⁶ P Pleasance and NJ Balmer “The Audacity of Justice: Recession, Redundancy, Rights and Legal Aid” *Social Policy and Society* [2010] Vol 9:4., 485

⁷ Scottish Legal Aid Board Annual Report 2009-2010, available at <http://slab.kraya.net/about-us/what-we-do/annual-report/reports/2009-2010.html>, pg 9

⁸ Scottish Legal Aid Board Annual Report 2009-2010, pg 13 available at <http://slab.kraya.net/about-us/what-we-do/annual-report/reports/2009-2010.html>

⁹ Scottish Legal Aid Board Annual Report 2011-12, pg 10, available at http://www.slab.org.uk/news/archive/articles/Annual_report_2011-12_1367373601188.html

¹⁰ Scottish Legal Aid Board Annual Report 2011-12, pg 10

and the projects reported working at or near to capacity. This resulted in positive outcomes for many people including:¹¹

- Preventing possession;
- Preventing eviction;
- Resolution of a debt problem;
- Help to resolve an employment related problem.

4 Republic of Ireland

In 2012, the Legal Aid Board published its 2011 Annual Report and Accounts. The Board reported an increase in applications for civil legal aid and advice, up 9% on the previous year. This followed a 21% increase in 2010 and 18% in 2009. In the four years since 2006, the demand for services increased by 93%. The Board explained that the sustained increase in demand was as a result of two main factors: firstly and most significantly, the economic downturn has meant that a greater number of persons are satisfying the means test, allowing them to avail of the legal services provided by the Board. The Legal Aid Board also said that, secondly, there was evidence that there is a greater need for legal services during times of economic distress, particularly in areas of family law, debt and unemployment.¹²

5 Northern Ireland

The Law Centre NI in response to the Northern Ireland Legal Services Commission consultation on the Funding Code in 2009 stated “in a period of economic recession where the impact is most keenly felt, there is a strong link between social justice and the ability to access justice.”¹³ The Law Centre NI reported that over the previous twelve months, calls to their advice line increased significantly and in the area of employment law, the work of the organisation focused on dismissal, short time working, lay off and redundancy. Employment advisors witnessed an increase in the requests for advice on contract terms and on dismissal.¹⁴

Housing Rights Service reported that there has been an unprecedented growth in the number of actions for possession taken by lenders and that the legislative framework in Northern Ireland does not provide legal aid for free representation for people at risk of losing their homes.¹⁵ In 2012, the Minister approved a grant to Housing Rights Service

¹¹ Scottish Legal Aid Board Annual Report 2011-12, pg 17, available at

http://www.slabb.org.uk/news/archive/articles/Annual_report_2011-12_1367373601188.html

¹² http://www.legalaidboard.ie/lab/publishing.nsf/content/Press_Release_Annual_Report_2011

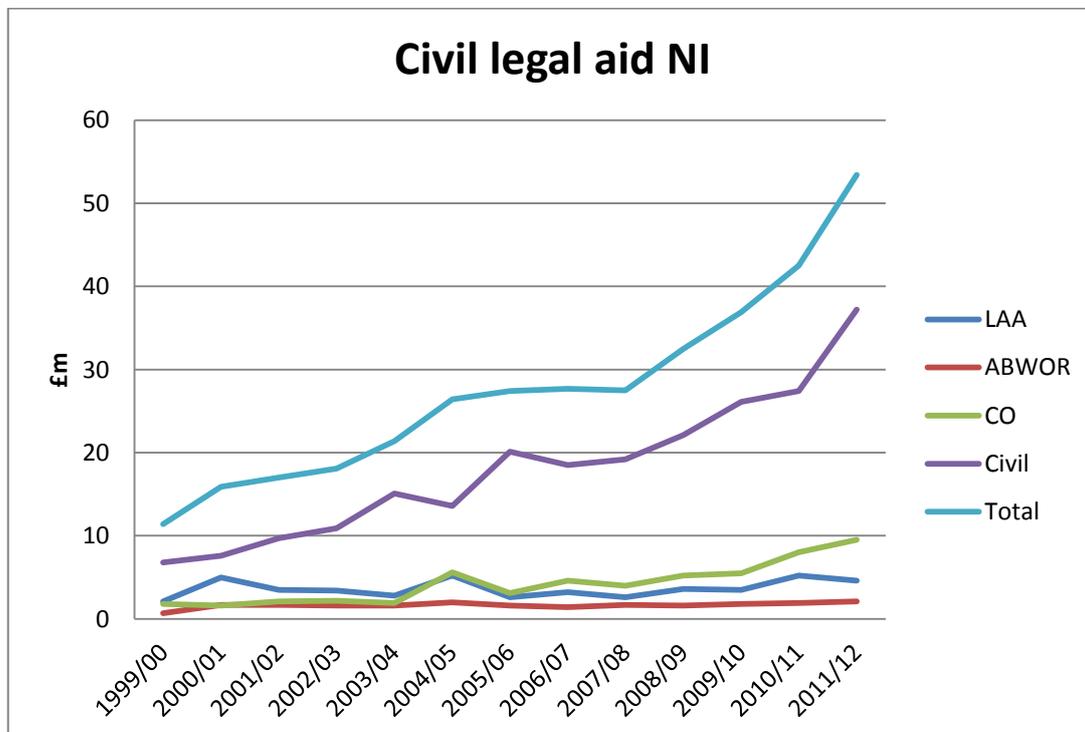
¹³ <http://www.lawcentreni.org/consultation-responses-by-category/social-justice-responses/214.html>

¹⁴ <http://www.lawcentreni.org/consultation-responses-by-category/social-justice-responses/214.html>

¹⁵ Housing Rights Service “No Defence: Why People in Northern Ireland Facing Possession Are Losing Out” http://www.housingrights.org.uk/component/docman/doc_download/275-no-defence-executive-summary

to provide specialist advice and representation to people facing imminent threat of repossession on the day of the court hearing.¹⁶

The Northern Ireland Legal Services Commission (NILSC) reported that in 2011/12 there had been a significant increase in civil legal aid from £40.3m to £54.2m. The graph below shows civil legal aid expenditure from 1999-2012.¹⁷



The NILSC reported the significant increase as being explained by two factors: the Omagh civil action and increase in expenditure in Children Order cases.¹⁸ The Annual Report made no reference to the recession as a causal factor. Without a detailed breakdown of data it is not possible to provide an explanation for any correlation between the recession and legal aid expenditure.

¹⁶ <http://www.dojni.gov.uk/index/media-centre/further-executive-help-for-those-under-threat-of-repossession.htm>

¹⁷ Graph based on Profile of Legal Aid Cash Expenditure from 1999/2000 – 2011/2012 Information taken from a table obtained with thanks from the Department of Justice on 14 January 2013

¹⁸ Northern Ireland Legal Services Commission "Annual Report and Financial Statements for the Year ended 31 March 2012", pg 15 http://www.nilsc.org.uk/uploads/publications/documents/annualreport_2011_2012.pdf