



BRIEFING PAPER

Number 07113, 14 January 2016

Litigants in person: the rise of the self-represented litigant in civil and family cases

By Gabrielle Garton
Grimwood

Inside:

1. Legal aid for civil and private law children and family cases in England and Wales: what has changed?
2. Have numbers of LIPs in civil and family proceedings increased since the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* came into force?
3. What savings have the legal aid changes yielded?
4. Has the increase in LIPs driven up costs elsewhere?
5. What remains in scope for legal aid?



Contents

Summary	3
1. Legal aid for civil and private law children and family cases in England and Wales: what has changed?	4
1.1 What concerns have been expressed about the reduction in scope of legal aid?	4
2. Have numbers of LIPs in civil and family proceedings increased since the <i>Legal Aid, Sentencing and Punishment of Offenders Act 2012</i> came into force?	5
2.1 What did the MoJ expect to happen when the legal aid changes were implemented?	5
2.2 What does the available evidence say?	5
2.3 What are the characteristics of LIPs?	6
2.4 How do LIPs experience the civil justice system?	7
2.5 What support is available to LIPs?	8
2.6 What are the effects of increased numbers of LIPs in civil and family proceedings?	9
3. Has the increase in LIPs driven up costs elsewhere?	13
4. What remains in scope for legal aid?	15
4.1 Is legal aid available for family mediation?	15
4.2 Is legal aid available through any other route?	16
4.3 Are there any other sources of help with legal problems?	16

Summary

The available evidence indicates that the proportion of litigants appearing before the civil and family courts without legal representation (litigants in person, also sometimes called self-represented litigants) has increased since the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* took many civil and private law children and family cases out of scope for legal aid in England and Wales from 1 April 2013.

The changes to the scope of civil and family legal aid have proved controversial. Concerns have been expressed about the effects on individuals who are no longer eligible for legal aid to resolve legal problems and on the courts which must deal with increased numbers of litigants in person. Whether the reforms will generate the savings that have been claimed – or whether the increased numbers of litigants in person will drive up costs - has also been debated.

Reliable data on LIPs are scarce and the National Audit Office (NAO) has been critical of the limitations of the MoJ's data. Most of the data that are available concern LIPs in the family courts, although the NAO has said that the legal aid reforms are likely also to have increased the number of LIPs in civil law courts.

The NAO has reported a 22% increase in cases involving contact with children (*Children Act 1989* private law matters) and a 30% increase across all family court cases (including those that remain eligible for civil legal aid) in which neither party had legal representation.

In its own inquiry into the impact of the changes to civil legal aid, the Commons Justice Committee looked in some detail at the effects of the changes on the numbers of LIPs and their experiences. The Committee heard evidence to suggest that not only were there more LIPs, they were now qualitatively different. In the past, LIPs had been in the courts by choice but now they were there because they could not get legal aid. The Committee voiced concern that some LIPs might have difficulty in presenting their case.

Particular issues surrounding the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*'s impact on clients seeking help with legal problems, the availability of legal aid for victims of domestic abuse, and the apparent rise in the number of "advice deserts" observed since the 2012 Act came into force are discussed in other Commons Library briefings, available on Parliament's [topic page for legal aid](#).

1. Legal aid for civil and private law children and family cases in England and Wales: what has changed?

Until the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (the 2012 Act) came into force on 1 April 2013, any type of civil or family case would be within scope for legal aid unless it was part of a (relatively short) list of exclusions. Now, cases are within scope only if they are of a type set out in the Act.¹

As well as many areas of civil law, the 2012 Act took most private law children and family cases out of scope for legal aid. They remain in scope only where there is certain types of documentary evidence that the client has suffered domestic abuse.

Further information on the changes to legal aid is available in

- Commons Library briefings [Changes to civil legal aid in England and Wales since 2013: the impact on clients](#)² and [Legal aid for victims of domestic abuse](#)³
- a note by the Ministry of Justice (MoJ) on the [scope of family legal aid post-April 2013](#)⁴ and
- a page on the government's Justice website (since archived) summarising the provisions for [legal aid for victims of domestic violence](#).

Perhaps the biggest impact of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*'s legal aid provisions has been the removal of swathes of types of legal dispute from the scope of civil and family legal aid.

This was one of the most controversial aspects of the previous Government's reforms to legal aid.

1.1 What concerns have been expressed about the reduction in scope of legal aid?

Much of the commentary on these changes has focused on the impact on individuals no longer eligible for legal aid to resolve legal problems, who may have to represent themselves in court. For example, there have been questions about whether they might struggle to present their cases effectively and might clog up the courts.⁵ Whether the reforms will generate the savings claimed for them, or whether increased numbers of litigants in person (LIPs or self-represented litigants) will drive up costs, has also been debated.

¹ [Part 1 of Schedule 1 to the Act](#) (and subject to the exclusions in Part 2 of that Schedule). Even where cases remain in scope, to receive legal aid a client would (as before) have to fulfil the merits test and financial eligibility criteria.

² CBP06645, 10 December 2015. (This discusses the background to the 2012 Act, the scope changes and eligibility requirements).

³ CBP05839, 26 November 2015

⁴ Ministry of Justice, *Family Legal Aid Post April 2013* (undated), available on the website of Resolution (formerly the Solicitors Family Law Association)

⁵ This issue is mentioned in *Legal Aid, Sentencing and Punishment of Offenders Bill*, [Commons Library Research Paper 11/53](#), 4 July 2011: page 23 and *Legal Aid, Sentencing and Punishment of Offenders Bill Committee Stage Report*, [Commons Library Research Paper 11/70](#), 20 October 2011: page 3

2. Have numbers of LIPs in civil and family proceedings increased since the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* came into force?

2.1 What did the MoJ expect to happen when the legal aid changes were implemented?

In the consultation (green) paper [Proposals for the reform of legal aid in England and Wales](#), the MoJ foresaw that numbers of LIPs would rise and outlined some of the possible consequences:

4.266 We recognise that the proposals to reduce the scope of legal aid will, if implemented, lead to an increase in the number of litigants representing themselves in court in civil and family proceedings. This may potentially lead to delays in proceedings, poorer outcomes for litigants (particularly when the opponent has legal representation), implications for the judiciary, and costs for Her Majesty's Courts Service.

The MoJ argued too that many of the cases funded by legal aid could be resolved outside the courts but, if litigants wished to take matters to court, they would in many instances be doing so in fora which were suited to LIPs:

4.267 We believe that many of the cases currently funded through legal aid could be resolved without recourse to the courts. Nevertheless, litigants are entitled to bring their cases to court, and to represent themselves, if they wish. We also expect that many of the litigants representing themselves will be doing so in fora where the proceedings are particularly suitable for litigants in person.

The MoJ acknowledged that there was little substantive evidence of the impact that LIPs might have on the conduct and outcome of proceedings and promised to report the outcome of its research when it published its response to the consultation.⁶

2.2 What does the available evidence say?

Reliable data on LIPs are scarce and the National Audit Office (NAO) has been critical of the limitations of the MoJ's data. Most of the data that are available concern LIPs in the family courts, although the NAO has

The cumulative impact assessment published by the MoJ during the consultation in 2010 suggested that total court case volumes might go down and the proportion of cases where people represented themselves in court might go up.

MoJ, [Cumulative Legal Aid proposals](#), MoJ 036, 15 November 2010: page 2

⁶ Cm 7967, November 2010: paras 4.266-8

said that the legal aid reforms are likely also to have increased the number of LIPs in civil law courts.⁷

In November 2014, the NAO published its [report on changes to civil legal aid](#). The NAO argued that the MoJ had not understood how people would respond to the changes: although it had recently commissioned work in this area, the MoJ had implemented its reforms “without a good understanding of why people go to court to resolve their disputes”.⁸ It had (the NAO argued) failed once again to forecast or quantify potential wider costs arising from a reform.⁹

The NAO observed that, since the 2012 Act’s reforms had been implemented, there had been increases in the numbers of cases where either or both parties did not have legal representation:

- a 22% increase in cases involving contact with children (Children’s Act private law matters) in which neither party was legally represented
- a 30% increase across all family court cases (including those that remain eligible for civil legal aid) in which neither party had legal representation
- 80% of all family court cases starting in the January–March quarter of 2013-14 had at least one party who did not have legal representation

Source: NAO, *Implementing Reforms to Civil Legal Aid*, 20 November 2014, HC 784 2014-15: page 15

In its own inquiry into the impact of the changes to civil legal aid, the Commons Justice Committee looked in some detail at the effects of the changes on the numbers of LIPs and their experiences. The Committee remarked in its [report](#) that it had heard evidence to suggest that not only were there more LIPs, they were now qualitatively different. In the past, LIPs had been in the courts by choice but now they were there because they could not get legal aid. The Committee voiced concern that some LIPs might have difficulty in presenting their case:

We believe ... that it is of more significance that the rise in litigants in person constitutes at least some people who struggle to effectively present their cases, whether due to inarticulacy, poor education, lack of confidence, learning difficulties or other barriers to successful engagement with the court process.¹⁰

2.3 What are the characteristics of LIPs?

A [study into the experiences and support needs](#) of LIPs in private family law cases carried out for the MoJ in five courts, which included a detailed analysis of 151 cases, found (amongst other things) that:

⁷ NAO, *Implementing Reforms To Civil Legal Aid*, 20 November 2014, HC 784 2014-15: page 15

⁸ *Ibid*: pages 6-7

⁹ *Ibid*: page 14

¹⁰ Justice Committee, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, 12 March 2015, HC 311 2014- 5: page 38

7 Litigants in person: the rise of the self-represented litigant in civil and family cases

- The major reason for appearing in person was inability to afford a lawyer; appearing in person was wholly or partially a matter of choice for only around one quarter of LIPs.
- Over half of the LIPs observed had had legal representation at some stage during the current proceeding and/or in previous family law proceedings.
- Only a small minority of LIPs were able to represent themselves competently in all aspects of their family law proceedings. Even those with high levels of education or professional experience struggled with aspects of the legal process.
- The great majority of LIPs were procedurally (and, where relevant, legally) challenged in some way, with some having no real capacity to advocate for their or their children's interests.
- Around half of those observed had one or more vulnerabilities, making it more difficult for them to represent themselves and in some cases making it impossible.
- LIPs may create problems for the courts by not appearing, by refusing to engage with proceedings, or (less frequently) by behaving violently or aggressively. Apparent resistance to court proceedings (and violence and aggression) may often be related to litigants' vulnerabilities.
- LIPs were no more likely to bring unmeritorious and serial applications than represented parties, although having to respond to these applications was another vulnerability faced by some women LIPs.¹¹

2.4 How do LIPs experience the civil justice system?

In November 2011, a working group set up by the Civil Justice Council made recommendations on LIPs to the Lord Chancellor and to the Lord Chief Justice. It remarked that LIPs were confronted by a system that was too complex and obscure for anyone representing themselves and the reduced availability of legal aid was likely to create various problems:

The design of the legal aid reductions and changes will take away routes to accessible early advice (including by the damage done to the advice sector, which in turn damages access to wider pro bono legal services) and leave intervention too late or denied altogether. As a result we will find more cases started by self-represented claimants that need not have been started, more cases where self-represented defendants are involved for longer than need be, and more cases not starting when they should be started so that they can be resolved. We will find problems clustering, with increasingly wide and serious consequences for the individual, for families, and the state.¹²

Amongst the "fundamental points" made by the working group were:

- The civil justice system exists for its users, who include LIPs.

¹¹ Liz Trinder, Rosemary Hunter, Emma Hitchings, Joanna Miles, Richard Moorhead, Leanne Smith, Mark Sefton, Victoria Hinchly, Kay Bader and Julia Pearce *Litigants in person in private family law cases*, MoJ Analytical Series, 2014: pages 33-4

¹² Civil Justice Council, [*Access to Justice for Litigants in Person \(or self-represented litigants\)*](#), November 2011: page 8

- Judges can be at the heart of addressing what needs to be done and create solutions rather than deal with imposed solutions.
- The most important thing for LIPs was access to objective and reliable advice, above all advice about merits, and risks (including costs) but also about process.
- The law, the system and its language (including court forms, procedures and hearings) should be simplified and demystified.¹³

In an update two years later, the Civil Justice Council observed that much was being done:

The update shows that, thanks to the combined efforts and leadership of all these people, around 200 things have been done or are being done towards the recommended actions and in the recommended areas. Some things are large; some are small. All are important. Many are collaborative. Each taken individually is enhanced by the fact that it takes place alongside so many others. Many set a valuable example that could be taken up elsewhere or on which we can build further.¹⁴

2.5 What support is available to LIPs?

The support for LIPs mentioned in the NAO research was outlined in a written statement by the then justice minister, Simon Hughes, in October 2014:

A new package of support has been developed aimed at keeping disputes away from court and providing better support for those who do end up in court.

The new support will include:

Improving online information so that it is accurate, engaging and easy to find.

A new strategy, funded by the Ministry of Justice, and agreed with the legal and advice sectors which will help to increase legal and practical support for litigants in person in the civil and family courts.

A new “Supporting separating parents in dispute helpline” pilot run by the Children and Family Court Advisory and Support Service (CAFCASS) to test a more joined-up and tailored out-of-court service.

This package of support will help provide separating couples and court users with the information, advice and guidance they need to help settle disputes in the most appropriate and proportionate way.¹⁵

In its response to the Justice Committee inquiry, the MoJ reiterated that support was being offered to LIPs:

The Ministry of Justice is currently funding a Litigants in Person Support Strategy. Our key partners in delivering the strategy are the Personal Support Unit, the Royal Courts of Justice Advice Bureau, Law for life (incorporating Advice Now) Law Works who are supported by the Bar Pro Bono Unit and the Access to Justice

¹³ Civil Justice Council, [Access to Justice for Litigants in Person \(or self-represented litigants\)](#), November 2011: pp 9-10

¹⁴ Civil Justice Council, [Access To Justice For Litigants In Person: Implementation update](#), November 2013

¹⁵ [HC Deb 23 October 2014 cc80-1WS](#)

Foundation. The strength of the strategy lies in bringing together the expertise and experience of these organisations into one coherent strategy which maximises the provision of support to litigants in person.

The strategy seeks to prioritise the provision of legal support in civil and family cases, through the co-ordination of local support and expertise via expanded personal support units, with pro bono and law centres delivering practical support and information including free or affordable legal advice. The strategy will also expand online and telephone support available to litigants in person and their advisors.¹⁶

2.6 What are the effects of increased numbers of LIPs in civil and family proceedings?

The [Low Commission on the Future of Advice and Legal Support](#) argued that the narrower scope of legal aid would push up the numbers of LIPs, with knock-on costs.¹⁷ The Low Commission also reported the views of the President of the Supreme Court, Lord Neuberger, that the rule of law itself might come under threat.¹⁸

In its evidence to the Justice Committee's [inquiry into the impact of the legal aid changes](#), the Judicial Executive Board highlighted some of the consequences of the reforms to civil legal aid, including:

- a large increase in the number of cases where one or both parties do not have legal representation – most prominently in private law family litigation
- a considerable adverse impact on courts' administration and efficiency as a result of more people being self-represented
- take-up of mediation and ADR¹⁹ services has reduced, meaning more cases are dealt with by the courts and tribunals.²⁰

The NAO report mentioned earlier also examined the evidence of the impact that increased numbers of LIPs might have on the courts. Previous research (although using small case samples and therefore to be treated with some caution) had found that LIPs

- were less likely to settle cases outside court hearings
- were likely to have more court orders and interventions in their cases
- tended to lack the knowledge and skills required to conduct their case efficiently and
- created additional work for judges and court staff, which could make court listing processes less efficient.

¹⁶ *Ibid*: page 17

¹⁷ The [Commission](#) states that it is independent of government, political parties and advice providers, funded by the Baring Foundation, Lankelly Chase Foundation, Barrow Cadbury Trust, Esmee Fairbairn Foundation, and Trust for London.

¹⁸ Low Commission, [Tackling the advice deficit: A strategy for access to advice and legal support on social welfare law in England and Wales](#), January 2014: page 14

¹⁹ Alternative dispute resolution

²⁰ [Written evidence from the Judicial Executive Board \(MSC 84\)](#), 13 May 2014: Key findings

Anecdotal evidence from legal professionals had tended to support these conclusions:

For example, judges have estimated that hearings involving litigants in person take around 50% longer on average and have reported that more cases are going to court hearings that would have been ‘filtered out’ with accurate advice on their legal merits. Family law professionals have reported an increase in hearing duration, which may result in fewer hearings per day.²¹

The Justice Committee remarked that the Master of the Rolls, Lord Dyson, had said that it was “inevitable” that some LIPs might receive adverse decisions in the courts which would have been decided the other way, had they been represented by a competent lawyer. Likewise, the Magistrates’ Association had said that some cases would never be brought, because people would be deterred by the lack of legal advice and representation and the off-putting forms and processes.²²

On the question of whether hearings take longer when litigants are self-represented, the MoJ has published what it terms “experimental statistics”. The MoJ concludes here that there is “no strong evidence” of hearing durations changing significantly over time, although it notes that this finding should be treated with caution as (amongst other things) it is based on estimated rather than actual duration of hearings.²³

The Justice Committee also remarked that – notwithstanding the fact that hearing times are not a reliable indicator of how well or not a LIP is able to present their case - it had heard mixed evidence about whether cases took longer when LIPs were involved. The Magistrates’ Association had suggested that they did, whereas the MoJ had cited its own research as indicating that they did not.²⁴

Commenting on the MoJ study of LIPs’ experiences and needs cited earlier and on the experimental statistics, one of the authors of that study remarked that other aspects of the study had received less attention. The number of LIPs had risen – “burgeoned” - from its already quite high base and average times to first definitive disposal had increased each quarter in private law cases overall, while the number of private law family disposals had dropped:

Where have these cases gone? Is there an underlying dip in family law problems? It seems unlikely that the parties are going to mediation, given the well-publicised drop in mediation appointments. What we appear to know is that the courts are dealing with fewer cases, taking longer but perhaps not listing individual hearings for longer. (...) Ken Clarke’s prediction that

²¹ NAO, [Implementing Reforms To Civil Legal Aid](#), 20 November 2014, HC 784 2014-15: pages 14-5

²² Justice Committee, [Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 2014- 5: page 50

²³ MoJ, [Experimental Statistics: analysis of estimated hearing duration in Private Law cases, England and Wales](#), Ad hoc statistics bulletin, 27 November 2014

²⁴ Justice Committee, [Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 2014- 5: page 39

11 Litigants in person: the rise of the self-represented litigant in civil and family cases

fewer people would litigate looks like it might be coming true. But what people? And what are they doing instead? Vital questions. Only some of these questions are acknowledged in the report and none are answered.²⁵

As the Justice Committee noted, the Master of the Rolls, Lord Dyson, has been quoted as suggesting that the increase in the number of LIPs may be leading to miscarriages of justice.²⁶ The President of the Family Division, Sir James Munby, has also argued that the withdrawal of legal aid funding from civil and private law family cases has created problems of inequity and unfairness:

[Legal aid] is a matter of public policy – an area in which judges can tread only with great care. Where we can tread ... is if it is impacting on the fairness of the proceedings in front of us it is our duty to make sure the proceedings in front of us are fair. If that requires representation we must say so and if the absence of representation means the proceedings are not fair and because they are not fair are potentially prejudicial to the interests of the child then we must say so.²⁷

The Justice Committee drew attention to some further problems arising from the increasing numbers of LIPs appearing before the civil and family courts:

- Cross-examination of a complainant by an alleged abuser in the family courts
- Parties lacking capacity and
- The Legal Aid Agency's refusal to pay for expert evidence.²⁸

The Justice Committee concluded that there was no "silver bullet" to solve these problems and LIPs should be given every possible help:

138. The problems presented by litigants in person are complex. We reiterate that there is no "silver bullet" which will solve all the issues that arise, not least because litigants in person themselves are a diverse group with widely differing needs. **Fundamentally, the courts need more funding to cope with the numbers of self-represented litigants appearing before them and this is an area which should attract some of the underspend from the civil legal aid budget. Only with assistance will the courts be able to ensure access to justice. It is imperative that litigants in person are given every possible assistance to make their cases clearly and effectively.**²⁹

In its response to the Justice Committee, the MoJ said that it was considering whether (in response to a judgement in the Court of Appeal) it should make funds available, in certain limited circumstances where vulnerable witnesses might otherwise face cross-examination by

²⁵ LawyerWatch (Richard Moorhead) *Litigants in person, never mind the quality – it's the length that counts*, 28 November 2014

²⁶ "Litigants in person facing miscarriages of justice", *New Law Journal*, 4 December 2014

²⁷ "Legal aid procedures causing problems for the Family Court, says the President", *Family Law Week*, 7 December 2014

²⁸ Justice Committee, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, 12 March 2015, HC 311 2014- 5: pages 40 - 44

²⁹ Justice Committee, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, 12 March 2015, HC 311 2014- 5: pages 51 - 52

their abuser, to pay for legal representation.³⁰ On litigants who lack capacity, the MoJ argued that a lack of mental capacity did not necessarily mean an inability to pay and normal legal aid criteria would usually apply:

Generally speaking, people who lack litigation capacity are subject to the same legal aid eligibility requirements as everyone else. It should be recognised that a person may be vulnerable due to their mental capacity but this does not mean that they are also financially vulnerable.³¹

³⁰ MoJ, [*Government Response to Justice Committee's Eighth Report of Session 2014–15: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*](#), Cm 9096, July 2015: page 14

³¹ *Ibid*: page 15

3. Has the increase in LIPs driven up costs elsewhere?

The Low Commission argued that the reductions in the scope of legal aid would increase costs elsewhere.³² Similarly, an [article in the New Law Journal](#) argued that the knock-on costs of the legal aid reforms would undermine government targets.³³

The NAO put forward estimates of the costs to the MoJ and the wider costs to government of the increase in LIPs:

- The significant increase in LIPs in family courts had cost the MoJ £3.4 million in 2013-14.³⁴
- The impact of increased numbers of LIPs on court costs in family courts alone (where cases might take 50% longer) could be £3 million.³⁵
- In 2013-14, the MoJ had spent approximately £370,000 on various types of support for LIPs and would provide approximately £2 million over the next 2 years.³⁶
- In a survey, 50% of respondents who were eligible for legal aid reported that their civil legal problem worsened their health and wellbeing. Where legal problems remain unresolved, the cost may be met by the taxpayer through additional costs to the NHS or welfare programmes.³⁷
- The loss to HM Treasury in lower VAT revenue through reduced payments from the Legal Aid Agency to providers could be £60 million in 2013-14.³⁸

The Public Accounts Committee (PAC) also examined the impact of the changes to civil legal aid. On whether the changes to civil legal aid had achieved overall savings, it argued that it was impossible to know whether the savings in legal aid expenditure would be offset by additional expenditure elsewhere or represented value for money. In its conclusions and recommendations, the PAC drew attention to the shortcomings in the MoJ's assessment of the impact of the changes and argued that the MoJ could not manage the impact of the increase in LIPs, because it still did not understand their impact on the courts service.³⁹

The Justice Committee concluded that the MoJ had failed to meet three out of its four stated objectives for the reforms and, while making significant savings, had damaged access to justice for some litigants:

Commentators such as the National Audit Office and Commons Public Accounts and Justice Committees agree that the 2012 Act's changes have reduced spending on civil legal aid, but have questioned whether they have increased costs elsewhere in the legal system.

³² Low Commission, [Tackling the advice deficit: A strategy for access to advice and legal support on social welfare law in England and Wales](#), January 2014: Executive summary

³³ "Hidden cost of legal aid cuts", *New Law Journal*, 12 January 2012

³⁴ *Ibid*: page 14

³⁵ *Ibid*: page 17

³⁶ *Ibid*: page 18

³⁷ *Ibid*: page 19

³⁸ NAO, [Implementing Reforms To Civil Legal Aid](#), 20 November 2014, HC 784 2014-15: page 19

³⁹ Public Accounts Committee, [Implementing reforms to civil legal aid](#), 4 February 2015, HC 808 2014-5: pages 3-6

The Ministry's four objectives for the reforms were to:

- discourage unnecessary and adversarial litigation at public expense;
- target legal aid to those who need it most;
- make significant savings in the cost of the scheme; and
- deliver better overall value for money for the taxpayer.

Our overall conclusion was that, while it had made significant savings in the cost of the scheme, the Ministry had harmed access to justice for some litigants and had not achieved the other three out of four of its stated objectives for the reforms.⁴⁰

⁴⁰ Justice Committee, [*Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*](#), 12 March 2015, HC 311 2014-15: Summary

4. What remains in scope for legal aid?

4.1 Is legal aid available for family mediation?

The Commons Library briefing [Mediation and other alternatives to court](#) examines the options for alternative dispute resolution to settle civil disputes without the need for a formal court hearing.⁴¹

In [Proposals for the reform of legal aid in England and Wales](#), the MoJ advocated mediation as a quicker, cheaper and less stressful means of resolving disputes without going to court. It argued that family mediation in private law family cases should remain within scope for legal aid, drew attention to (then) increasing numbers of publicly-funded mediations and pointed to the wider benefits of mediation.⁴²

The 2012 Act provides for [mediation in family disputes](#).⁴³ The GOV.UK website offers a brief summary of legal aid provision for family mediation.⁴⁴ The MoJ has posted an animation [Understanding family mediation](#) on YouTube.⁴⁵

The NAO reported in November 2014 that, since the 2012 Act came into force, fewer people were using mediation for family law disputes:

10 (...) The Ministry ... expected 9,000 more mediation assessments and 10,000 more mediations to start in 2013-14. However, mediation assessments fell by more than 17,000 and there were more than 5,000 fewer mediations starting in 2013-14 than there were in 2012-13.⁴⁶

In response to a Parliamentary Question in December 2014, Simon Hughes outlined the Government's plans to advance mediation in family disputes:

The Government are committed to advancing mediation as the best way of reducing the stress on separating couples, alleviating pressures on the court system, and saving money for taxpayers. Last year, seven out of 10 couples who went into mediation had a successful outcome. In the past few months, we have set up a system where the first mediation session is free for both parties if one of the parties is legally aided, and we are already seeing an increased take-up in mediation as a result.⁴⁷

In its response to the Justice Committee, the MoJ described what the Legal Aid Agency had done to increase the supply of mediation:

⁴¹ SN 04176, 6 June 2013

⁴² Cm 7967, November 2010: paras 4.69-72

⁴³ Paragraph 14 of Schedule 1

⁴⁴ [Legal aid: family mediation](#). The Legal Aid Agency's [Family Mediation Guidance Manual](#) (November 2014) sets out the family mediation criteria (amongst other things) in more detail.

⁴⁵ 29 May 2014

⁴⁶ NAO, *Implementing Reforms To Civil Legal Aid*, 20 November 2014, HC 784 2014-15: p 7

⁴⁷ [HC Deb 16 December 2014 c1257](#)

The recent tender for mediation contracts resulted in an additional 37 providers being awarded contracts to deliver services across an additional 171 locations. These locations are spread across all areas of the country.

The Legal Aid Agency will continue to monitor the availability of access to Mediation services as well as the sustainability of the individual contracts awarded where the volume of work is low.⁴⁸

4.2 Is legal aid available through any other route?

For cases that are out of scope, the only potential way to secure legal aid would be through exceptional funding. A page on the Government's Justice website – [legal aid: apply for exceptional cases funding](#) – summarises the relevant provisions of the 2012 Act and provides a link to the Lord Chancellor's funding guidance.⁴⁹ In essence, a client would have to demonstrate that rights under the European Convention on Human Rights or EU law were at stake.⁵⁰

The NAO report in November 2014 observed that use of the exceptional funding route since the implementation of the 2012 Act had been lower than the MoJ had planned for.⁵¹

Responding to the Justice Committee's report of its inquiry into the legal aid changes, the MoJ defended the robust line it takes on exceptional funding, arguing that it should be available only where lack of legal aid would breach rights under the European Convention on Human Rights or EU law. The MoJ did not agree that people who had been refused exceptional funding were at risk of a miscarriage of justice.⁵²

4.3 Are there any other sources of help with legal problems?

The Commons Library briefing [Legal help – where to go and how to pay](#) suggests some potential sources of help with legal problems.⁵³ The Citizens Advice Bureau's Adviceguides [Help with legal costs - legal aid \(England\)](#) and [Help with legal costs - legal aid \(Wales\)](#) may also be useful.

From April to June 2015, the number of applications for exceptional case funding increased by 29 percent on the same period of the previous year. Of these applications — excluding those awaiting a decision — more than a third were granted, the highest proportion granted since the introduction of the exceptional case funding scheme in April 2013.¹

Source: Ministry of Justice, [Legal Aid Statistics in England and Wales: April to June 2015](#), 24 September 2015: page 5

⁴⁸ MoJ, [Government Response to Justice Committee's Eighth Report of Session 2014–15: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), Cm 9096, July 2015: page 18

⁴⁹ Section 10

⁵⁰ Exceptional funding is discussed at more length in Commons Library briefing 06645, [Civil legal aid changes since 2013: the impact on people seeking help with legal problems](#) (14 January 2016)

⁵¹ NAO, [Implementing Reforms To Civil Legal Aid](#), 20 November 2014, HC 784 2014–15: page 7

⁵² MoJ, [Government Response to Justice Committee's Eighth Report of Session 2014–15: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), Cm 9096, July 2015: page 18

⁵³ SN 03207, 21 February 2014

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).