

# 1 Background to the Research

The present legal advice and assistance scheme came into operation in 1973 as a measure designed to encourage the public to consult solicitors about their legal problems before they become too complex.

The green form scheme, as it is generally known, is part of the overall legal aid provision. It is means-tested and allows a solicitor to provide those who qualify with preliminary advice and assistance on any aspect of English law. In addition to advice on legal rights, a solicitor can write letters, conduct negotiations, obtain expert opinion or reports and prepare cases for tribunals. The green form scheme does not, however, cover the costs of representing a client before a tribunal or court.

The solicitor decides whether a client qualifies under the means test and can then incur the costs of up to two hours' work (three hours for a petition for divorce or judicial separation) without further authorisation from the Legal Aid office.

The scheme is demand led and not subject to cash limits. In other words, the amount spent on providing legal advice and assistance is determined by the number of people using it, not by a budget fixed by the government. Both use and expenditure have increased considerably over the years, so that it now covers over one million bills a year at a total cost of £60 million. This represents a fifth of all expenditure on legal aid.

Over the same time period, that is since 1973, there has been a parallel increase in the use of independent advice services. There has been an increase in both the number and complexity of the enquiries made at advice services and, at the same time, a diversification in the range of advice agencies to meet these demands. Twenty years ago, advice services were predominantly citizens advice bureaux, staffed by volunteers who provided clients with initial information and advice on a wide range of problems. Since then there has been a steady growth in CABx and other generalist advice agencies, staffed

with paid advisers, who not only offer detailed advice and assistance, but also represent their clients at tribunals and at certain court hearings. Alongside these generalist agencies has been a growth in both law centres and advice services that specialise in a particular aspect of civil law: housing, consumer, debt, welfare benefits and immigration.

These changes have, however, been unevenly spread around the country. Advice services are predominantly funded by local authorities, and so the level of service in any one area will depend on the philosophy and generosity of individual councils. Since use of the green form scheme is restricted to advice by lawyers, only the law centres and those few advice agencies with salaried lawyers are able to submit green forms for their work.

Successive governments have been concerned at the increasing costs of legal aid, arising from what is, in effect, a blank cheque. The first major review of the scheme took place in 1986. This was conducted by an Efficiency Scrutiny Team set up by the government to review the whole legal aid scheme. The most radical part of their report was that relating to advice and assistance which recommended that 'the green form scheme in its present form should be abandoned'. It proposed that a better service could be provided to the public at a lower cost if advice and assistance on civil matters were transferred, through a process of competitive tendering, to advice services – the citizens advice bureaux in particular. It was calculated that, to cover the volume of work currently undertaken by solicitors, the advice agencies would require 500 additional lay advisers, 125 lawyers and 155 clerical workers. The resulting savings in costs could be used to set up a telephone advice service and to cover the costs of representing clients at tribunals.

These proposals met with considerable criticism from both solicitors and advice workers, who felt that they were predominantly a cost-cutting exercise that would result in a poorer provision of legal advice and assistance to the public. The critics argued that the changes would damage and not reinforce the current provision, since they were based on too simplistic a view of the work of both solicitors and advice agencies.

Since the Efficiency Scrutiny Team reported the Legal Aid Act 1988 has come onto the statute books. This has brought about the transfer of legal aid administration from the Law Society to a government-appointed Legal Aid Board. It also gave the Board the task of reviewing, further, the provision of advice and assistance under the green form scheme

The Law Society commissioned the Policy Studies Institute to carry out a research study to assist consultations with the Legal Aid Board over the future of the green form scheme. The overall aims of the research were:

- to provide a more detailed picture of the extent and nature of the work undertaken by private solicitors in the areas of welfare benefits, housing, employment, consumer, debt and immigration and nationality
- to investigate the inter-relationship between solicitors and advice agencies in the provision of legal advice and assistance in these areas
- to identify the effects on services to the public, should legal advice and assistance in any, or all, of these areas be removed from the green form scheme and offered for competitive tendering.

The work was carried out in two stages. The first comprised a review of earlier research and related reports, which forms the basis of Chapter 2 and the annotated bibliography.

The literature review was followed by a postal survey of all private practice solicitors' firms in a London Borough (London Borough of Newham), a Metropolitan District (Oldham Metropolitan Borough Council) and a Shire County (Cornwall County Council). A total of 140 solicitors' firms and 49 advice agencies provided details of their work in this way. This information was supplemented by detailed semi-structured telephone interviews with nine solicitors and nine advice workers.

Throughout the report the terms *social welfare law* and *social welfare advice and assistance* are used. These are short-hand terms that are widely used to denote work in the fields of welfare benefits, housing, employment, consumer debt and immigration. In many ways, however, the terms are misleading. They have been used because they are so widely used and because no alternative terms have been suggested.