



This is the first article in a new series, 'Legal aid at 60: bridging the justice gap', to mark the anniversary of the Legal Aid and Advice Act 1949. Here, Steve Hynes, LAG's director, discusses the recession and its likely impact on creating demand for legal services.

Legal aid in the recession

For many people, the most disturbing aspect of the recession is how quickly it has hit the wider economy.

Concerns over toxic sub-prime mortgage debts spread rapidly into a general breakdown in confidence in the banking sector, which was caused by banks' risky lending in the boom times of the past ten years. A lack of credit for businesses and declining demand for their products has led to an increase in unemployment which has spread from the financial services sector into all areas of the economy. As a result of the squeeze on the public finances, the public sector is also affected and it is making staff redundant. According to one estimate, 10,000 jobs have gone so far and this figure could rise as the government struggles to pay the bill for the bail out of the banks.¹

To help offset the impact of the recession, lessons need to be learnt from looking at the last economic slowdown, the resulting increase in demand for legal services and the choices now facing the government. Norman Lamont was the Chancellor of the Exchequer from 1990 to 1993 during the latter part of the last recession. He came to grief after burning through £27 billion in a forlorn attempt to defend the pound's value in the European exchange rate mechanism (ERM). In September 1992, in the middle of this economic crisis, interest rates spiralled to 15 per cent.

Norman Lamont's £27 billion looks small beer compared with the costs of the current crisis, but in contrast to the recession in the 1990s those who remain

in work will be cushioned by the historically low interest and inflation rates. It remains to be seen if the Labour government will pay the same political cost as did the Conservatives for their management of the economy in the previous recession.

The increasing demand for advice

Housing and debt work often grab the headlines in telling the story of people who are caught at the sharp end of a recession. In 1991, a record number of 189,789 possession actions were brought in the county court. This was a 28 per cent increase on the previous year (see March 1992 *Legal Action* 6). In the early 1990s, owner-occupiers were eligible to claim 50 per cent of eligible mortgage interest for the first 16 weeks unemployment and 100 per cent thereafter. In January this year, the government changed the rules to make homeowners eligible to claim full eligible mortgage interest after 13 weeks unemployment. Moreover, the government says that it has only changed the rules on a temporary basis.

Of equal concern is general consumer credit debt. According to Financial Services Authority research published in March 2006, an estimated 1.5 million households were falling behind with credit repayments.² In 1992, two million households were in debt, double the number in 1981; however, it should be emphasised that this was at a time of high interest rates compared with the current historic low rates. Household debt has ballooned over the past ten years as lenders were awash with cash for loans,

albeit, as it turns out, the money had been borrowed largely on the financial market merry-go-round. The demand for money advice in this recession is therefore likely to be higher than that in the previous one.

In 1992, industrial tribunals (now called employment tribunals (ETs)) were experiencing severe delays because of the backlog of cases, according to the *Council on Tribunals annual report 1991/1992*. By March 1992, the number of claims had risen to 62,000, ie, a 60 per cent increase on the previous year. In response, the government increased the number of tribunal staff: it employed 16 more full-time and 50 more part-time chairpersons. The increase in the number of claims had been caused by multiple claims and the impact of the recession.

Current Employment Tribunals Service statistics show a 23 per cent increase in ET cases. Unions and other advisers, for example, those in Citizens Advice Bureaux (CABx) are saying that employers are cutting corners in their attempts to shed jobs in response to the recession. According to CABx, they have seen an 18 per cent increase in the number of enquiries to do with dismissals on the same period last year.³

The jobless count currently stands at around two million, but this is set to rise throughout the next year and could peak at 3.04 million according to some estimates.⁴ High unemployment inevitably increases the demand for legal advice on benefit entitlement.

Who will give the advice?

The Legal Services Commission (LSC) has moved to provide duty schemes that cover

104 out of the 194 county courts in England. One of the 22 county courts in Wales is covered in this way, with a further 13 covered by outreach services. The government also injected an extra £10 million into CABx in November last year to increase their capacity to give advice to clients hit by the recession. It is hard to make direct comparisons with the position in the early 1990s, but looking at the figures the advice sector seems much the same size with around 2,000 or so outlets depending on how these are counted.

The big difference is that over 400 organisations now contract with the LSC for services, including debt, while there has been a startling decline in the number of solicitors' firms contracting with the commission. The number is down from 11,060, including criminal providers in 1991/1992, to under 3,500 civil and 2,500 criminal providers today (it should be noted also that because of the overlap between firms doing both civil and criminal work, there are probably fewer than 5,000 firms contracting with the LSC). This is due, in part, to deliberate policies pursued by the LSC, especially around quality, which reduced the number of firms, and those solicitors who decided to pull out of legal aid as they could not make publicly-funded work pay.

LAG would argue that the decline in the number of solicitors' firms undertaking legal aid work could have the most marked effect in housing law. Since 2003, the number of firms in this area of publicly-funded work has dropped from 799 to 362 firms. As a result, clients will have difficulty accessing services in disrepair and other cases in which specialist legal help is needed. In housing-related debt and other debt cases, the decline in solicitors' contracts will have less impact as much of this work has been traditionally carried out in the voluntary sector and paid for by local authorities and other funders. Despite the problems of fixed fees, the fact remains that in the previous recession, with the exception of Law Centres®, legal aid did not fund not-for-profit (NFP) agencies, and so it has added to the capacity of the sector, though admittedly a great degree of cross subsidy is going on.

Recession cost drivers

A recession acts as a cost driver on legal aid. More people become eligible for legal aid as unemployment rises and incomes are reduced by less overtime, and fewer (or lower) bonuses and other work-related payments. This will have the effect of

raising eligibility levels from the historically low 29 per cent reported last year (see September 2008 *Legal Action* 10), but because currently the legal aid budget is capped at £2 billion, LAG predicts that without new money the legal aid fund will have difficulty in meeting demand as the recession bites. So far, through reallocating unused matter starts and other budget savings, the LSC has been able to announce an extra 68,000 matter starts in social welfare law. LAG would argue that this figure will not be enough as the legal aid fund comes under increasing pressure.

In the recessions during the 1980s and 1990s, the government responded to spiralling expenditure on legal aid by cutting eligibility. In 1986, in a move that at the time stunned the legal aid world, the government introduced draconian cuts in response to a dramatic increase in costs over the preceding two years caused, in part, by increasing eligibility levels. In 1992, eligibility was cut, again, in response to increased costs (see April 1992 *Legal Action* 4). In the current recession, without cuts in eligibility, which all sides would find unacceptable, a budget crisis seems probable because of the increase in the need for services that will be caused by the recession and the likely demand-led rises in criminal and family law legal aid.

Overall crime rates have been falling since the last recession. However, there is already evidence that crime is on the increase. According to the British Crime Survey, in the quarter that ended in September 2008, domestic burglaries increased by four per cent, fraud and forgery by 16 per cent, and street robberies involving knives by 18 per cent.⁵ A significant increase in crime would feed through into costs in the criminal legal aid system, as it is reasonable to anticipate that the rise in crime would be matched by an increasing number of arrests and prosecutions.

According to the LSC, the number of family law children cases is increasing. This is because of the adjustment of local authorities to the court fee changes and the Public Law Outline procedure (see June 2008 *Legal Action* 3). There is also it seems a 'Baby P effect', with local authorities being more prepared to take child protection proceedings as they are fearful of repeating Haringey Council's errors. Overall, the recent fall in expenditure in family law children legal aid cases is likely to be a blip, and the costs look set to rise, which will put further budgetary pressure on the legal aid budget.

Possible reforms

In *The Justice Gap: whatever happened to legal aid?*, LAG's new book about legal aid policy, the authors argue that through combining existing funds, a national non-means-tested telephone advice service could be established to ensure everyone would have access to initial advice.⁶ The authors also argue for a system of Community Legal Services Grants to plug the gaps in social welfare law services. These would be a more flexible means of funding NFP advice services and would combine services paid for by legal aid with those paid for by local authorities. As well as these policy ideas, other suggestions include the greater promotion of legal expenses insurance and a consultation on establishing a separately funded and managed social welfare law fund.

The fundamental problem within the legal aid system remains, though, a demand-led criminal budget with increasing costs, especially in Crown Court and other higher court work, with its knock-on impact to the civil fund. The civil and criminal legal aid budgets need to be separated and criminal legal aid needs to be compensated for the external cost drivers created by the Home Office and other government departments. LAG argues that the effects of the recession will present the government with the stark choice between looking at measures such as LAG suggests or being forced to embark on cutting civil legal aid at a time when people most need it.

- 1 See Polly Toynbee, 'Don't blame the public sector for catching the fat cats' virus', *Guardian*, 3 March 2009, available at: www.guardian.co.uk/commentisfree/2009/mar/03/executive-pay-bonuses-conservatives.
- 2 *Financial capability in the UK establishing a baseline*, available at: www.fsa.gov.uk/pubsother/fincap_baseline.pdf.
- 3 See Peter Walker, 'Recession hit firms 'use dodges to shed staff without redundancy pay'', *Guardian*, 16 February 2009, available at: www.guardian.co.uk/money/2009/feb/16/recession-unemployment-redundancy-pay.
- 4 See Gráinne Gilmore and Ian King, 'More than 3 million will be out of work next year, CBI warns', *Times*, 16 February 2009, available at: <http://business.timesonline.co.uk/tol/business/economics/article5741781.ece>.
- 5 *Crime in England and Wales: quarterly update to September 2008*, 2nd edition, 01/09, Home Office, 22 January 2009, available at: www.homeoffice.gov.uk/rds/pdfs09/hosb0109.pdf.
- 6 Available from April 2009. See page 44 of this issue for details.