

No time to retire –

# Legal aid at 60



# Foreword



Access to justice underpins our democracy. Citizens have to have confidence in the rule of law and that they can obtain advice, assistance and representation where it is necessary to enforce their rights. The legal aid system is crucial in ensuring this democratic participation. Congratulations to Citizens Advice for producing this excellent, thoughtful report.

**Carol Storer**  
*Director, Legal Aid Practitioners Group*



In tough times, legal redress for the vulnerable becomes even more important – when you are in need, access to the justice system doesn't seem like such a luxury. Legal aid isn't an 'added extra', designed to line lawyers' pockets; rather it is a vital part of the welfare state.

**Shami Chakrabarti**  
*Director, Liberty*



Our society is underpinned by laws and regulation, many of which make little sense to the average citizen. Legal aid helps the public navigate the justice system, access their rights and resolve problems. In many cases recourse to legal aid may be a one-off event, but it can change peoples' lives. As a service it has a real public value, so long may it continue.

**Des Hudson**  
*Chief Executive, The Law Society*



This publication makes an excellent contribution to the public debate that needs to happen about the future of legal aid. For 60 years Legal Aid has provided access to justice for millions of people ensuring the rule of law prevails. It does not though enjoy the same public profile or support as other public services. Constant wrangles about how much, the hard pressed lawyers and latterly, not for profit organisations, get paid to provide the service dominate what political debate there is on its future. What really matters- is what access to good quality legal advice services can do for ordinary people and the frequent failure of the legal aid system to provide this.

**Steve Hynes,**  
*Director, Legal Action Group*

# Introduction



Legal rights involve the things we hold most dear – our physical safety, the care of our children, our ability to stay employed or keep our homes. Yet research into the civil justice system has found that one third of the population has had unresolved legal problems.<sup>1</sup> The good news is that half the people who seek advice to resolve their civil legal problem obtain it, but Citizens Advice is concerned about the many who try to get advice or representation and fail.<sup>2</sup> The recession and resulting financial insecurity are causing more people to seek advice about legal problems. We know from what Citizen Advice Bureaux are telling us that finding legal help to solve problems is getting more difficult.<sup>3</sup>

Since 1939, Citizens Advice Bureaux have been providing free, independent, confidential and impartial advice to people who need it. And since 1949, when civil legal aid was established to provide equal access to the justice system for people on low incomes, Citizens Advice Bureaux have worked in partnership with civil legal aid services to achieve the shared goals of helping people understand and realise their rights and responsibilities.

This report celebrates the vital role played by civil legal aid over the last 60 years in making the ideal of justice a reality for millions of people who otherwise could not afford advice or representation. The research shows real public support for legal aid services. It also highlights that we cannot cease our efforts to reach the goal of legal services for all who need them, so that there is in fact, access to justice for all.

Additional resources must be targeted at areas where gaps in service are worst and local demand is greatest to ensure that all those who need advice have equal, affordable, and reasonable access to civil legal aid.

A handwritten signature in black ink that reads "David Harker". The signature is written in a cursive, slightly slanted style.

**David Harker**  
Chief Executive, Citizens Advice

- <sup>1</sup> Pleasance, P., Balmer, N., and Buck, A., *Causes of Action: Civil Law and Social Exclusion, Second Edition*, Legal Services Research Centre, 2006.
- <sup>2</sup> *English and Welsh Civil and Social Justice Survey*, Legal Services Research Centre, 2007.
- <sup>3</sup> The findings in this report are the result of four surveys undertaken by Citizens Advice, principally of bureaux and clients, but also of the public. A survey of 239 Citizens Advice Bureaux was undertaken from September to December 2008. An additional survey of 261 Citizens Advice Bureaux was completed from February to May 2009. In both surveys over half of all Citizens Advice Bureaux responded. Citizens Advice also conducted a survey of clients' experiences through our Adviceguide website. There were 314 respondents. Finally, in March 2009 Citizens Advice commissioned the British Market Research Bureau (BMRB) to undertake a survey of a representative sample of the UK population (2,000 people) for their impressions of civil legal aid. The survey was undertaken between 23 and 27 March.

# Legal aid can solve a crisis

A woman fell into debt and made payments she couldn't afford to some of her most demanding creditors. As a result she fell behind on her rent. When she sought help at her local CAB her problems had escalated and she was facing eviction. Her legal aid adviser applied to suspend the eviction warrant, helped her to write a manageable budget, negotiated with her creditors, and began payment plans. The client wrote:

*"I now feel confident to manage my financial affairs. A sincere thank you for all your help and guidance... all my creditors have accepted terms that I can afford with no risk of me defaulting. I am so grateful for your excellent service and the marvellous work done by the Citizens Advice Bureau."*<sup>4</sup>



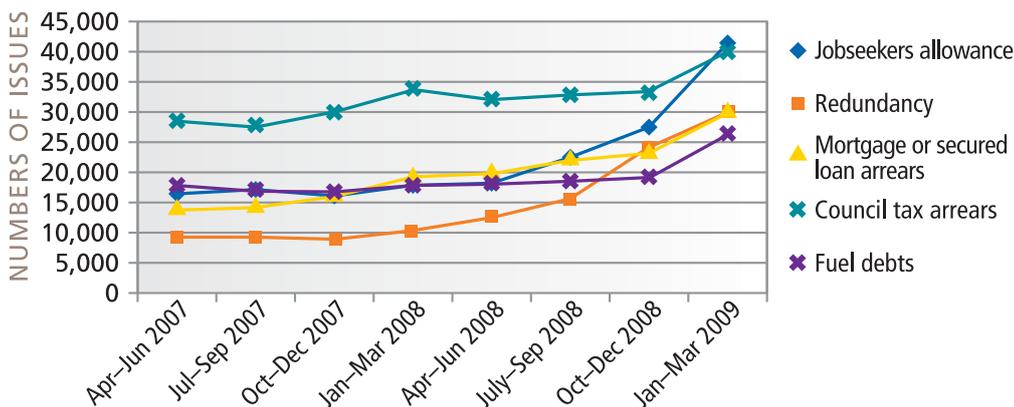
## Legal aid makes a difference...

The legal aid system – established in 1949 – is one of the welfare state's greatest achievements.<sup>5</sup> Each year the Legal Services Commission helps over two million people, who could not otherwise afford it, access quality advice, information and representation.<sup>6</sup> Citizens Advice Bureaux are long-standing partners in this provision. Often bureaux are the gateway to civil legal services for people facing a legal problem, with half of bureaux providing specialist legal aid advice themselves.<sup>7</sup>

## We all need advice

Everyone needs legal advice sometimes and this need only increases during a recession. The legal aid system is here to make sure those who need legal help, but cannot afford to pay for it, can get it. In today's economic climate, legal help is particularly important for those threatened with eviction, facing redundancy, or facing court action for debt. Bureaux are seeing an increase in requests for advice on these issues, and are finding it increasingly difficult to connect clients to the help they need.

## Key advice problems dealt with by Citizens Advice Bureaux in England and Wales from April 2007 to March 2009



Base: Data extracted from Citizens Advice's case recording system for the period April 2007 to March 2009.

## No time to retire

Despite legal aid's achievements society and its laws have grown far more complex in recent years and too many people cannot access legal help when they really need it. Of the third of the people who experience legal problems in any one year – only 38 per cent succeed in getting help.<sup>8</sup> Eight per cent of people in England and Wales have tried to get advice for a civil justice problem and failed.<sup>9</sup> This equates to 2.3 million people.<sup>10</sup> This suggests there are still critical barriers to accessing civil legal services – a fact that presents an ongoing challenge for the Community Legal Service.<sup>11</sup>

This report uses surveys of bureaux, bureaux clients, and the general public to research their perception of Community Legal Services today and makes recommendations for eliminating barriers to accessing to legal services.

- 4 Case study from the LSC's 'legal aid is 60' website, [www.legalaid60.org.uk](http://www.legalaid60.org.uk)
- 5 For a full history of legal aid see Hynes, S. and Robins, J. *Whatever Happened to Legal Aid*, Legal Action Group 2009.
- 6 Legal Services Commission (LSC) website, [www.legalservices.gov.uk](http://www.legalservices.gov.uk).
- 7 Two hundred and twenty five bureaux currently offer legal services under contract with the Legal Services Commission.
- 8 *English and Welsh Civil and Social Justice Survey*, op. cit.
- 9 *Ibid.*
- 10 Calculated using figure for population of England and Wales contained in *Key Population Statistics 2007*, Office for National Statistics, 2009.
- 11 Citizens Advice previously outlined concerns about access to the Community Legal Service (CLS) in *Geography of advice – an overview of the challenges facing the Community Legal Service* (2004). Concerns were also raised by the Constitutional Affairs Select Committee's fourth report, *Civil Legal Aid: Adequacy of Provision*, HC391-I (2004).

The recession hits those closest  
to poverty the **hardest**

*"The recession has hit us hard. We have opened 50 per cent more cases each month in the last three months than we did in the previous year over the same months. At this rate we will run out of funding in half the time we expected. It means that people in debt won't get advice from us because we simply haven't been funded to handle the level of demand in a recession."*

***Adam Cain, Stroud CAB***

*"Because legal aid was very limited [we were] advised to present [our] case to court ourselves."*

***Adviceguide survey respondent***



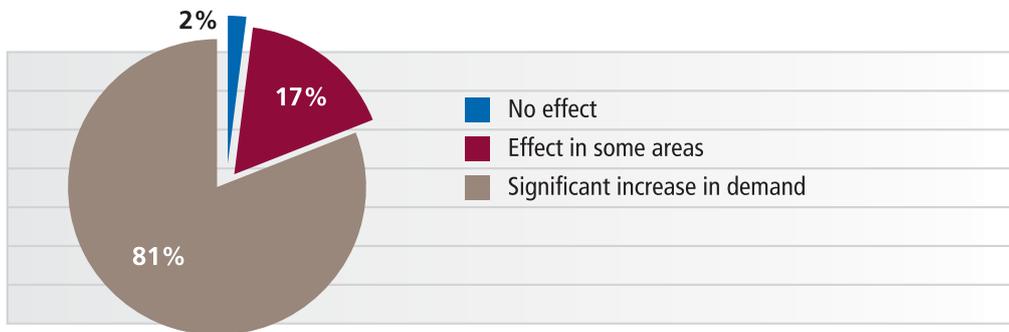
## The UK is experiencing severe economic turmoil

- Unemployment in the UK rose to 2.2 million in May 2009. Seven per cent of the UK working population is currently jobless – the highest level in over a decade.<sup>12</sup>
- The UK saw a 50 per cent rise in repossessions by first charge lenders in 2008. There were 40,000 repossessions during 2008 – one in every 290 mortgages.<sup>13</sup>
- Individual insolvencies in England and Wales increased by 22 per cent in the first quarter of 2009 compared to same quarter in 2008.<sup>14</sup>
- Company insolvencies in England and Wales increased by 56 per cent in the first quarter of 2009 compared to the same quarter in 2008.<sup>15</sup>

## The recession has increased the demand for advice

Between April 2008 and May 2009 Citizens Advice Bureaux assisted 1.93 million clients with about six million issues. Rising numbers of bureaux in England and Wales are reporting an increase in demand for advice due to the recession, with most reporting a significant increase in demand.

### What effect has the recession had on your area?

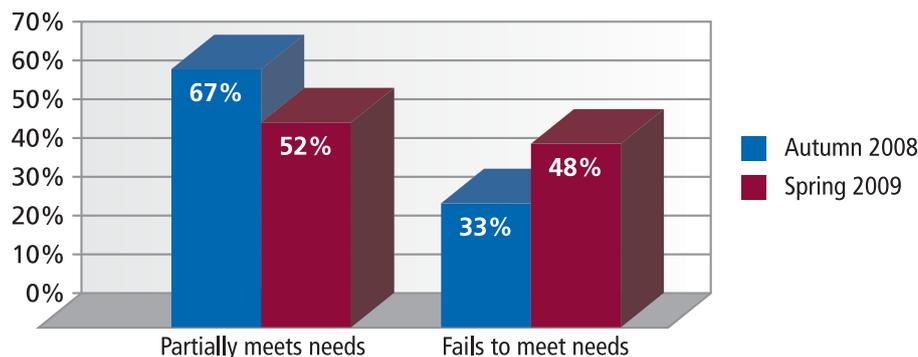


Base: 176 respondents to survey question to Citizens Advice Bureaux February to May 2009

## Demand for civil legal advice in the recession is outstripping the supply

As companies downsize or close, access to credit shrinks, and consumer spending drops, people who were struggling on the margins of poverty, debt and employment find themselves falling into crisis and needing legal help. As the recession worsens more bureaux are reporting concerns that the current level of Community Legal Service provision is no longer meeting the needs in their area.

### Does the current level of Community Legal Services provision meet client needs in your area?



Base: 174 respondents to survey question to Citizen Advice Bureaux, September to December 2008, and 175 respondents to the same survey question to Citizens Advice Bureaux, February to May 2009.

12 Office for National Statistics, *Labour Market Statistics Headlines*, May 2009.

13 Council of Mortgage Lenders, *Arrears and Possessions in 2008*, 20 February 2009. According to the Council of Mortgage Lenders there were 12,800 repossessions by first-charge mortgage lenders in the first quarter of 2009. This compares with 8,500 in the first quarter of 2008.

14 The Insolvency Service press release, 1 May 2009.

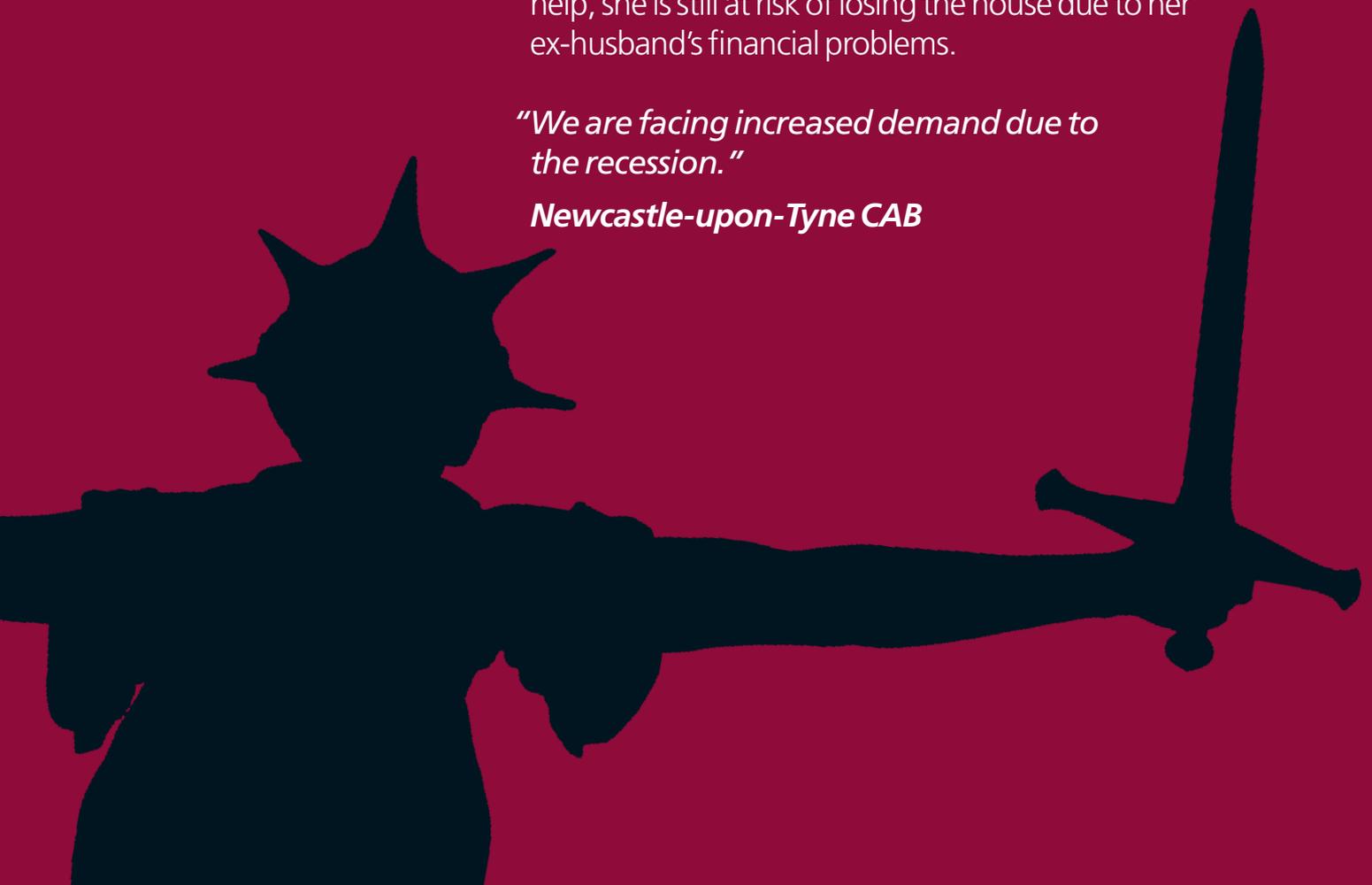
15 *ibid.*

# People adversely affected by the recession need help **now**

An assistant teacher in Lancashire whose ex-husband accrued enormous debts was facing the loss of her home because he had gone bankrupt. Her ex-husband was self-employed and was supporting their children by contributing to the mortgage. When his small business failed, as over 10,500 did in the first half of 2008, he became unable to pay his creditors and his portion of support. They fell behind with the mortgage. Before he petitioned for bankruptcy, she took out a loan to help him pay off his debts, hoping she could avoid the forced sale of the house by the bankruptcy trustees. When she sought legal help to solve her debt problems and save her home, she found she wasn't eligible for legal aid due to the value of the equity in the house. Unfortunately, without legal help, she is still at risk of losing the house due to her ex-husband's financial problems.

*"We are facing increased demand due to the recession."*

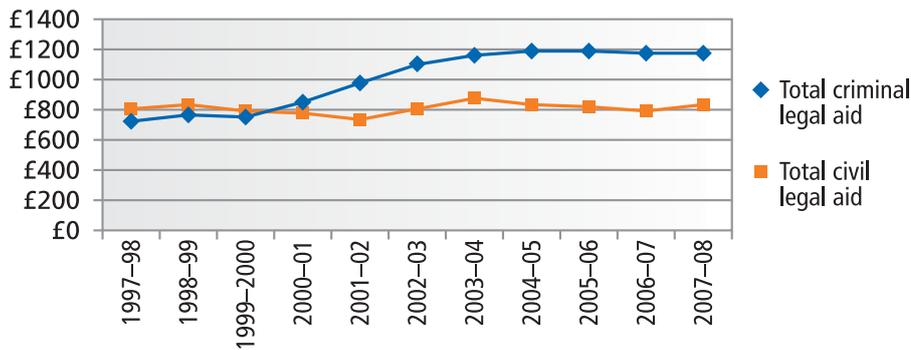
**Newcastle-upon-Tyne CAB**



## Recession increases demand but not the budget

The legal aid budget is currently capped at £2.2 billion, with £801 million of expenditure on civil matters. Over the past 10 years, civil legal aid expenditure has been cut back in real terms by 24 per cent due to an increase in expenditure on criminal legal aid.<sup>16</sup>

### Spending on legal aid

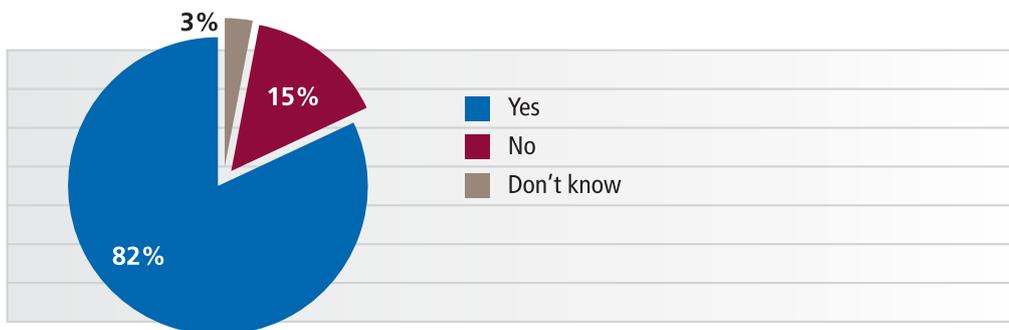


Base: Data provided by the Legal Services Commission on Legal Aid expenditure 1997 – 2009.

## The public support more funding for civil legal aid

Our research suggests the overwhelming majority of people support more funding for civil legal aid to provide legal help to people adversely affected by the recession.

### Do you support Government providing more funds to legal aid for people adversely affected by the recession?



Base: Sample consists of 1,816 adult respondents aged 16+ members of the public from England and Wales. Research conducted by BMRB Omnibus March 2009.

People understand that their rights to child maintenance, employment pensions, unemployment benefits, asylum, or housing can all be rendered meaningless without the help of a legal adviser. Yet the Legal Services Commission’s budget is based on historic need for legal services and set far in advance – it doesn’t have the capacity to respond to the changes in demand caused by the recession.

<sup>16</sup> *A Fairer Deal for Legal Aid*, Department of Constitutional Affairs, 2006.

# Prevention means rapid. access to legal aid is **vital**

A woman working in a supermarket in Swansea asked to take extended leave because her 16 month old daughter sustained an injury which required an operation. She believed that because she sought and received permission from her employer before she took 11 weeks' unpaid leave she would not be at risk of losing her job. Upon her return to work, however, she was advised by her employer that she should report to a disciplinary hearing. She feared that she was facing the loss of her job.

Rapid access to legal information, advice and potentially representation is absolutely essential for this woman to keep her job.

The loss of employment could easily lead to cascading problems and future crisis, such as homelessness. However, a simple meeting with an employment specialist could help her avoid the loss of income and the financial hardships this could bring. Maintaining stable employment for the future would also mean that she and her children need not rely on benefits.

*"This is an advice desert, and we constantly see clients who are not getting the advice they need and deserve because there is simply nobody out there for us to refer clients on to. This is particularly true for employment cases, and this is an area where the demand is increasing daily – employment practice here has always been poor, and the recession is exacerbating this tendency."*

**North Cornwall CAB**



## The majority of people with unresolved legal issues seek help, only half get it<sup>17</sup>

The problem is not apathy: only 10 per cent of people with legal problems do nothing.<sup>18</sup> Far too many people fail to get the help they need because they don't know where to go, or try to receive assistance and get denied or discouraged in searching for it.<sup>19</sup> The recession exacerbates both the need for legal help and the difficulties obtaining it.

## Prevention can save resources

The Legal Services Commission estimates the cost to society of unresolved legal cases in increased spending on public services at £13 billion over three and a half years.<sup>20</sup> Preventing or resolving legal problems could save the Government billions annually, at the same time as helping individuals to surmount or avoid personal difficulties. The costs of legal problems to individuals included:

- Sixteen per cent reported that their problems led to physical ill health.
- Eighteen per cent reported that the problems led to stress-related ill health.
- Sixteen per cent reported that the problems led to a loss of income or employment.
- Six per cent reported that the problems led to the loss of a home.<sup>21</sup>

## The Government is taking first steps to respond to the recession

Because early advice can be a quick and cost-effective strategy to prevent simple cases from developing into more complicated matters, the Government has supported the advice sector to meet increasing demand. Citizens Advice welcomes the steps taken which include:

- The Legal Services Commission allocating £23 million for face-to-face legal advice, including advice-desk provision in county courts.
- Promoting telephone advice and referral, including opening the Community Legal Advice helpline on a Saturday morning and extending the Community Legal Advice telephone to family issues, to help an additional 25,000 people with family law problems.
- The Treasury providing an additional £10 million to enable Citizens Advice Bureaux to extend their opening hours. This will allow bureaux in England and Wales to open for 170,000 additional hours in the 14 months up to March 2010 and allow an estimated 335,000 more clients to be served during this period.
- Substantial Government funding for debt advice; including £84 million through the Financial Inclusion Fund for the period 2006 to 2011 and £5 million in the 2008 pre-Budget report to extend telephone advice via National Debtline.
- The Legal Services Commission setting a target to deliver one million Civil Legal Help acts of assistance via face-to-face and telephone advice during 2008/09. This target was met with a total of 1.07 million acts of assistance being achieved.

17 *English and Welsh Civil and Social Justice Survey*, op. cit., page 46; these findings appear to be supported by other research, for example LAG *Availability of Advice Survey*, Legal Action, September edition 2008.

18 *ibid.*

19 For more information see *Understanding Advice Seeking Behaviour: Further Findings from the LSRC Survey of Justiciable Problems*, LSRC 2007. Also see Patel, Balmer et al, *Geography of Advice Seeking*, LSRC Paper 2008.

20 Pleasance, P., Balmer, N., and Buck, A., op.cit.

21 *English and Welsh Civil and Social Justice Survey*, op. cit.

## The Government must do more

However, legal advice in some cases simply isn't enough. When the advice given to resolve an issue is to seek the help of a solicitor or legal specialist, CAB clients are increasingly finding that next step is too difficult, and sometimes practically impossible.

Investing in prevention also means developing the Community Legal Service's capability to advocate for change and reform in agencies that are not functioning well and to educate the public about their rights and responsibilities. As AdviceUK argue, the legal aid system must be given the resources to tackle systemic problems such as poor administration in the benefits system.<sup>22</sup> The Government has embraced the concept of public legal education, but currently this is not funded through the legal aid system, and nor has the Government made the investment necessary for public legal education to make a widescale impact.<sup>23</sup>

PA-JOHN BIRDSALL



22 *It's the System Stupid: Radically Rethinking Advice*, AdviceUK, 2008.

23 *Public Legal Education and Support Taskforce Report*, 2007

# People in need of legal aid may find legal help hard to access

*“Many people in Lambeth need access to free legal aid. However, present provision is insufficient. As a result, access to justice continues to be compromised for many.”*

**Merton and Lambeth CAB**

A distraught woman with a severely disabled eight year old daughter needed legal help quickly. Social services in Sussex had advised her that they were going to remove her daughter from her home and place her into foster care. As required, social services provided the mother with a list of legal aid solicitors. She rang all the firms on the list, numbering over 100. None of them were able to come to the next meeting between her and social services. Adding to her distress, the list she which she was given did not specify the area of the solicitors' expertise and many were not appropriate for her legal situation.

The CAB were concerned that the experience of trying and failing to get help from so many Community Legal Service funded solicitors simply increased her anxiety and her sense that she was on her own in her struggle to keep her daughter with her.



## Evidence of a decline in supply

Between 1997 and 2005 there was a decline of 39 per cent in the number of people represented and of 45 per cent in the number of people receiving face-to-face legal help in a solicitor's office or advice agency.<sup>24</sup> In 1999, 3.1 million acts of assistance were delivered,<sup>25</sup> whilst last year it was 2.5 million.<sup>26</sup>

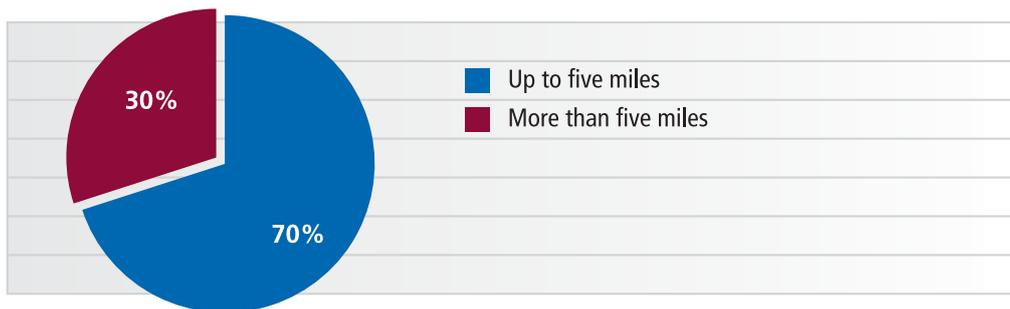
The number of solicitors providing legal services has also diminished over time. In 1995, 11,999 solicitor offices and other agencies provided civil legal aid,<sup>27</sup> compared to 2,734 in 2008.<sup>28</sup> The reduction in supply can partly be explained by changes in the contracting regime which consolidated a number of specialist services. The consequences of this change raises challenges for access.

## Difficulties accessing legal aid assistance

Citizens Advice is concerned that people with legal issues find it hard to access legal help. Many bureaux report that some clients find it hard to travel the long distances to meet with a specialist legal adviser. Even short distances can be a barrier to accessing legal services. People on low incomes may not have a car, public transport can be expensive, infrequent, or unavailable, and they may be unable to travel because of their job, family demands, or due to mobility impairments. Travel is a major problem in rural areas, and whilst geographical access is improving, the public's experiences of seeking advice suggest there is still some way to go.

Telephone advice is part of the solution to eliminating barriers for some people, especially in rural areas, but the need for face-to-face meetings cannot be eliminated in the provision of quality legal services. Better outreach programmes are also needed to support hard to reach groups.

## How far did you have to travel to get to speak to an adviser or solicitor?



Base: 120 respondents of the 314 respondents to the Adviceguide survey who were eligible for legal aid.

24 *A Fairer Deal for Legal Aid*, op. cit.

25 Legal Aid Board, *Annual Report, 1999–2000*.

26 Legal Services Commission, *Annual Report, 2007–2008*.

27 Legal Aid Board, *Annual Report, 1995–1996*. It is not entirely clear from the Legal Aid Board's (predecessor to the Legal Services Commission) annual reports whether "offices" refers to firms and agencies or their individual outlets, or on the number of these outlets delivering exclusively civil and family legal aid services. Subsequent years' Legal Aid Board reports show 9,790 (1996–97) 9,541 (1997–98) 9,385 (1998–99) and 8,677 (1999–2000) offices involved in civil legal aid work. Following the introduction of exclusive contracting under the Access to Justice Act regime and the phasing out of the previous scheme by March 2002 only 3,800 firms offered this service. The Legal Services Commission's report for 2002–2003 showed that the total number of "offices" with civil contracts (solicitors, and Not for Profit agencies) at the end of March 2003 was 5,061, this has now declined to the current level of 2,734.

28 Legal Services Commission, *Annual Report, 2007–2008*.

## The need to develop access guidelines

The Legal Services Commission's vision for the Community Legal Service is for it to be client focused and accessible.<sup>29</sup> We applaud the Legal Services Commission's plans to improve access by developing and publishing access targets for advice and representation, benchmarked against standards used by other public services such as the NHS.<sup>30</sup>

When people seeking legal help encounter access barriers such as travel distance, busy phone lines, long waiting times for appointments, and complex eligibility criteria, they become discouraged and sometimes dissuaded from pursuing their case. Access barriers often act to ration access to legal advice. This can particularly disadvantage many of those who would benefit greatly from legal help, including older people and those who are socially marginalised or geographically isolated. The Legal Services Commission needs to work to eliminate barriers to legal services that conflict with the mission of ensuring that everyone in society has access to justice and protection for their fundamental rights.

PA-JOHN BIRDSALL



<sup>29</sup> *Making Legal Rights a Reality*, Legal Services Commission, March 2006.

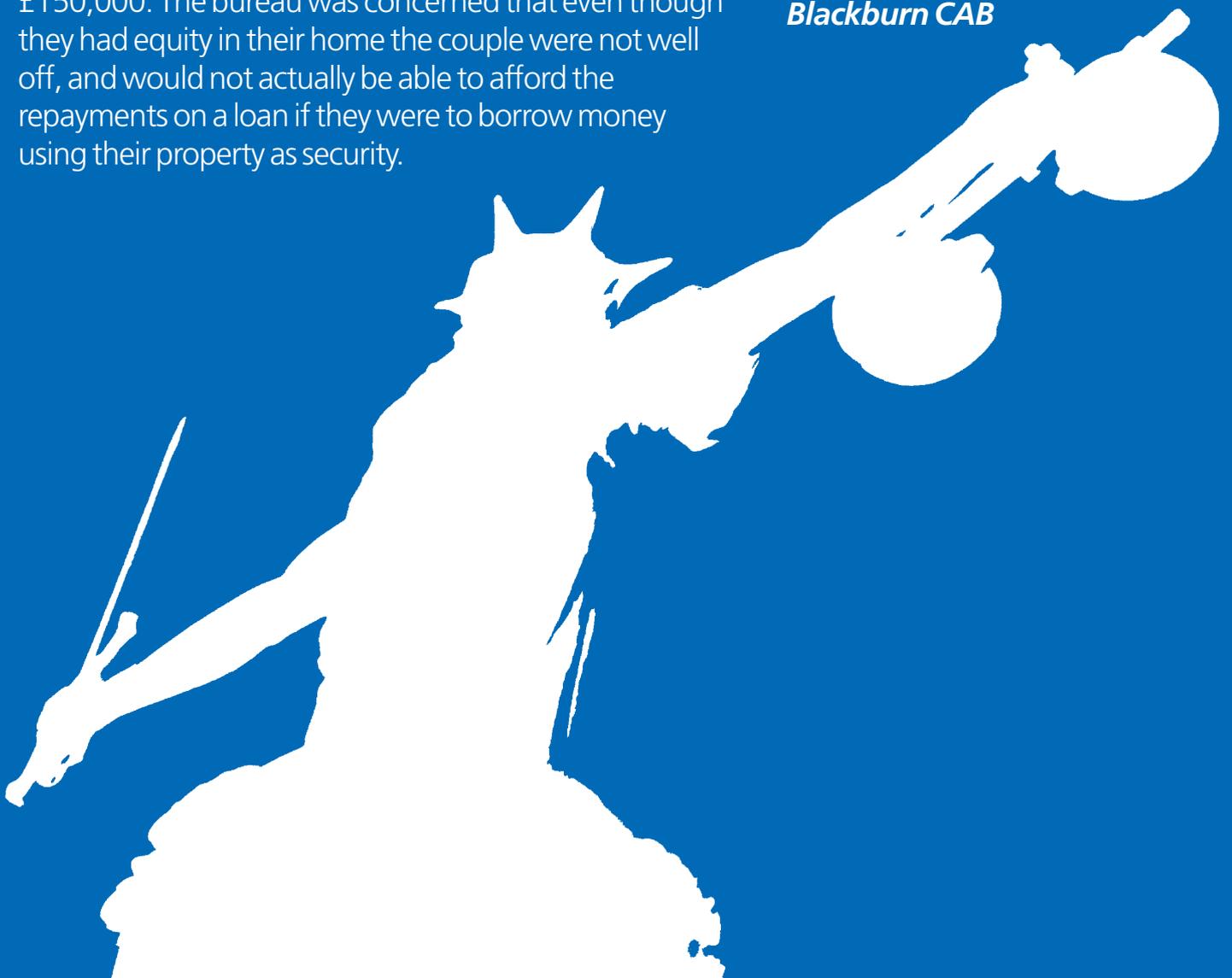
<sup>30</sup> *ibid.*

# Eligibility thresholds can be a major problem for some people who need advice

A 62 year old woman sought advice from her bureau in Yorkshire to find out whether her husband was entitled to a higher rate of disability living allowance (DLA) than he was currently receiving. Since he had first applied for DLA his condition had worsened. At the time they requested free legal help, neither was able to work. Frustratingly, the couple were told they were ineligible for Legal Services Commission help because they owned their house with no mortgage, which was valued at £150,000. The bureau was concerned that even though they had equity in their home the couple were not well off, and would not actually be able to afford the repayments on a loan if they were to borrow money using their property as security.

*“The situation needs to be addressed – clients who fall through the net of eligibility are left with nowhere to turn. Access to justice is becoming the province of the very rich and the very poor but it does not address the people in the middle.”*

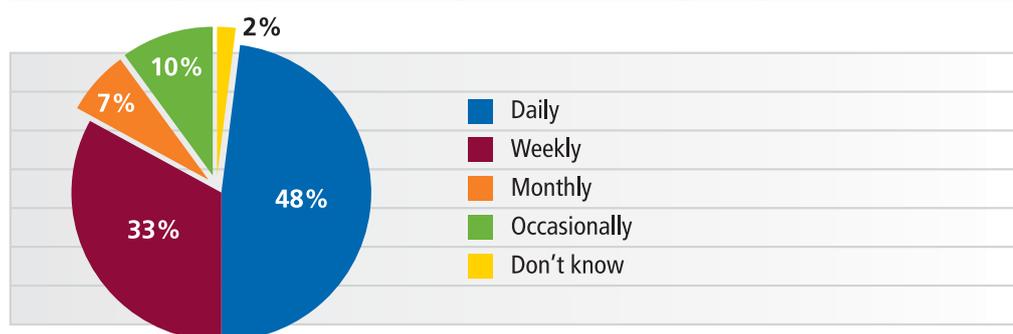
**Blackburn CAB**



## People of modest incomes can be denied help

People of very modest means can often be denied access to legal aid services. People who receive certain income related benefits are automatically eligible for legal aid, but everyone else must pass through four stages of testing. A person who fails at any stage will not be eligible for help. One of the four stages is to calculate the client's disposable income, which includes money needed for food, utilities, and council tax. This cannot exceed £733 per month. Furthermore, anyone who has more than £100,000 equity in their home may not be eligible. Bureaux report seeing people who fail criteria on a daily or weekly basis.

### How often does your bureau see clients who are unable to access specialist legal help because they fail to meet eligibility criteria?

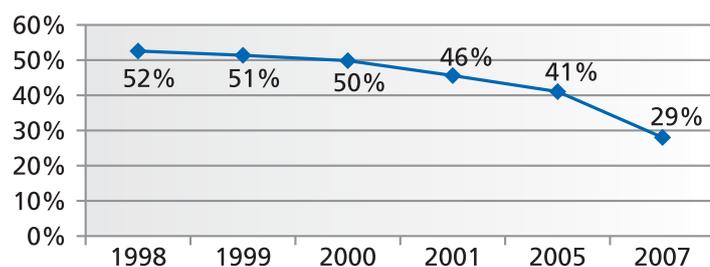


Base: 261 respondents to survey to Citizens Advice Bureaux, February to May 2009.

## Eligibility for legal services is dropping

Today less than one in three people are eligible for legal aid. Many of the people for whom legal aid was intended to serve, such as those receiving welfare benefits, in low paid work, or in debt, are unable to receive the help they need because of the income and asset eligibility rules.

### Estimated proportion of the population of England and Wales eligible for civil representation



Base: Advice Service Alliance, response to Freedom of Information request.<sup>31</sup>

## Eligibility criteria creates barriers

Citizens Advice believes that there is evidence that the eligibility barriers to accessing legal services are undermining the fundamental mission of the Community Legal Service to provide legal help to those who otherwise could not afford it. The Government has acknowledged the problem and is moving in the right direction. It has increased civil legal aid eligibility limits by five per cent from April 2009. However, if eligibility limits had kept pace with the average rise in inflation since 1997, the eligibility increase would have been more than four times that much. We believe that the eligibility limits need to be reformed.

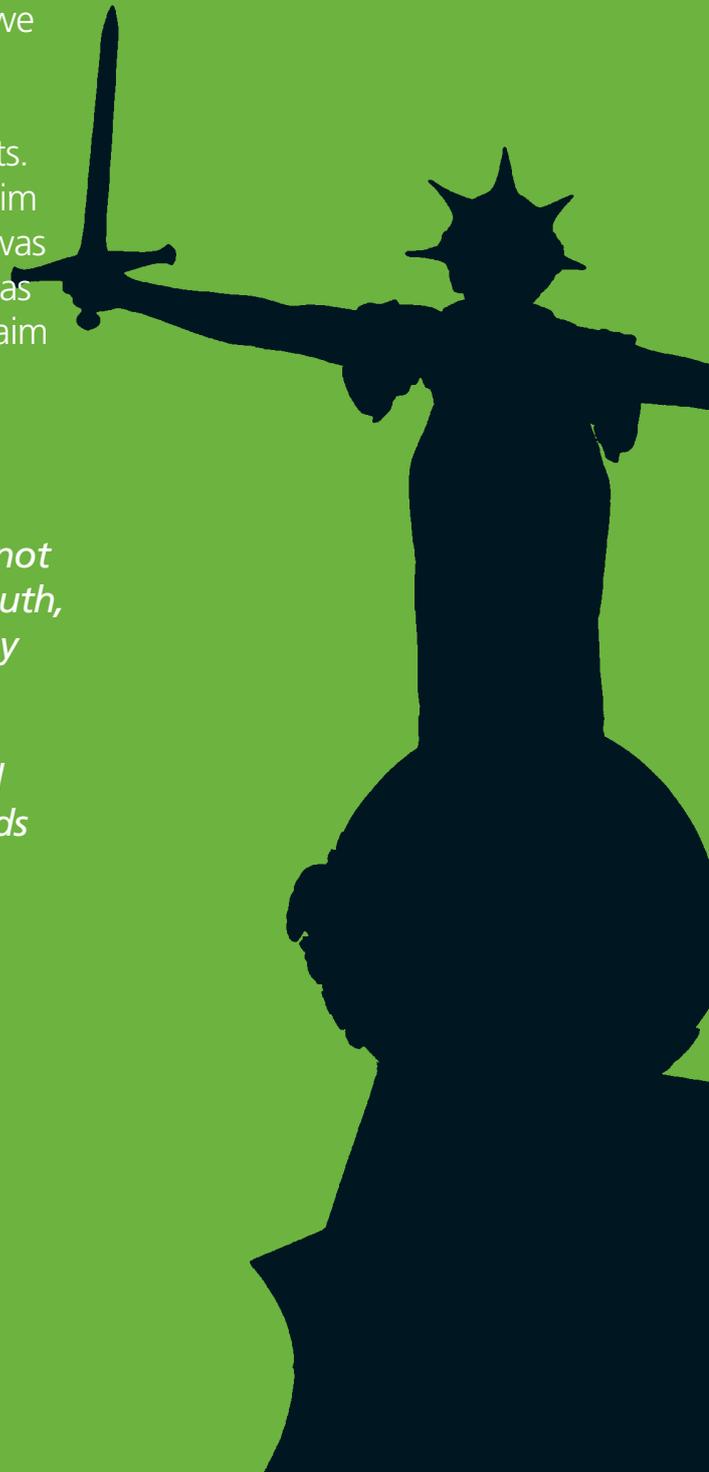
<sup>31</sup> An estimated 40 per cent of those experiencing welfare benefits problems are unlikely to be eligible for civil legal aid and over 50 per cent of those experiencing money or debt problems are unlikely to be eligible. Griffith, A., *Dramatic drop in civil legal aid eligibility*, Legal Action, September 2008.

# Immigrant needs legal help to obtain asylum

A 26 year old man settled in Yeovil was seeking political asylum in the UK having fled violence in Zimbabwe. It is easy to forget the level of fear and misery that causes people to leave their home country. The world's leading human rights organisations all report that in Zimbabwe assaults, torture, death threats, kidnappings and unlawful arrests and detentions are perpetrated by law enforcement agencies against political opponents. This refugee sought legal help to make his asylum claim and learned that the nearest specialist legal support was in Bristol or Plymouth, both over 40 miles away. He was prohibited from working in the UK until his asylum claim was decided, so the lack of local immigration asylum agencies in the area meant he had to travel long distances and caused him financial hardship.

*"We are in a rural area which means any travel is not only costly but takes time. Referral to Bournemouth, for example, might mean a bus and train journey costing in excess of £60 with travelling time in excess of three hours from our area. Clients on benefits are often vulnerable and cannot afford to, or are emotionally unable to make these kinds of journeys."*

**Sherborne CAB**



## Access to legal aid should mean access to specialist advisers

Today most legal issues require advisers who specialise in that particular area of law, such as family law. So someone who lives near a legal aid provider may still not be able to access the help they need. The Legal Services Commission is aware that there are shortages in key specialist services, and are working to ensure that services are delivered across different categories of law. Scarce resources means they have to make difficult decisions on priorities.<sup>32</sup> As a result, nearly one in three bureaux report having difficulty finding a representative for court and tribunal proceedings on a weekly basis.<sup>33</sup>

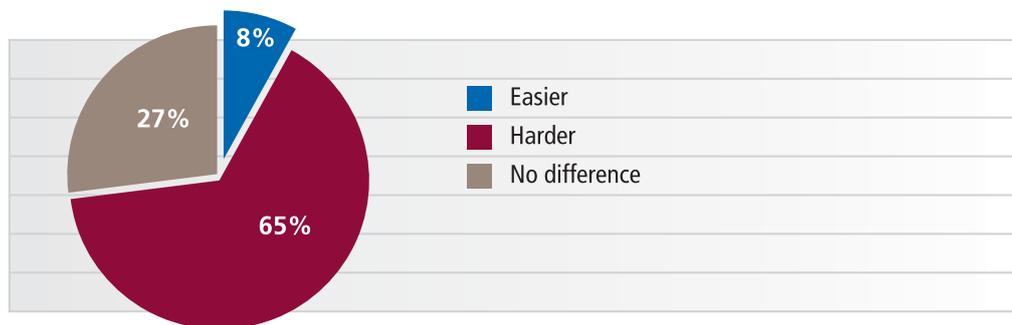
## Legal aid is restricted in scope

Legal Services Commission funding does not cover some of the most commonly experienced legal problems about which people need advice and representation. Some specific types of cases are ineligible for legal aid representation, such as personal injury claims and representation in many tribunals, including social security appeal hearings, Employment Tribunals and the Asylum Support Tribunal (which decides whether asylum-seekers should receive basic subsistence).<sup>34</sup> The barriers created for people based on the type of case leave vulnerable people without the legal help they need.

## Legal aid is becoming increasingly hard to deliver

Over the past three years, civil legal aid has undergone extensive reforms, including the introduction of fixed fees, a new system of contracting and increased use of competitive tendering to encourage providers to deliver joined up services across a range of legal advice categories.<sup>35</sup> Whilst some of these changes have improved value for money and promoted better services for the public, legal aid providers are increasingly operating on tight financial margins and spending more time on bureaucracy – a common complaint from not-for-profit providers.

## Has it got easier or harder to deliver Community Legal Service contract services as a result of contract changes?



Base: 261 respondents to survey to Citizens Advice Bureaux, February to May 2009.

<sup>32</sup> *Making Legal Rights a Reality*, op. cit.

<sup>33</sup> Survey question to Citizens Advice Bureaux spring 2009 – "How often is it a problem to find a CLS lawyer or a specialist adviser who will represent a client in court or tribunal proceedings?" Twenty nine per cent responded daily or weekly.

<sup>34</sup> For more information on the lack of representation in Asylum Support Tribunal and the consequences on vulnerable immigrants, see *Supporting justice*, Citizens Advice, June 2009.

<sup>35</sup> Following a review of the Community Legal Service established under the Access to Justice Act, the Government outlined a new strategy entitled *A Fairer Deal for Legal Aid*, op.cit. In March 2006, the Legal Services Commission published their *Making Legal Rights a Reality* strategy. As a result of these, and a subsequent review of procurement undertaken by Lord Carter of Coles, the Ministry of Justice introduced a new approach to delivery in 2007, outlined in *Legal Aid Reform – The Way Ahead*.

# Family needs legal help to keep the roof over their head



A disabled woman who was threatened with homelessness sought advice from a Cheshire CAB. She had lived in a house for 20 years that was purchased for her son out of compensation received after an accident. Her son had now left home and his solicitor was arranging for the house to be sold. Her son, her partner, and her two remaining children would be homeless. She had approached the council's housing department about her situation, only to be told that she would need to see a solicitor before they would consider re-housing her. However, as the woman's partner worked they would not be entitled to legal aid.

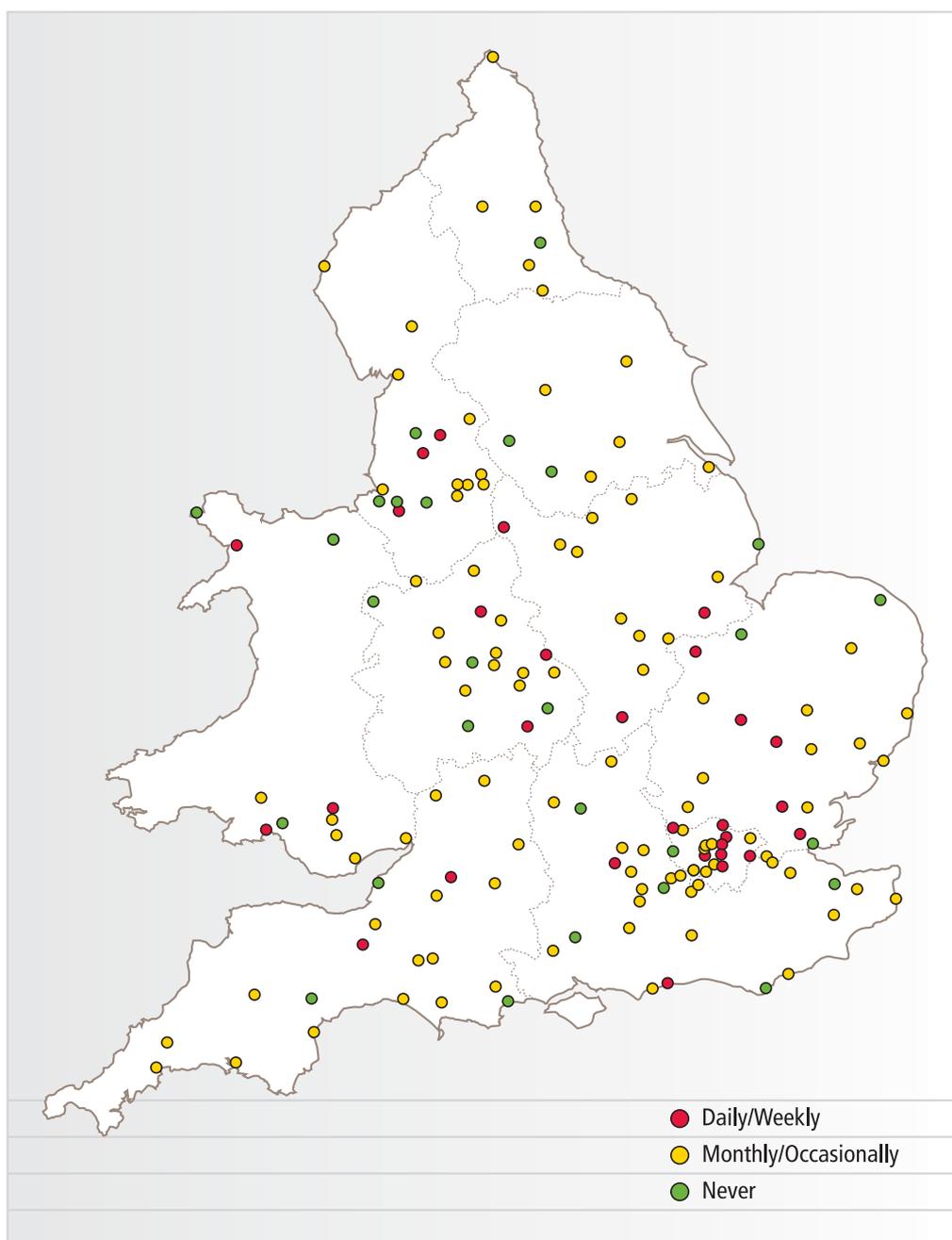
*"My only income is a state pension and the lawyer said that I would qualify for legal aid and therefore agreed to represent me. However, when he realised that [owning property disqualified me from] legal aid, he said he could no longer represent me, leaving me half way through the process of a housing dispute and with a court appearance pending. I had to resolve the problems without him. Because I had relied on him I felt terribly let down."*

**Adviceguide survey respondent**

## Accessing civil legal aid for housing problems

Over 120,000 people received legal aid for housing problems from the Community Legal Service in the year before March 2007.<sup>36</sup> Despite this, 75 per cent of bureaux reported problems finding a Community Legal Service lawyer who will deal with urgent **housing cases** such as defending possession proceedings or housing disrepair.

### How often is it a problem to find a Community Legal Service lawyer or a specialist adviser who will deal with urgent housing cases (for example defending possession proceedings or housing disrepair)?



Base: 261 respondents to survey to Citizens Advice Bureaux, February to May 2009.

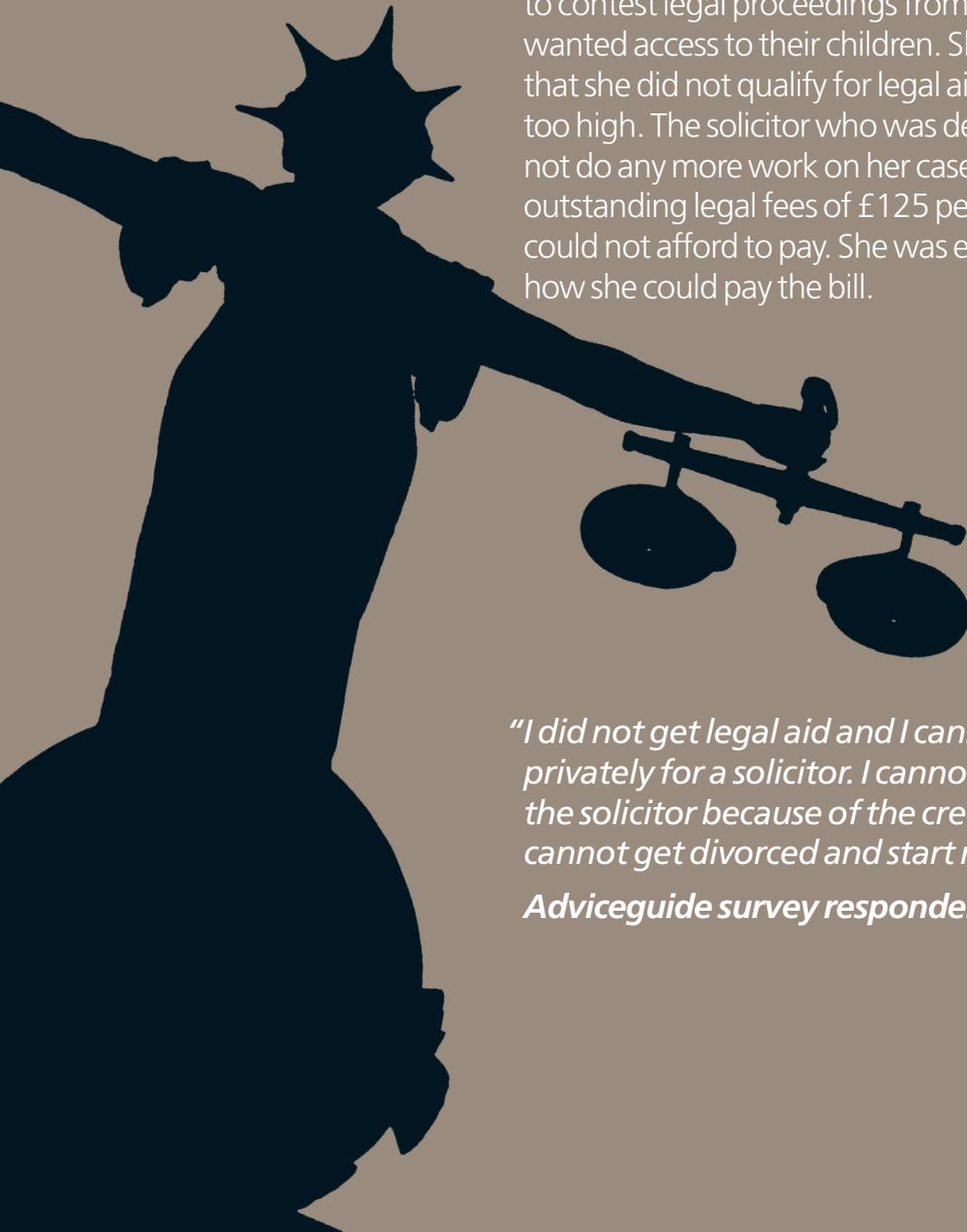
<sup>36</sup> *Statistical Information, 2006/07*, Legal Services Commission, Table CLS2.

# Victim of domestic violence needs legal aid to keep her family safe

A woman with three children sought advice from a Somerset CAB about legal aid. She earned £403 per month from her part-time job, topped up with a working tax credit of £110.42 per week, child tax credit of £126.95 per week, and child benefit of £43.90 per week. She needed legal aid to contest legal proceedings from her violent ex-partner who wanted access to their children. She had just been notified that she did not qualify for legal aid because her income was too high. The solicitor who was dealing with the case would not do any more work on her case, and was pursuing outstanding legal fees of £125 per hour plus VAT, which she could not afford to pay. She was extremely worried about how she could pay the bill.

*"I did not get legal aid and I cannot afford to pay privately for a solicitor. I cannot obtain a loan to pay for the solicitor because of the credit crunch. As a result I cannot get divorced and start my life."*

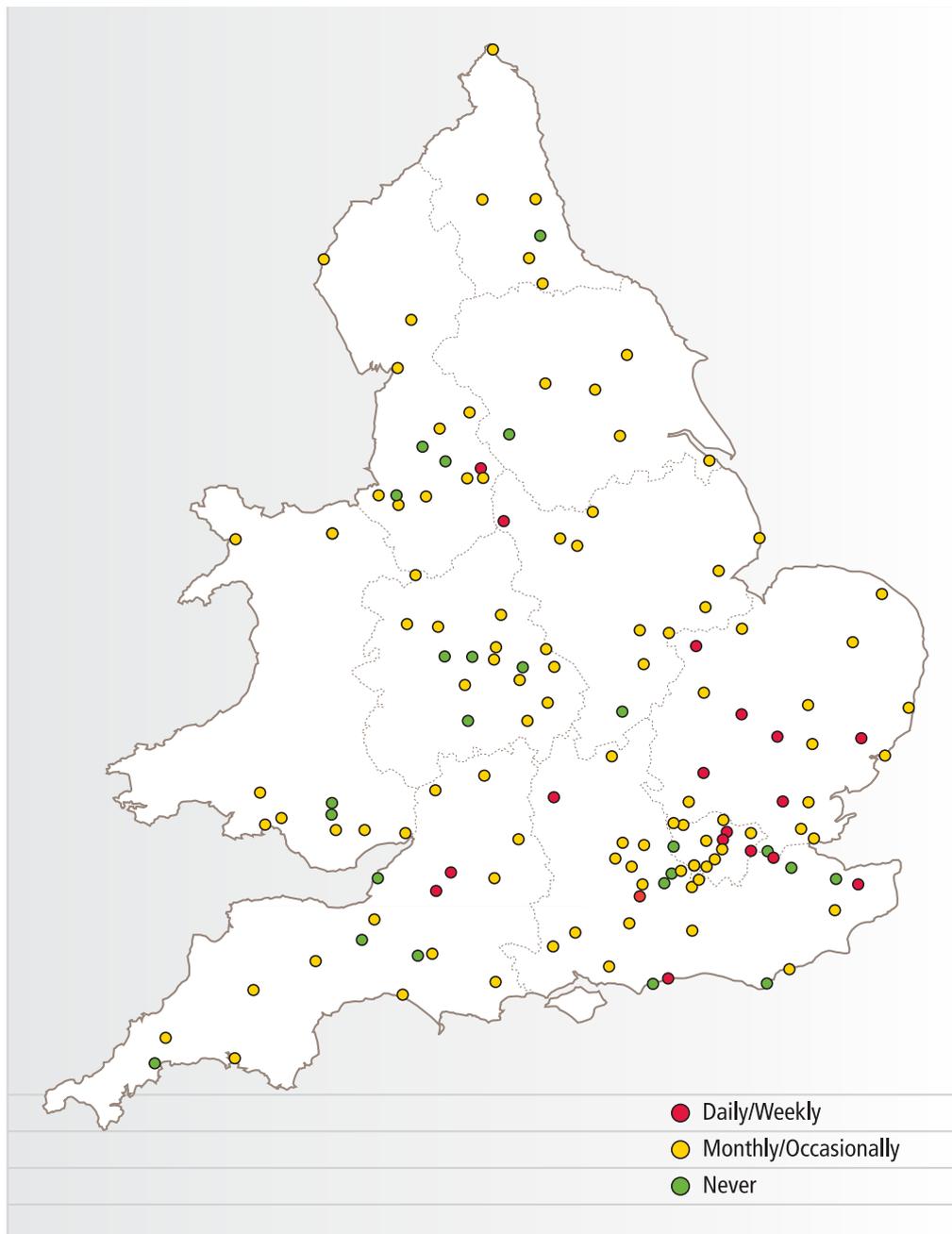
***Adviceguide survey respondent***



## Accessing civil legal aid for family breakdown and domestic violence

Over 280,000 people received legal aid for family problems from the Community Legal Service in the year before March 2007.<sup>37</sup> Despite this, 68 per cent of respondent bureaux reported problems finding a Community Legal Service lawyer who will deal with urgent **family cases** such as domestic violence injunctions.

### How often is it a problem to find a Community Legal Service lawyer who will deal with the urgent family cases (for example injunctions for domestic violence cases or child custody issues)?



Base: 261 respondents to survey to Citizens Advice Bureaux, February to May 2009.

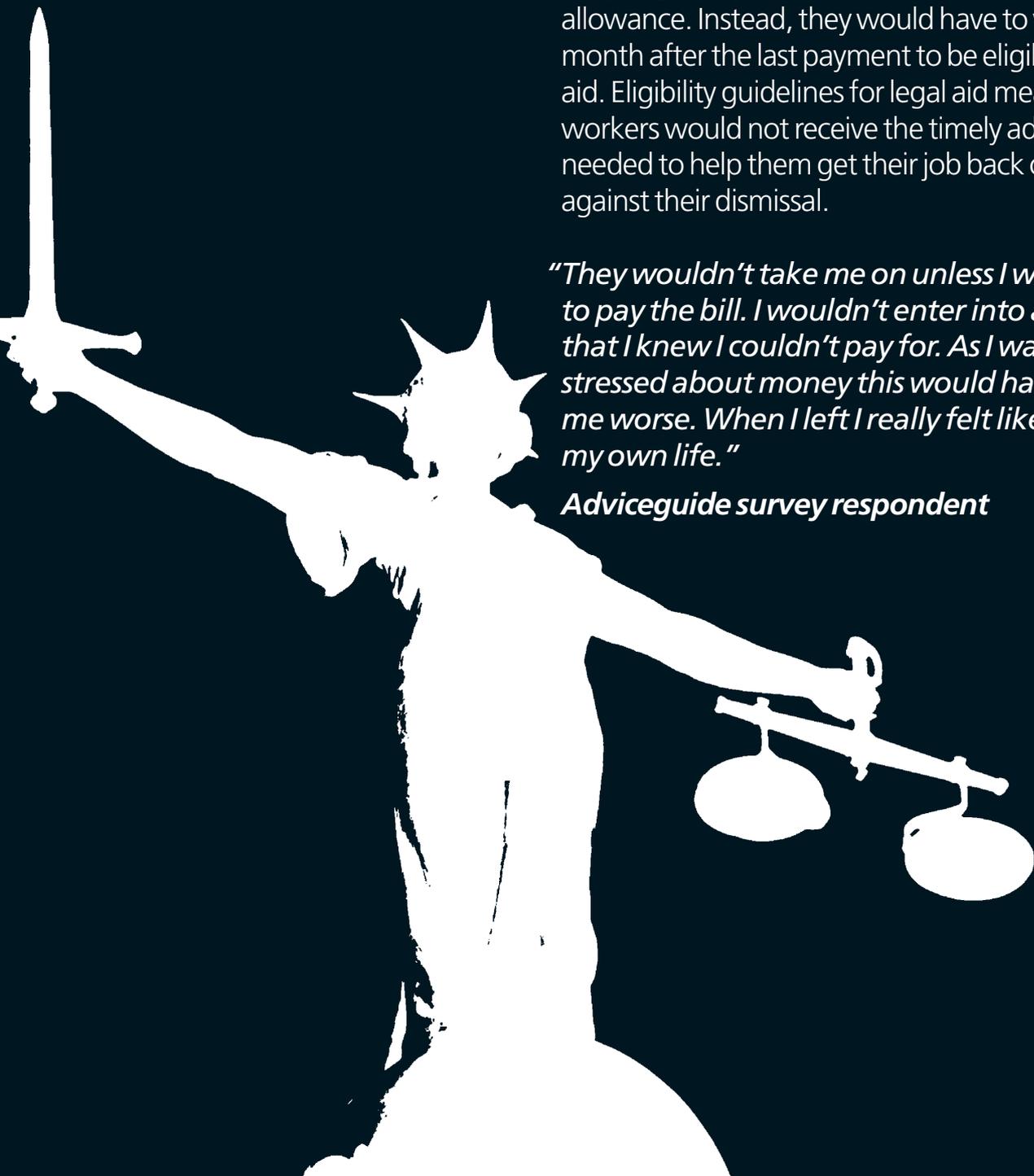
<sup>37</sup> Ibid.

# Workers need legal aid to keep their jobs

A CAB in South East Wales which had a legal aid contract to give advice on employment issues was concerned that people who had just lost their jobs would not be able to access free legal advice quickly about their employment situation. This is because civil legal aid is calculated on the applicant's income in the last month. In this period they would have received a final payment of wages and possibly notice pay. They might not have started to receive jobseekers allowance. Instead, they would have to wait one month after the last payment to be eligible for legal aid. Eligibility guidelines for legal aid mean that these workers would not receive the timely advice they needed to help them get their job back or appeal against their dismissal.

*"They wouldn't take me on unless I was able to pay the bill. I wouldn't enter into anything that I knew I couldn't pay for. As I was too stressed about money this would have made me worse. When I left I really felt like taking my own life."*

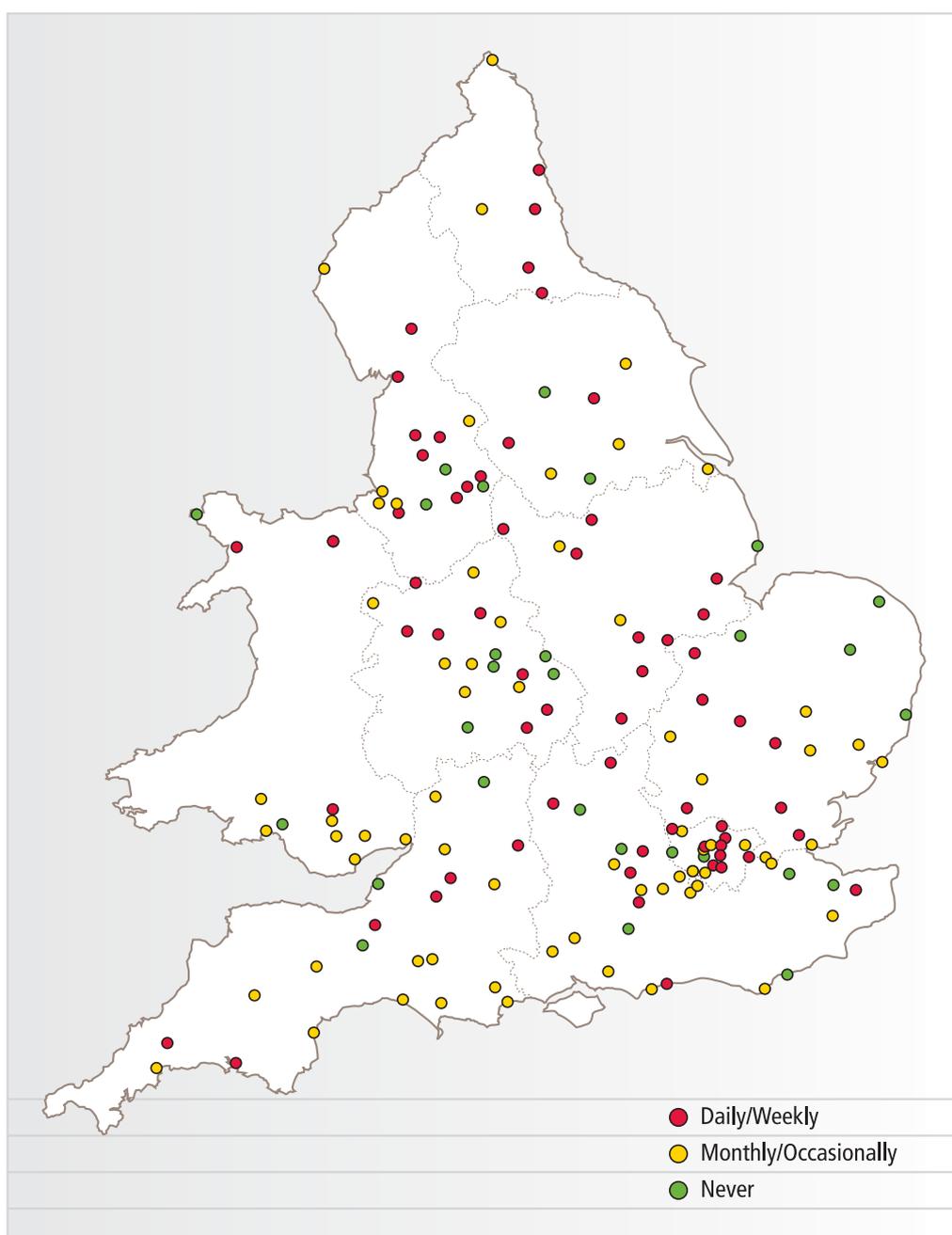
***Adviceguide survey respondent***



## Accessing civil legal aid to keep jobs secure

Over 22,000 people received legal aid for an employment problem from the Community Legal Service in the year before March 2007.<sup>38</sup> This was before the severe economic downturn. Now 76 per cent of bureaux who answered our survey reported problems finding a Community Legal Service lawyer who will deal with urgent **employment cases** such as advice about discrimination at work before the person loses their job, as well as representation at tribunals or appeals.

### How often is it a problem to find a Community Legal Service lawyer or a specialist adviser who can deal with employment cases (for example representation at tribunals or appeals)?



Base: 261 respondents to survey to Citizens Advice Bureaux, February to May 2009.

<sup>38</sup> Ibid.

# A family need an immigration lawyer to stay **together**

The children of a 65 year old woman living in Berkshire sought a lawyer on behalf of their mother, as her English was somewhat limited, explaining that their mother was from Sierra Leone and was the full-time carer for her husband, who was terminally ill. She needed an immigration solicitor's help with her application for leave to remain in the United Kingdom. While deadlines were becoming more urgent, no Community Legal Service immigration adviser could be found to assist her make her application, although they searched in Reading, and in Slough. If the woman fails to persuade the Home Office of the merits of her case she could be forced to leave her dying husband and her children, who have rights of residence in the UK.

*"The difficulty we have is particularly around getting immigration help for clients. The capital limits are set too low. Clients who own their home, for instance and have paid off most of the mortgage often find they do not qualify for legal aid. The system discriminates against people who own their own property – what are they expected to do, sell their home in order to pay for legal advice?"*

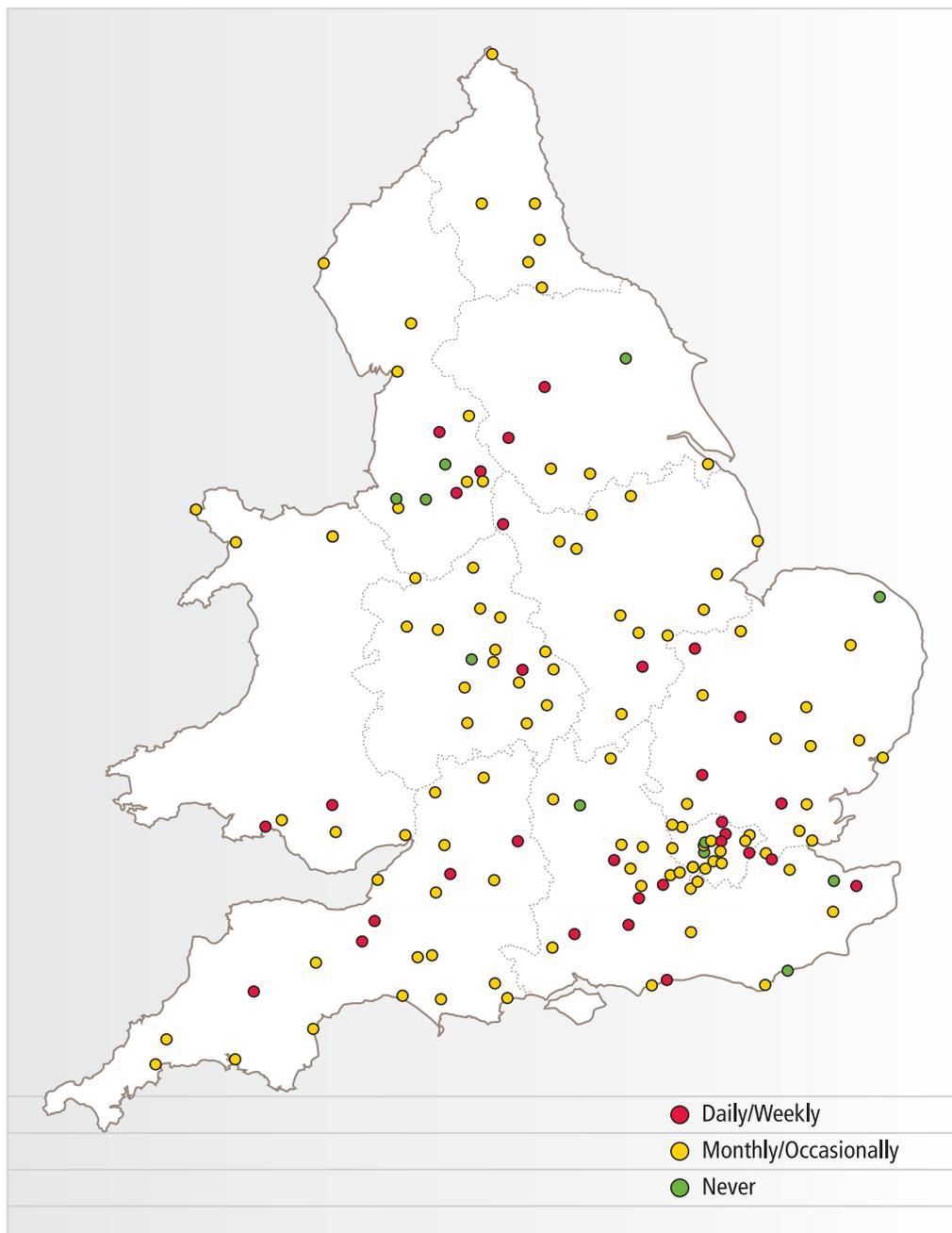
**Gravesham CAB**



## Accessing civil legal aid for immigrants seeking asylum or citizenship

Over 91,000 people received legal aid for an immigration problem from the Community Legal Service in the year before March, 2007.<sup>39</sup> Despite this, 79 per cent of respondent bureaux reported problems finding a Community Legal Service lawyer who will deal with urgent immigration and asylum cases such as lodging and representing in appeals or preventing deportation.

### How often is it a problem to find a Community Legal Service lawyer or a specialist adviser who will deal with urgent immigration and asylum cases (for example lodging and representing in appeals or preventing deportation)?



Base: 261 respondents to survey to Citizens Advice Bureaux, February to May 2009.

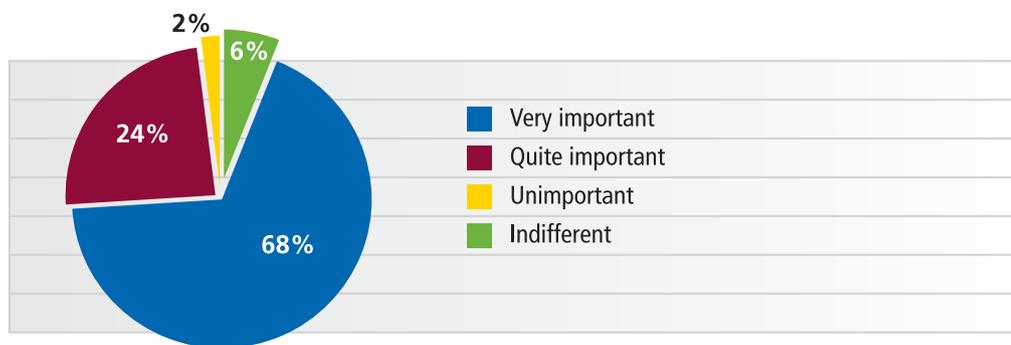
<sup>39</sup> Ibid.

# Conclusion

## Eliminating barriers to accessing legal services

The Legal Services Commission has shown dedication to the mission of making legal services accessible to the vulnerable population that relies on them for help. The public, regardless of income level, is very supportive of legal aid as an important component of the safety net for the poor.

### How important is it to a fair justice system for people on low income to get legal aid for problems such as debt, benefit, family law, housing, and employment?



Base: Sample consists of 1,816 adult respondents aged 16+ members of the public from England and Wales. Research conducted by BMRB Omnibus March 2009.

Yet, with public expenditure under pressure and increasing demand, this is a challenging time for legal aid. As we celebrate 60 years of accomplishment we must acknowledge that there is still work to be done.<sup>40</sup> It is no time to retire.

Part of the Legal Services Commission's strategic plan is to evaluate access to Community Legal Services.<sup>41</sup> The Ministry of Justice has recently initiated a study of local legal advice provision. This has identified an increased advice need as a result of the economic downturn and reduced access in areas which previously had a range of different suppliers.<sup>42</sup> Citizens Advice applauds this review as an appropriate response to a critical problem that is worsening during the current recession.

## Needed: A strategy to eliminate the barriers to accessing legal services

To make legal services fully responsive to the community, the Legal Services Commission needs to develop strategies to eliminate all barriers to accessing legal services and the Ministry of Justice. Any comprehensive strategy to improve access to legal services should address and eliminate the multiple barriers that contribute to the complex problem.

40 For more information on the 60th anniversary of Legal Aid see [www.legalaid60.org.uk](http://www.legalaid60.org.uk)  
41 *Making Legal Rights a Reality*, *op. cit.*  
42 *Local Legal Advice Study*, Ministry of Justice, June 2009.

The barriers are:

- Inadequate budget to meet increasing demand.
- Incomplete information for clients about how and where to find services.
- Long delays for clients trying to get an appointment.
- Limited times and days of operation of some suppliers.
- Long travel times and distances required of some clients.
- Disincentives for suppliers created by bureaucratic contracts.
- The need to recruit and retain legal specialists.
- Lack of support for systemic advocacy and public legal education.
- Limits on suppliers on types of cases qualifying for aid.
- Overly narrow eligibility and means testing criteria for clients.

**Barrier: Shrinking civil budget**

**Solution:** The Government should move to separate the criminal and civil budgets and identify additional resources for civil legal aid. The shrinking civil aid budget has proved inadequate to meet the increasing demand for legal services.

**Barrier: Access to legal service providers**

**Solution:** The Legal Services Commission should develop better ways to help people navigate the advice and representation maze. People seeking legal help should be able to quickly identify legal service specialists who are currently available to accept cases. The Legal Services Commission should develop service guidelines for the time it should take to access a supplier of legal services, both on the phone and in person. These guidelines should take into account the need for urgent representation in some cases, like domestic violence and wrongful eviction. The Legal Services Commission should collaborate with the Ministry of Justice's Public Legal Education Project to review whether information and outreach efforts are effectively reaching people who need legal help, such as people without internet access, with poor basic skills, or limited English.

The key challenge for front-end referral systems is identifying not just which legal advice providers might be able to assist a client but which ones could definitely take their case within a reasonable timescale, and within reasonable access considerations (such as travelling times). The Legal Services Commission should take a simple step in this direction by ensuring that the Community Legal Advice phonenumber is not just signposting customers to legal aid providers who might be able to assist them, but also takes responsibility for finding a provider who can take on the case in a reasonable timescale.

**Barrier: Travel times and distances**

**Solution:** The Legal Services Commission has increased the availability of telephone advice and should continue to expand availability of non-means tested telephone advice on legal matters. The Legal Services Commission should also examine travel allowances under the disbursements system, and consider whether to develop a corresponding travel allowance to help people who live in rural or remote areas

**Barrier: Contracting process and bureaucratic burdens**

**Solution:** The Legal Services Commission should look at ways to simplify the contracting process in order to encourage more providers to take on Community Legal Service casework.

**Barrier: Lack of specialist providers**

**Solution:** The Legal Services Commission should ensure that Community Legal Service offers the type of legal specialist needed, where it is needed, in a timely fashion. To do this, the Legal Services Commission must review what changes are needed to retain or recruit the necessary specialist suppliers.

**Barrier: Restrictions on types of cases, on public education, and on advocacy**

**Solution:** The Legal Services Commission must expand the capability of the Community Legal Service to enable them to advocate for change and reform in agencies that are not functioning well and educate the public about their rights and responsibilities. The Ministry of Justice should remove the scope restrictions on social security appeals and appeals about refusal of support for asylum seekers. These restrictions deny vulnerable and poor people much needed access to justice.

**Barrier: Income and eligibility standards**

**Solution:** The Ministry of Justice should review the eligibility criteria in light of the increased need for housing, employment and debt advice. The Legal Services Commission should, as a minimum, disregard tax credits and redundancy payments in the calculation of eligibility for civil legal aid, increase the eligibility cap annually to match increased earnings, and increase the equity disregard for home owners to £200,000. These changes to the current eligibility rules would more appropriately divide the community that can afford legal services from those who cannot.



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**Written by**

James Sandbach and Sczerina Perot

**Published by**

Social Policy Department

**Citizens Advice**

Myddelton House

115–123 Pentonville Road

London N1 9LZ

Telephone 0202 7833 2181

Fax 0202 7833 4371

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Registered charity number: 279057