

Means Assessment: Options for Change

Alexy Buck and Graham Stark

**Research Paper 8
Legal Services Research Centre
February 2001**

ACKNOWLEDGEMENTS

The research project, under the management of the Legal Services Research Centre (LSRC), was a collaborative project between Alexy Buck and Pascoe Pleasence from the LSRC, and Graham Stark from the Institute for Fiscal Studies.

The authors would like to thank Andy Grant, Neil Tyson, Patrick Reeve, Roger Hamilton, Neil McKay, Hannah Quirk and Aoife O'Grady for their contribution to the project. Further thanks are due to the means assessment staff in the Legal Services Commission's regional offices.

All the views expressed are those of the authors and do not necessarily represent those of the Legal Services Commission.

ISBN 0 9529882 7 4

Printed by the Legal Services Commission,
85 Gray's Inn Road, London, WC1X 8TX

© Legal Services Commission 2001

All rights reserved. No part of this report may be reproduced or transmitted, in any form or by any means, or stored in any retrieval system of any nature without prior permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright materials including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgement of author, publisher and source must be given.

Executive Summary

This research report presents findings of the second phase of the Legal Services Research Centre's (LSRC) means assessment research project. The work was conducted in collaboration with the Institute for Fiscal Studies. Building on the findings of the first phase of the research project¹, the key objective has been to develop a range of options for a new means assessment test aimed at simplicity, administrative efficiency and fairness. The project proceeded on the basis that the total number of persons eligible for Legal Representation and the net spend should remain unaffected by any change to an improved test.

The second phase of the project included research on eligibility and the effects of a changed means test on both Legal Representation *and* Legal Help eligibility. All the results presented in this report pertain to the financial year 2001/2002 (April 2001 to March 2002).

The first part of the report discusses eligibility for 2001/2002 under *current* rules for Legal Representation and for Legal Help. It was found that 28.4% of benefit units² in England and Wales would be fully eligible for Legal Representation in 2001/2002, under current rules. 18.5% of benefit units would be partially eligible for contributory Legal Representation. If the rules for the Legal Help means test were not to change, 31.6% of benefit units would be eligible for Legal Help from April 2001 onwards. This compares to 68.4% of benefit units who are not eligible.

The report then focuses on four potential alternative means assessment options and discusses the likely winners and losers of each. The most complex of the options includes 5 allowances. All the alternative means tests were modelled within the context of devising a test which resulted in identical partial and full eligibility as compared to the current Legal Representation means test. Within the 4 options, the increase or decrease of allowances *did not* operate as a method to increase or decrease either full or partial eligibility, although – to maintain overall eligibility rates – as more allowances were added, income thresholds generally had to reduce. A number of complexities, however, militate against a straightforward relationship between allowances and income thresholds. The smallest possible error rate was achieved by running the four options repeatedly to find the optimum income levels.

All four options contain:

- a gross annual income cap of £24,000
- an upper annual income limit above which, once defined allowances are taken off net income, people are ineligible. If people's incomes fall between the upper and the lower limit, then they qualify with contributions to be paid.
- a lower annual income limit below which, once defined allowances are taken off net income, people qualify without a contribution to be paid.
- dependants' allowances based on Income Support figures for April 2001 and maintenance payments
- current passporting rules (Income Support, Income-based Jobseeker's Allowance)

¹ See, Buck, A., *Assessing Means Assessment*, Research Paper 5, Legal Services Research Centre, July 2000.

² The term benefit unit refers to a single adult or couple living as married and any dependent children. It is a standard Department of Social Security term.

- upper disposable capital limit of £8,000 for Legal Representation, lower disposable capital limit of £3,000 for Legal Representation, and disposable capital limit of £3,000 for Legal Help³

In addition to the above features, *Option 1* contains an allowance for employment expenses of £10 and an allowance for actual housing costs for people with dependants (capped for people without dependants). In order to achieve the eligibility levels of the current Legal Representation test, the following income limits need to be applied: £8,105 per year for the higher income limit, and £3,079 for the lower income limit.

Option 2 is identical to Option 1, with the addition of an allowance for the actual cost of childcare if the parent is working. In order to achieve the eligibility levels of the current Legal Representation test, the following income limits need to be applied: £8,137 per year for the higher income limit, and £3,060 for the lower income limit.

Option 3 retains all the allowances of Option 2. There are also allowances for council tax and water rates. In addition, homeowners (mortgaged and owned outright) profit from allowances for repairs, maintenance and structural insurance. In order to achieve the eligibility levels of the current Legal Representation test, the following income limits need to be applied: £7,756 per year for the higher income limit, and £2,766 for the lower income limit.

Option 4 retains the allowances introduced in Option 3. The test is a departure from Options 1 to 3 in that some of the fixed allowances have been taken out, to be replaced by actual amounts. This radically alters the nature of the test. Specifically, Option 4 does not include a fixed weekly amount of £10 for employment expenses. Instead, it takes into account actual travel to work costs of people in work. Employment related expenses are also covered through taking into account pension contributions. Also, Option 4 does not include the housing cap for people without dependants. Instead, actual housing costs are allowed. In order to achieve the eligibility levels of the current Legal Representation test, the following income limits need to be applied: £8,172 per year for the higher income limit, and £2,840 for the lower income limit.

The four options were modelled for both Legal Representation and Legal Help. For Legal Help, only one income limit was applied as there are no contributions to be paid by assisted persons for Legal Help. Two different income thresholds were modelled for the Legal Help options: equalising to the Legal Representation upper income limits of the four options *and* applying income limits which are 75% of the difference between the up-rated Legal Help threshold under current rules and the new Legal Representation upper limits in the four options. For both these alternatives, eligibility numbers differ compared to current rules (whereas for the Legal Representation test the options were devised so as to have as little impact as possible on eligibility). The number of eligible benefit units for Legal Help increases substantially with all four options to around 44.5% with the equalised income limits and to around 41.5% with the 75% alternative. This 3% difference equates to around 850,000 benefit units.

³ In line with the proposals contained in the Lord Chancellor's Department's consultation paper *Community Legal Service – Financial Conditions for Funding by the Legal Services Commission*, July 2000, the upper capital limit for the Legal Help test options was set at £3,000 (as opposed to £8,000 for the Legal Representation options).

A take-up estimation for Legal Representation, under each option, was undertaken. Two applicant surveys conducted in 1998 and 2000 were used to show the relationship between people *eligible* for Legal Representation, and people *applying* for Legal Representation. By applying the propensities to apply under the current system to the eligible population generated by the four options, it was possible to estimate the number of Legal Representation certificates the new tests would generate. Finally, a cost analysis was undertaken.

Results indicated that the number of winners and losers consequent upon introducing options 1,2,3 and 4 were very small⁴. None of the four potential options resulted in a significant decrease or increase to the take-up and cost of the scheme. However, our take-up estimates are based on relatively small samples of Legal Representation applicants, and so the results must be treated with some caution.

⁴ For a profile of winners and losers see pages 25-27 (Option 1), pages 32-34 (Option 2), pages 38-40 (Option 3) and pages 44-46 (Option 4).

Contents	Page
1. Introduction	1
2. Research Questions and Objectives	3
3. Research Methodology	5
4. Eligibility for April 2001 – April 2002 under Current Means Assessment Rules	9
4.1 Legal Representation	9
4.2 Legal Help	15
4.3 Comparing Legal Help and Legal Representation	18
5. Four Options (Legal Representation and Legal Help)	19
5.1 Option 1	22
5.2 Option 2	28
5.3 Option 3	35
5.4 Option 4	41
6. Take-up of Legal Representation	47
7. Conclusion	49
 Appendices:	
1. Legal Aid Means Testing in Context: Historical Development and Research	50
2. The Rules for the Current Legal Representation and Current Legal Help Test	64
3. Family Resources Survey (FRS)	68
4. Optimising	70

1. Introduction

The Final Report of the means assessment research project follows on from the first research paper⁵ published in July 2000. The first research report discussed work conducted in 1998 and 1999 on civil legal aid eligibility. This work can be described as primarily a *theoretical* exercise, initially to investigate whether a new simpler means test for civil legal aid *could* be devised. It also entailed looking at eligibility under current rules in detail. We modelled a large number of alternative tests, with the ultimate aim of devising a test with only a limited set of allowances. Our initial brief also included researching the possibility of a radical new means test which could determine eligibility with reference to a gross income cap and suitable lower and upper income limits *only*. All of the alternative means test models were to be devised within a context of fairness, cost neutrality and of *retaining* current eligibility levels. Guidance on which tests to model was received from senior policy, legal and operational staff at the Legal Aid Board.

The final alternative working model, as discussed in the first report, was identified as an extremely simple test with virtually identical eligibility levels, an equitable outcome given the simplicity of the test, and with minimal cost impact. This volume sets out some variants of this final alternative model. It presents 4 potential options, each of which are discussed in this report - focusing on effects on eligibility and the likely winners and losers under each potential new scheme. It should be stressed again that none of the models were devised as eligibility-cutting tools. The four options range from a simple test to a means test with 5 allowances (some of which are relatively complex). It is for policy makers to decide which, if any, of the options best fit with organisational, operational, financial and policy concerns.

All the results presented in this document have been updated⁶ and pertain to the financial year 2001/2002 (April 2001 to March 2002). This applies to both the models outlining eligibility under current rules as predicted for April 2001, and to the potential alternative tests which have been modelled. The results derive from work conducted in collaboration with the Institute for Fiscal Studies (IFS).

The brief of the first phase of the research project asked us to concentrate on civil legal aid means assessment (now Legal Representation). The second phase of the project includes research on eligibility and the effects of potential new means tests on *Legal Help*, formerly the Advice and Assistance or "Green Form" scheme. In addition, we also compared the effects on eligibility of the current Legal Help and Legal Representation means test.

Overview of Report

This document starts by providing an overview of research objectives and questions. It then sets out the research methodology. Following this, findings for predicted eligibility for 2001-2002 under *current* means assessment tests are presented and discussed, for *both* Legal Representation and Legal Help. Four

⁵ Buck, A., *Assessing Means Assessment*, Research Paper 5, Legal Services Research Centre, July 2000.

⁶ In order to predict to April 2001 a 3.5% price increase, real GDP of 2.8% and base rate of 6.5% have been factored in, as well as the Rossi Index (1.6%), RPI at 3.3% and the benefit uprates for April 2001 as outlined in a DSS Press Release, 9th November 2000.

potential new tests are then presented in detail, both for Legal Help and Legal Representation. For Legal Help, two alternative income thresholds were applied. This is followed by a chapter on likely take-up of the potential new tests for Legal Representation, and associated estimated costs. The final chapter sets out our conclusions.

2. Research Objectives and Questions

Research Objectives

The second phase of the means assessment research project had at its core a series of inter-related and inter-dependent research objectives and questions. The research objectives can be divided into 5 sections:

- (i) Establishing eligibility for 2001/2002 under *current* rules for Legal Representation *and* for Legal Help.
- (ii) Investigating whether the profile of applicants for Legal Representation has changed since the LSRC Civil Legal Aid Applicant Survey in 1998.
- (iii) Devising a range of potential options for means assessment tests modelled, taking into account responses to the Lord Chancellor's Department's consultation paper *Financial Conditions for Funding by the Legal Services Commission*⁷, and policy input from Legal Services Commission and Lord Chancellor's Department representatives⁸.
- (iv) Assessing the impact of the four options on Legal Representation and Legal Help eligibility.
- (v) Researching the four options in detail, paying particular attention to the winners and losers of each scheme.
- (vi) Exploring the likely take-up of the four potential tests for Legal Representation in order to make predictions as to their impact on the overall costs of the scheme.

Research Questions

The principal research questions, in line with the objectives set out above, are presented below. These *research* questions might differ from *policy* questions. Our aim has been to devise and test a range of potential new means tests. Decisions on which tests were feasible options were made by policy makers.

- (i) What are the effects of the current Legal Representation means assessment rules as predicted for April 2001?
- (ii) What are the effects of the current Legal Help means assessment rules as predicted for April 2001?

⁷ Lord Chancellor's Department, *Community Legal Service – Financial Conditions for Funding by the Legal Services Commission*, July 2000.

⁸ The basic premise, however, has stayed the same throughout the means assessment research project: devising a potential new means test aimed at affording greater fairness and administrative simplicity, with the total number of persons eligible for Legal Representation and the net spend remaining unaffected.

- (iii) What are the differences between the current Legal Representation means assessment rules (see (i)) and the current Legal Help means assessment rules (see (ii)), both as predicted for April 2001?
- (iv) In liaison with policy officials from the Legal Services Commission and the Lord Chancellor's Department, what should the four tests modelled entail in terms of the nature and form of allowances?
- (v) What are the effects on eligibility of the four tests? What level of gross income cap and higher and upper income limits for the four tests result in almost identical full and partial eligibility numbers compared to the current Legal Representation test?
- (v) What is the effect on Legal Help eligibility of the four tests (the only differences to the Legal Representation options being that (a) the upper capital limit is set at £3,000, not £8,000, (b) there are no contributions to be paid by assisted persons and (c) two income thresholds were modelled for each option)?
- (vi) What are the disadvantages and advantages of the four tests? Who are the winners and who the losers?
- (vii) What conclusions can be made about take-up for Legal Representation, under the four tests?
- (viii) What are the potential cost implications of the four tests for Legal Representation?

3. Research Methodology

Whereas the first phase of the project concentrated on investigating whether a new means test *could* be developed and necessitated building up expertise and conducting background research, the second phase focused on fine-tuning a series of feasible tests. Further, some of the work previously undertaken had to be updated. For example, eligibility levels under current rules had to be predicted for 2001/2002. The first phase of the research was completed in 1999, so that the last available model dated back to 1999. Additional work also had to be conducted on the Legal Help test.

Micro-economic Modelling

Microsimulation modelling was applied to model the means tests for the first phase of the research project. The second phase also saw the employment of microsimulation modelling.

Microsimulation models are based on micro-data for representative samples of the population. They are employed to mimic how current programme provisions apply to individuals and groups of individuals. Microsimulation models can also simulate and evaluate the potential consequences of policy changes to existing programmes. As Hancock and Sutherland state, “microsimulation models have become accepted tools in the analysis of tax-benefit options and in other areas of public policy. By permitting analyses at the level of the individual, family or household, they provide the means of assessing the distributional consequences of policy”⁹.

A large-scale government social survey, the Family Resources Survey (FRS) was used for the purposes of the means assessment project. The Family Resources Survey contains information on income and expenditure and is a representative sample of the population. Information is collected on an annual basis. The FRS contains details on over 25,000 households and was launched in 1992 by the Department of Social Security. More detailed information on the FRS can be found in Appendix 3.

First, models of the current Legal Representation test and Legal Help test (forecasted to April 2001) were constructed to simulate eligibility rules. The models developed were applied to the FRS in order to calculate the numbers eligible for Legal Representation and Legal Help, as well as defining their characteristics. The models were then developed to simulate the four potential alternative options that we examined.

Much of the work involved very detailed modelling of special allowances, such as travel to work costs and maintenance payments. The Family Resources Survey was chosen because it contains good detail on many of the allowances which had to be modelled. However, the FRS lacks information in some areas. For example, it does not contain Local Authority identifiers (which means that council taxes need to be

⁹ Hancock, R. and Sutherland, H. (1992) *Introduction* in Hancock, R. and Sutherland, H. (eds) *Microsimulation Models for Public Policy Analysis: New Frontiers*, Imediaprint Limited: London.

estimated). The Family Expenditure Survey (FES), the main alternative to the FRS, has a smaller sample size and lacks information on, for example, travel to work.

Modelling Legal Representation and Legal Help posed a number of special concerns:

- there is no information in the datasets on either use of Legal Representation/Legal Help or on whether benefit units were in reality entitled to it at the time of interview. By contrast, for models of (say) reforms to Income Support, it is possible to compare modelled results for each benefit unit to their actual recorded receipts; this provides a useful check on modelling procedures.
- the estimates for eligibility are partly dependent on the receipt of means-tested benefits. In calculating eligibility, we have sometimes had to use modelled entitlements to these benefits rather than recorded receipts. Since take-up of these benefits is incomplete, this could bias results. The problem here is most likely with the passporting of Working Families Tax Credit (WFTC) for Legal Help, since take-up of WFTC is generally thought to be around 50% to 75%.
- we model results for each benefit unit on the assumption that the income and capital of all family members are included in the assessment, but this may not always be the case: for example, in a Family case where the wife is the applicant and the husband the respondent, only the income of the wife would be included. Likewise, children can be granted Legal Representation regardless of the circumstances of their parents.
- the Legal Representation means test is based on an estimate of the applicant's annual income over the following 12 months, rather than their actual income at the time of the application. This is hard to get right in our model, since data sets are short-term snapshots of the benefit unit's circumstances at the time of interview. We can get some way towards the Legal Representation measure by using the FRS's measures of usual earnings, but this is unlikely to be exactly right.

For all these reasons, in addition to the usual methodological caveats regarding, for example, sampling errors or modelling errors, the results must be treated with caution.

Devising Tests

Using a teleological approach to model development, a large number of alternative means test models had already been tested during the first phase of the research project. The second phase of the project focused on fine-tuning the final alternative model developed during the first phase. Four potential options were devised. They ranged from a relatively simple model as proposed in the first report, to more complex models with additional allowances. Policy direction was sought throughout this part of the research project.

Applicant Survey

For the first phase of the research project, the LSRC conducted an applicant survey in summer 1998. The aim was to collect information about the most recent 200 civil legal aid applicants in each of the Legal Aid Board's 13 area office in order to obtain a representative sample.

The data collection exercise resulted in detailed demographic, socio-economic and legal information being collected on a sample of over 2,500 legal aid applicants. This information, apart from being of interest in itself, was used to model the take-up of civil legal aid amongst those currently eligible.

For the second research phase, it was decided to conduct a further, less detailed applicant survey in autumn 2000. Arguably, the profiles of people applying for Legal Representation might not have changed much over the last 2 years. However, the radical changes to the legal aid system (e.g. scope changes) meant that conducting a limited applicant survey follow-up would provide us with an up-dated methodology.

Less information was required for this new applicant survey. Two data collection questionnaires were designed: one for passported and one for non-passported applicants. The Legal Services Commission's 12 Regional Offices were asked to complete at least 120 of these questionnaires.

Take-up and Investigating Cost

Even if the total numbers entitled remain the same, changing the means test may change the demand for Legal Representation¹⁰ if the entitled population now have different characteristics. For example, if entitlement is switched from single people to parents with young children there might be a rise in family cases. It was therefore important to model likely take-up amongst the entitled population. This is not easy, however, and the results shown in Chapter 6 must therefore be regarded as estimates.

IFS tax benefit models have often been used to study the take-up of benefits such as Income Support and Family Credit¹¹. In these studies, for each benefit unit in the dataset, modelled entitlements to benefits are compared to recorded receipts. Statistical models are then built to explain the apparent differences between receipt and entitlement in terms of the characteristics of the benefit unit and the value of the benefits to be claimed.

This approach could not be applied to the means assessment research project, however, because we have no information in the Family Resources Survey and Family Expenditure Survey on either use of Legal Representation or on whether a benefit unit is in fact eligible. Instead, we used a different, slightly simpler, approach. The LSRC survey results were aggregated into a three-way table: by family type,

¹⁰ Take-up and a cost estimate were only investigated for Legal Representation. The research brief did not include take-up and cost estimation for Legal Help. In addition, a data collection exercise on applicants for Legal Help would have been difficult, as applications are assessed by the provider, and not the Regional LSC Office (as is the case for Legal Representation applicants).

¹¹ See (e.g.) Stark, G. and Fry, V. (1994) *The Take-up of Means-Tested Benefits 1984-90*, Institute for Fiscal Studies, Report Series No. 41, 1993

age and type of case. Then the FRS data on the eligible population was aggregated in the same way. The ratio between the corresponding cells in the LSRC claims sample and the FRS entitlements sample, grossed up to reflect the relative sample sizes, give an estimate of the proportion of the type of benefit units who are in fact likely to apply. The split by family type and age is based on the need to have reasonable cell sizes and to ensure that only information common to *both* datasets is used. Within this limited choice, we found that splitting by family type and age produced patterns that made intuitive sense. An example of a calculation forming part of the take-up and cost investigation stage of the project is as follows:

- the LSRC sample records 53 partially eligible single parents under the age of 40 applying for Legal Representation in a family case (out of a total sample of 614 family cases, 167 of which are contributory).
- In the FRS sample, there are 115,000 single parents under 40 who are partially eligible for Legal Representation.
- In 2000, there were an estimated 26,910 family cases where a contribution was paid
- The calculation is then as follows:
 - The LSRC sample grossing-up factor for this type of benefit unit is: $26910/167 = 161$ (that is, the survey is a 1/161 sample of this type of case)
 - The estimated number of applications per 1000 eligible benefit units is then $161 * (53/115) = 76$.

The pattern that emerges from applying this approach is in line with the results of the more formal take-up studies mentioned above. In most cases, families with children are more likely to claim, as are the young, whilst passported benefit units are more likely to apply than non-passported, and in turn no-contribution benefit units are more likely to apply than those who would be required to make a contribution.

Lastly, we estimated cost by obtaining average case cost for different types of case categories (family and non-family). Contributions, likely costs recovered and likely statutory charge recovery were subtracted. This new mean “net cost” was then multiplied by the expected change in applicant numbers resulting from the potential new means test.

4. Eligibility Under Current Rules

This chapter presents estimated eligibility for April 2001 – April 2002 under current means assessment rules. The estimations are based on a microsimulation model applied to the Family Resources Survey (FRS). All the information presented is at the level of a *benefit unit*. A ‘benefit unit’ is a standard Department of Social Security (DSS) term and is defined as a single adult or married/living as a married couple and any dependent children. The term ‘benefit unit’ is used throughout this report as a description of an individual/groups of individuals regardless of whether they are in receipt of any Social Security benefits.

Most of the figures in Chapters 4 and 5 are given to two-decimal points. This is the most detailed level of information we can provide. However, there is a margin of error associated with any exercise of this type of detailed information provision.

4.1 Legal Representation

The assessment officers at the Legal Services Commission’s regional offices work out whether the applicant qualifies financially¹² for Legal Representation, and whether there is a contribution to be paid. Details on the nature of the test and developments and changes to the test over the last 50 years can be found in Appendix 2 and Appendix 1 respectively.

As shown in Figure 4.1.1 and Figure 4.1.2, the results of the micro-economic modelling exercise indicate that 28% of benefit units in England and Wales would be fully eligible for Legal Representation in 2001/2002, under current rules. 18% of benefit units would be partially eligible for Legal Representation, i.e. they would be eligible but required to pay a contribution to costs of their case. The model for 1998/1999 indicated that 26% of benefit units in England and Wales were fully eligible, and 22% were partially eligible. There are two main reasons for this difference: first, modelling and data changes and, secondly, changes to the benefit system. In particular, this relates to the relative decline in importance of non-means tested benefits and the corresponding rise in means-tested benefits, which result in more benefit units being passported.

*Figure 4.1.1 Eligibility for Legal Representation in 2001/2002 under **current** rules*

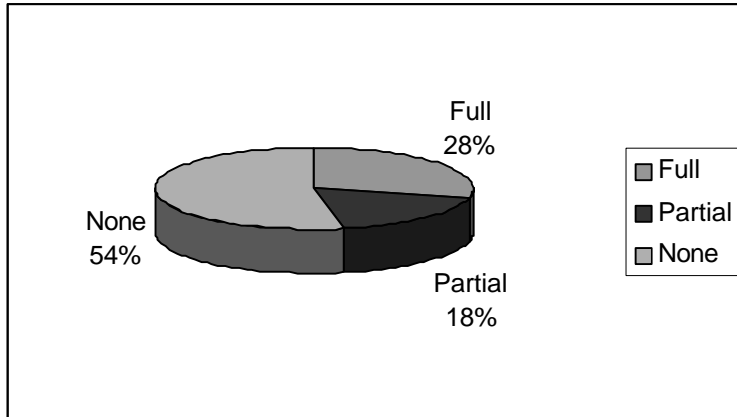
Eligibility Status	No. of Benefit Units in England and Wales (in 000s)	Percentage of Benefit Units in England and Wales (%)
Complete (passportd and non-passported)	7,700	28.40
Partial ¹³	5,008.76	18.48
None	14,401.43	53.12
Total	27,110.76	100.00

Data source: IFS Model

¹² Decisions on whether an application meets the criteria for funding on the merits of the case are also made in the regional office. In order for an application to succeed, the applicant needs to be financially eligible *and* meet the relevant merits criteria for funding.

¹³ Eligible for Legal Representation with a contribution to be paid from income and/or capital.

Figure 4.1.2 Eligibility for Legal Representation in 2001/2002 under **current** rules



Data source: IFS Model

Figures 4.1.1 and 4.1.2 show the Legal Representation eligibility status of the population in England and Wales. However, it is also crucial to investigate the socio-economic and demographic characteristics of the population who are *fully*, *partially* and *not eligible*. This allows us to assess how well targeted the current Legal Representation test is. It also provides the necessary information to compare the extent to which the four options deviate from the current profile of fully, partially and not eligible populations. The aim was to achieve as little movement as possible between population groups as a consequence of the new means tests. However, if *improvements* to the targeting of various groups seemed possible, this was also an option to be explored.

In order to assess *who* the people eligible for Legal Representation are, we took account of some of the key characteristics used in the Family Resources Survey to describe benefit units. As can be seen in Figures 4.1.3 to 4.1.5, particular attention was paid to the benefit unit type, tenure and the employment status of the head of the household. It was also felt to be important to include regional information for a geographical overview. In addition, income deciles were seen as a useful mechanism to highlight possible fairness issues and assess how well the different means tests target the population in terms of income. Income deciles refer to the position in the overall income distribution range of each benefit unit, using a measure of income which adjusts for benefit unit size. They range from the poorest 10% (Decile 1) to the richest 10% (Decile 10).

As Figure 4.1.3 sets out, most of the fully eligible population is located in the poorest 50% of the general population, in income terms, although some are drawn from the 6th, 7th, 8th and even 9th and 10th income deciles. As would be expected, the fully eligible population tend to be unoccupied, seeking work or retired. Nearly 40% live in local authority rented accommodation. Around 20% live in mortgaged accommodation, with a further, perhaps surprising, 19% owning their home outright. The fully eligible tend to be the single unemployed, single pensioners and one parent families. The fully eligible are distributed across England and Wales, the only significantly over-represented area is Greater London and the only significantly under-represented area is the South East.

As Figure 4.1.4 sets out, those in the partially eligible population are more likely to be located in the 3rd, 4th, 5th and 6th income deciles. Around 16% are in the 1st and 2nd decile. A relatively high percentage of 15% are located in the 7th, 8th, 9th and 10th gross income decile. As would be expected, a lower proportion than amongst the fully eligible live in local authority rented accommodation. Compared to the fully eligible, there are significantly more benefit units who live in mortgaged and owned outright accommodation (60% compared to 40%). As regards employment status, the partially eligible are predominately employed (46%). This compares to 8% of employees amongst the fully eligible. A relatively high proportion of the partially eligible can, further, be found amongst the retired. In terms of benefit unit type, the highest proportion (30%) can be found amongst the single employed, followed by single pensioners (20%). A higher proportion of benefit units with a single earner or two earners *and with* children is eligible for partial Legal Representation, compared to full Legal Representation (15% compared to 6%).

As expected, the majority of benefit units who are not eligible for Legal Representation (see Figure 4.1.5), can be found in the 7th, 8th, 9th and 10th income deciles (69%). However, 19% of the ineligible population is still located in the poorest 50% of the general population, in income terms. The majority of the ineligible population are employees (61%). They tend to be the single employed, and two earner couples with or without children. Over 50% of the ineligible population live in mortgaged accommodation. A high proportion also own their home outright. 6% of benefit units ineligible live in local authority rented accommodation.

Figure 4.1.3 Legal Representation: Fully Eligible Benefit Units under current rules (7,700,000)

Decile	%	Ben. Unit Type	%	Region	%	Tenure	%	Employment Status Head of Household	%
1	28.54	Single unemployed	26.62	Region Not Recorded	0.00	Tenure not recorded	0.00	Employee	8.39
2	21.16	Single employed	3.32	Northern	8.30	Local Authority Rented	39.72	Self employed	4.30
3	18.87	Single parent family	17.19	Yorkshire	9.62	Housing Association	8.54	Seeking Work	20.98
4	15.68	No earner couple without kids	4.29	North West	13.89	Other Rented Unfurnished	5.49	Waiting to Start	0.56
5	8.78	No earner couple with kids	7.27	East Midlands	7.74	Rented Furnished	6.58	Sick or Injured	8.23
6	4.53	Single earner couple without kids	1.08	West Midlands	10.36	Mortgaged	20.90	Retired	32.18
7	1.62	Single earner couple with kids	4.58	East Anglia	3.79	Rental Purchase	0.16	Unoccupied	25.35
8	0.54	Two earner couple without kids	0.44	Greater London	14.55	Owned Outright	18.62	Child	0.00
9	0.19	Two earner couple with kids	1.53	South East	15.79	Rent Free	0.00		
10	0.07	Single Pensioner	24.26	South West	8.52				
		Couple Pensioner	9.41	Wales	7.42				

Data source: IFS Model

Figure 4.1.4 Legal Representation: Partially Eligible Benefit Units under current rules (5,008,760)

Decile	%	Ben. Unit Type	%	Region	%	Tenure	%	Employment Status Head of Household	%
1	3.27	Single unemployed	11.56	Region Not Recorded	0.00	Tenure not recorded	0.00	Employee	45.61
2	12.83	Single employed	30.01	Northern	8.32	Local Authority Rented	23.11	Self employed	7.76
3	16.08	Single parent family	4.03	Yorkshire	10.44	Housing Association	5.10	Seeking Work	3.29
4	18.32	No earner couple without kids	3.12	North West	13.14	Other Rented Unfurnished	4.78	Waiting to Start	0.15
5	19.59	No earner couple with kids	0.46	East Midlands	7.84	Rented Furnished	6.47	Sick or Injured	6.70
6	14.54	Single earner couple without kids	5.37	West Midlands	10.17	Mortgaged	35.46	Retired	27.41
7	10.61	Single earner couple with kids	8.55	East Anglia	3.97	Rental Purchase	0.21	Unoccupied	9.07
8	3.74	Two earner couple without kids	2.10	Greater London	10.54	Owned Outright	24.87	Child	0.00
9	0.65	Two earner couple with kids	6.93	South East	18.49	Rent Free	0.00		
10	0.37	Single Pensioner	20.45	South West	10.07				
		Couple Pensioner	7.42	Wales	7.03				

Data source: IFS Model

Figure 4.1.5 Legal Representation: Not Eligible Benefit Units under current rules (14,401,430)

Decile	%	Ben. Unit Type	%	Region	%	Tenure	%	Employment Status Head of Household	%
1	2.49	Single unemployed	2.11	Region Not Recorded	0.00	Tenure not recorded	0.00	Employee	61.36
2	2.41	Single employed	20.54	Northern	5.78	Local Authority Rented	6.19	Self employed	9.95
3	2.83	Single parent family	1.56	Yorkshire	9.07	Housing Association	1.61	Seeking Work	1.22
4	4.15	No earner couple without kids	2.85	North West	11.14	Other Rented Unfurnished	2.67	Waiting to Start	0.09
5	7.60	No earner couple with kids	0.18	East Midlands	8.08	Rented Furnished	3.21	Sick or Injured	1.76
6	11.35	Single earner couple without kids	7.02	West Midlands	9.70	Mortgaged	52.47	Retired	22.16
7	14.41	Single earner couple with kids	6.92	East Anglia	4.70	Rental Purchase	0.26	Unoccupied	3.47
8	17.22	Two earner couple without kids	19.25	Greater London	12.02	Owned Outright	33.58	Child	0.00
9	18.57	Two earner couple with kids	18.89	South East	24.60	Rent Free	0.00		
10	18.98	Single Pensioner	10.04	South West	9.64				
		Couple Pensioner	10.64	Wales	5.27				

Data source: IFS Model

4.2 Legal Help

The first phase of the research project focused exclusively on devising and testing a potential new means test for civil legal aid, now Legal Representation. The second phase of the research project has been expanded to include Legal Help.

Figure 4.2.1 sets out the eligibility levels for Legal Help for 2001/2002 under current rules. Details regarding the test can be found in Appendix 2. One of the most important distinctions compared to the current Legal Representation rules is that there are no contributions to be paid for Legal Help.

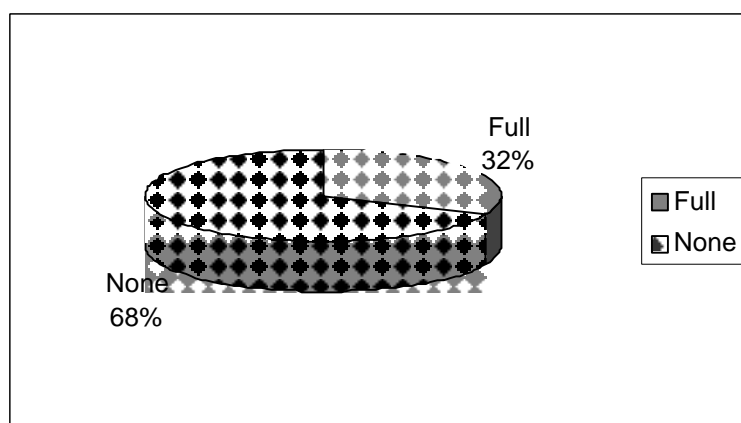
As can be seen, if the rules for the means test were not to change, 32% of all benefit units would be eligible for Legal Help from April 2001 onwards.

*Figure 4.2.1 Eligibility for Legal Help in 2001/2002 under **current** rules*

	No. of Benefit Units in England and Wales (in 000s)	Percentage of Benefit Units in England and Wales (%)
Full	8,552.78	31.55
None	18,557.42	68.45
<i>Total</i>	<i>27,110.76</i>	<i>100.00</i>

Data source: IFS Model

*Figure 4.2.2 Eligibility for Legal Help in 2001/2002 under **current** rules*



Data source: IFS Model

As with the Legal Representation test, we investigated the eligible groups in detail. The findings are set out in Figures 4.2.3 and 4.2.4. As can be seen, most of the eligible population is located in the poorest 50% of the general population, in income terms, although some are drawn from the 6th, 7th, 8th and even 9th and 10th income deciles. Benefit units eligible for Legal Help can further be found amongst the single unemployed (26%), single parent families (17%), and amongst single pensioners (21%). Nearly 40% live in local authority rented accommodation. Around 24% live in mortgaged accommodation with a further 18% owning their home outright. The eligible tend to be seeking work (19%), to be retired (29%) or to be unoccupied (24%). 16% of the fully eligible population are employees.

Figure 4.2.3 Legal Help: Fully Eligible Benefit Units under current rules (8,552,780) in 2001/2002

Decile	%	Ben. Unit Type	%	Region	%	Tenure %		Employment Status Head of Household	%
1	25.06	Single unemployed	26.03	Region Not Recorded	0.00	Tenure not recorded	0.00	Employee	15.66
2	20.81	Single employed	3.43	Northern	8.42	Local Authority Rented	38.08	Self employed	4.93
3	19.95	Single parent family	17.46	Yorkshire	10.15	Housing Association	8.23	Seeking Work	18.90
4	16.87	No earner couple without kids	3.50	North West	14.22	Other Rented Unfurnished	5.43	Waiting to Start	0.51
5	9.75	No earner couple with kids	6.45	East Midlands	7.86	Rented Furnished	6.10	Sick or Injured	8.51
6	4.94	Single earner couple without kids	0.66	West Midlands	10.30	Mortgaged	24.01	Retired	27.87
7	1.85	Single earner couple with kids	8.52	East Anglia	3.79	Rental Purchase	0.21	Unoccupied	23.62
8	0.54	Two earner couple without kids	0.18	Greater London	13.56	Owned Outright	17.94	Child	0.00
9	0.18	Two earner couple with kids	4.62	South East	15.49	Rent Free	0.00		
10	0.04	Single Pensioner	20.92	South West	8.67				
		Couple Pensioner	8.22	Wales	7.52				

Data source: IFS Model

Figure 4.2.4 Legal Help: Non Eligible Benefit Units under current rules (18,557,420) in 2001/2002

Decile	%	Ben. Unit Type	%	Region	%	Tenure	%	Employment Status Head of Household	%
1	3.01	Single unemployed	3.65	Region Not Recorded	0.00	Tenure not recorded	0.00	Employee	56.44
2	4.39	Single employed	23.90	Northern	6.27	Local Authority Rented	9.76	Self employed	9.36
3	5.03	Single parent family	1.29	Yorkshire	9.15	Housing Association	2.33	Seeking Work	1.75
4	6.77	No earner couple without kids	3.22	North West	11.38	Other Rented Unfurnished	3.12	Waiting to Start	0.10
5	10.28	No earner couple with kids	0.28	East Midlands	7.98	Rented Furnished	4.13	Sick or Injured	2.61
6	12.35	Single earner couple without kids	7.09	West Midlands	9.82	Mortgaged	48.08	Retired	25.08
7	13.95	Single earner couple with kids	5.61	East Anglia	4.55	Rental Purchase	0.23	Unoccupied	4.66
8	14.48	Two earner couple without kids	15.76	Greater London	11.96	Owned Outright	32.35	Child	0.00
9	14.74	Two earner couple with kids	15.13	South East	23.57	Rent Free	0.00		
10	15.00	Single Pensioner	13.67	South West	9.74				
		Couple Pensioner	10.41	Wales	5.58				

Datasource: IFS Model

4.3 Comparing Legal Help and Legal Representation

We compared the eligibility for the current Legal Help and Legal Representation test. This exercise was aimed at showing the different effects the two means tests have on eligibility. The rules differ substantially in terms of income and capital calculation (see Appendix 2). The Legal Representation test is more complex and includes discretionary elements. In addition, eligibility for Legal Help is non-contributory. In practice, this means that take-up of this scheme is likely to be higher than for Legal Representation. Some applicants who are eligible for Legal Representation with a high contribution to be paid refuse their conditional offer¹⁴.

Figure 4.3.2 provides a comparison of eligibility under current Legal Help and Legal Representation rules. Of the 28.4% benefit units who are fully eligible for Legal Representation, 26.8% are also eligible for Legal Help. 1.6% are not eligible under the Legal Help test, but are fully eligible under the Legal Representation test. Of the 18.5% of benefit units who are partially eligible for Legal Representation, 3.9% of benefit units are also eligible for Legal Help. The 14.5% of benefit units who are not eligible for Legal Help, are partially eligible for Legal Representation. Of the 53.1% of benefit units who are not eligible for Legal Representation, 0.7% are eligible for Legal Help. These benefit units are primarily benefit units in receipt of Working Families Tax Credit.

Figure 4.3.1 Eligibility for Legal Help under current rules vs. eligibility for Legal Representation under current rules in 2001/2002 (in 000s)

	Complete	Partial	None	Legal Help
Complete	7,276.5	1,077.99	198.29	8,552.78
Partial	0.00	0.00	0.00	0.00
None	423.50	3,930.79	14,203.13	18,557.42
Legal Representation	7,700	5,008.76	14,401.43	27,110

Data source: IFS Model

Figure 4.3.2 Eligibility for Legal Help under current rules vs. eligibility for Legal Representation under current rules in 2001/2002 (in percentages)

	Complete	Partial	None	Legal Help
Complete	26.84	3.89	0.73	31.55
Partial	0.00	0.00	0.00	0.00
None	1.56	14.50	52.39	68.45
Legal Representation	28.40	18.48	53.12	27,110

Data source: IFS Model

¹⁴ See, Woolfson, R. & Plotnikoff, J. (1996), *Report of Study into Reasons for Refusal of Offers of Contributory Civil Legal Aid*, Legal Aid Board, June 1996.

In 1999-2000, the proportion of certificates issued to applicants accepting an offer of a contributory certificate was 16.1%. Nearly one legally aided litigant in ten paid a contribution at a rate of £500 per year or more (Legal Aid Board, *Annual Report*, 1999-00, July 2000, page 81).

5. Four Options

Introduction

Four options were devised for consideration. Each one is set out below. The first option is identical to the final alternative working model proposed in the first means assessment research report¹⁵.

All four options are based on the principle devised for the models in the first phase of the research. Following logically from the objective of reducing complexity and moving away from calculating *disposable income*, we concentrated on modelling means tests which calculate eligibility with reference to *gross annual income*. A two-tier system was tested in which benefit units are “filtered through” a basic gross income test before allowances are applied to net income in order to determine eligibility and contribution levels. Consequently, the following structural elements apply to all four options:

- *gross income cap* - People whose annual gross income is above this figure are ineligible whatever their outgoings. This initial cap acts as a filter. It is an initial, simple, gross income ‘hurdle’ test.
- *upper income limit* - People who are above this upper income limit once defined allowances are taken off their net income do not qualify. If they are between the upper and lower limit, then they qualify with contributions to be paid.
- *lower income limit* - People who have an income below this figure once defined allowances are taken off their net income qualify without a contribution to be paid.

It was decided to use £24,000 as the gross income cap¹⁶. This is considerably higher than the gross income cap of £20,000 for the final alternative working model in the first report. It is also higher than average gross annual earnings of £22,026 for England and Wales and median earnings for Great Britain of £18,346¹⁷.

It was found that the difference between a gross income cap of £20,000, £21,000, £22,000 and £23,000 was negligible, with less than 1% difference in eligibility outcome. Seeing that the gross income cap does not have much impact on changing the overall eligibility numbers, the cap could be set either slightly lower or higher than £24,000. However, the fact that there is some variability in terms of where the cap is set does not mean that it is a redundant feature of the four options. A gross income cap and a limited set of allowances reduces the amount of information applicants need to provide in order to have their means assessed. It also reduces the amount of time needed to make a decision on applicants’ eligibility status. The cap therefore has advantages of transparency as well as reducing administrative effort.

¹⁵ See Buck, A., *Assessing Means Assessment*, Research Paper 5, Legal Services Research Centre, July 2000, p. 24-27.

¹⁶ Gross income includes *all* sources of income, without deducting Income Tax and National Insurance.

¹⁷ See New Earnings Survey 2000, Department of Social Security. The figures apply to full-time employees of both sexes.

At present the complexity of the current assessment process militates against clarity of decision making, resulting in the current system being not as user friendly as it could be. It is not always easy for applicants and their legal representatives to understand the outcome of the assessment process. A gross income cap indicates clearly to applicants and those assessing their means whether they are likely to meet the financial eligibility criteria.

The upper and lower income limits for all 4 options were devised with the explicit aim of retaining current eligibility levels as predicted, under current rules, for 2001/2002. Given that findings and discussions relating to legal aid eligibility have taken place in a heated and controversial climate, it should be stressed again that the means assessment research project was never informed by an eligibility-cutting policy. Indeed, all the alternative means test models were conducted within the context of devising a test which resulted in almost *identical* partial and full eligibility as compared to the current Legal Representation test. In line with this aim, one of the main focuses of the second phase of the project entailed *optimising* the models, so as to obtain as little movement as possible from overall eligibility. The smallest possible error rate was achieved by running the four options repeatedly with different income thresholds. This also means that the microsimulation models show only very small numbers of winners and losers as a consequence of the different options. The winners and losers are in most cases less than 1%. For a detailed overview of how the options were optimised, see Appendix 4.

Within the 4 options, the increase or decrease of allowances *has not* operated as a method to increase or decrease either full or partial eligibility, although – to maintain overall eligibility rates – as more allowances have been added, income thresholds have generally had to reduce. A number of complexities, however, militate against a straightforward relationship between allowances and income thresholds. First, the modelling process cannot yield perfect replication of eligibility numbers under current rules. Thus, as in Option 4, for example, a slight increase in eligibility accompanies a slight increase in the income thresholds. Second, moving from fixed to actual allowances penalises those who spend less than the fixed allowances, thereby lessening their likelihood of remaining eligible. Third, to maintain the balance between full and partial eligibility levels, thresholds have not always moved in the same direction.

Some elements of the four options are very similar or identical to the current rules for Legal Representation. For example, for the purposes of the microsimulation models the capital rules remain unchanged from the current test¹⁸. The only exception is the *increase* in the upper capital limit. This is based on the findings of the first phase of the project showing that the test applied for Income Support purposes is in some ways more generous than for the current Legal Representation test. Income Support recipients are allowed £8,000 in capital¹⁹. The Legal Representation test has a capital limit of under £6,750 (this limit has not changed since 1992). This can mean that working individuals, who earn an amount

¹⁸ The research brief of the means assessment project did not include investigating the capital proposals contained in the Lord Chancellor's financial conditions proposals. See, Lord Chancellor's Department, *Community Legal Service – Financial Conditions for Funding by the Legal Services Commission*, July 2000.

¹⁹ If Income Support/Income-based Jobseeker's Allowance recipients' capital is over £3,000, they are treated as having an assumed income from it, called tariff income. Recipients are assumed to have an income of £1 for every £250, or part of £250, by which their capital exceeds £3,000 but does not exceed £8,000.

equivalent to Income Support rates, can be worse off than their out-of-work counterparts. Conversely, it can be observed that if the practice of passporting Income Support were ended and Income Support benefits counted as income, some families currently passported would become ineligible.

Second, dependants' allowances²⁰ remain the same for all four models. Dependants' allowances have been tied into the Income Support allowances for dependants for a considerable period of time. The Income Support rates are the most straightforward way to calculate the essential needs of dependants, as well as allowing for overall coherence with the benefits system. In addition to these dependants' allowances, all of the models contain maintenance payments as a deductible expenditure. For the purposes of the microsimulation modelling, the *actual* maintenance cost figure was used.

Third, all the models contain a passported element. Recipients of Income Support and Income-based Jobseeker's Allowance are 'passported' automatically to free Legal Representation and Legal Help. For Legal Help this means a change as regards passporting: at present, if the applicant is receiving Income Support, Income Based Jobseeker's Allowance, Working Families Tax Credit²¹ or Disabled Person's Tax Credit²² the applicant is eligible on income. Capital, however, still needs to be assessed. In the four options, there is no passporting on income for Working Families Tax Credit and Disabled Person's Tax Credit anymore. On the other hand, recipients on Income Support and Income-based Jobseeker's Allowance are passported under both the income *and* the capital test under the four options.

The four options had to be modelled separately for Legal Help and Legal Representation. First, there are no contributions to be paid by assisted persons for Legal Help. Second, separate modelling was necessary to show the different impact the tests have on eligibility within the two schemes. For Legal Help, eligibility numbers differ substantially compared to current rules (whereas for the Legal Representation test the options were devised so as to have as little impact as possible on eligibility). The number of eligible benefit units for Legal Help increases substantially in all four options. This is the case for both a 75% increase to the income limits and for full equalisation to the higher Legal Representation income thresholds in the 4 options. In addition, it was necessary to model the 4 options separately for Legal Help because the Legal Help options contain a subtle variation to the Legal Representation options: it was proposed in the Lord Chancellor's Department's financial conditions consultation paper²³ that the upper capital limit for the Legal Help test be set at £3,000. Therefore, the options for Legal Help contained a £3,000 capital threshold, as opposed to £8,000 for the Legal Representation options.

The impact of all the four options was looked at in detail, investigating specifically the winners and losers of each scheme. This was undertaken using Family

²⁰ Dependants are classified in the FRS as all children up to the age of 16, and up to the age of 18 if in education. This also applies to couples who are not married.

²¹ Only if the amount (if any) to be deducted from the maximum tax credit as a result of other income the applicant receives has been determined at not more than £70 per week.

²² Only if the amount (if any) to be deducted from the maximum tax credit as a result of other income the applicant receives has been determined at not more than £70 per week.

²³ Lord Chancellor's Department, *Community Legal Service – Financial Conditions for Funding by the Legal Services Commission*, July 2000.

Resources Survey classifications; specifically gross income decile, benefit unit type, region, tenure and employment status.

5.1 Option 1

Option 1 is identical to the final alternative working model set out in the first report. The results were, however, updated to apply to 2001/2002.

In Option 1, the gross annual income cap is set at £24,000. The upper annual income limit is £8,105 and the lower annual income limit is £3,079. These are the limits necessary to arrive as close as possible to current eligibility levels.

Actual housing costs (rent and mortgage) are used, with a cap of £125 per week for benefit units without dependants. There is a travel to work/employment expenses allowance of £10 per week.

OPTION 1
Gross income figure: £24,000
Higher income limit: £8,105
Lower income limit: £3,079
Income: Allowances: <ul style="list-style-type: none">• Dependants' allowances<ul style="list-style-type: none">- based on Income Support figures for April 2001- maintenance payments allowed (actual amounts)• Employment expenses for people in work: £10 per week• Actual housing costs with a cap of £125 per week for benefit units without dependants, actual housing costs without a cap for benefit units with dependants Passporting: <ul style="list-style-type: none">• current passporting rules (Income Support, Income-based Jobseeker's Allowance) Capital (for Legal Representation): <ul style="list-style-type: none">• upper disposable capital limit is £8,000, lower disposable capital limit remains at £3,000 Capital (for Legal Help): <ul style="list-style-type: none">• disposable capital limit is £3,000

Legal Representation

Option 1 would result in almost identical *full* eligibility compared to current rules. Figures 5.1.1 and 5.1.2 show that 152,090 (0.6%) benefit units move from partial eligibility to complete eligibility. 196,250 (0.7%) benefit units move from being ineligible to being partially eligible. 71,960 benefit units (0.3%) move from being fully eligible to being partially eligible. 4,346,770 (16.0%) benefit units remain partially eligible.

As regards benefit units which are ineligible, 17,380 (0.1%) benefit units move from being eligible to being ineligible. 509,910 (1.9%) benefit units move from being partially eligible to being ineligible.

Figure 5.1.1 Eligibility for Legal Representation in 2001/2002 under Option 1 (in 000s)

	Complete	Partial	None	Total Reformed Eligibility under Option 1
Complete	7,610.66	152.09	0.00	7,762.75
Partial	71.96	4,346.77	196.25	4,614.97
None	17.38	509.91	14,205.19	14,732.49
Total Current Eligibility for Legal Representation	7,700	5,008.76	14,401.43	27,110.76

Data source: IFS Model

Figure 5.1.2 Eligibility for Legal Representation in 2001/2002 under Option 1 (in percentages)

	Complete	Partial	None	Total Reformed Eligibility under Option 1
Complete	28.07	0.56	0.00	28.63
Partial	0.27	16.03	0.72	17.02
None	0.06	1.88	52.40	54.34
Total Current Eligibility for Legal Representation	28.40	18.48	53.12	100.00

Data source: IFS Model

Legal Help

As can be seen in Figures 5.1.3 and 5.1.4, full equalisation to the Legal Representation Option 1 leads to a substantial increase of 3,419,720 in eligible benefit units for Legal Help. Of the eligible benefit units under this option, 8,249,050 benefit units were previously eligible for Legal Help, 3,723,460 benefit units were not eligible. 55.8% (15,137,710) benefit units are ineligible for Legal Help. Of these, 1.1% (303,720) benefit units were previously eligible.

Figure 5.1.3 Eligibility for Legal Help in 2001/2002 under Option 1 (in 000s)

	Complete	None	Total Reformed Eligibility under Option 1
Complete	8,249.05	3,723.46	11,972.50
None	303.72	14,833.98	15,137.71
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 5.1.4 Eligibility for Legal Help in 2001/2002 under Option 1 (in percentages)

	Complete	None	Total Reformed Eligibility under Option 1
Complete	30.42	13.73	44.17
None	1.12	54.72	55.84
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Figures 5.1.5 and 5.1.6 show the eligibility levels if the income limit is set at 75% of the difference between the up-rated Legal Help income limit under current rules (£4,438) and the upper income limit for Legal Representation under Option 1 (£8,105). The relevant income limit is £7,188.

As can be seen, this income limit again leads to a substantial increase of 2,555,000 in eligible benefit units for Legal Help. Of the eligible benefit units, 8,177,100 benefit units were previously eligible for Legal Help, 2,930,560 benefit units were not eligible. 59.0% (16,002,540) benefit units are ineligible. Of these, 1.4% (375,670) benefit units were previously eligible.

Figure 5.1.5 Eligibility for Legal Help in 2001/2002 under Option 1 with a 75% increase (in 000s)

	Complete	None	Total Reformed Eligibility under Option 1 (75%)
Complete	8,177.10	2,930.56	11,107.78
None	375.67	15,626.88	16,002.54
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 5.1.6 Eligibility for Legal Help in 2001/2002 under Option 1 with a 75% increase (in percentages)

	Complete	None	Total Reformed Eligibility under Option 1 (75%)
Complete	30.16	10.80	40.97
None	1.39	57.64	59.03
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Winners and Losers

Figures 5.1.7 to 5.1.8 provide an overview of fully eligible, partially eligible and ineligible benefit units as predicted under Option 1 (Legal Representation).

Under Option 1, the winners are disproportionately in the bottom two gross income deciles, living in furnished and unfurnished rented accommodation, and low-paid employees. These types of benefit units move from either being partially eligible to being fully eligible or from being ineligible to being partially eligible. Essentially, single low-paid employees gain from the Option 1 means test.

The losers under Option 1 are to be found in the middle-range and top gross income deciles, single earner couples with children, and employees with middle incomes living in mortgaged accommodation.

Figure 5.1.7 Option 1: Profile of Fully Eligible Benefit Units (7,762,750)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of Head of Household	%
1	28.76	Single unemployed	26.92	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	8.53
2	21.51	Single employed	3.89	Northern	8.36	Local Authority Rented	39.75	Self employed	4.29
3	18.84	Single parent family	16.96	Yorkshire	9.70	Housing Association	8.52	Seeking work	21.14
4	15.58	No earner couple without kids	4.23	North West	13.86	Other Rented Unfurnished	5.63	Waiting to Start	0.58
5	8.69	No earner couple with kids	7.22	East Midlands	7.84	Rented Furnished	6.65	Sick or Injured	8.19
6	4.47	Single earner couple without kids	1.09	West Midlands	10.30	Mortgaged	20.61	Retired	31.94
7	1.54	Single earner couple with kids	4.42	East Anglia	3.84	Rental Purchase	0.16	Unoccupied	25.33
8	0.41	Two earner couple without kids	0.42	Greater London	14.38	Owned Outright	18.69	Child	0.00
9	0.18	Two earner couple with kids	1.42	South East	15.75	Rent Free	0.00		
10	0.02	Single Pensioner	24.11	South West	8.53				
		Couple Pensioner	9.33	Wales	7.45				

Data source: IFS Model

Figure 5.1.8 Option 1: Profile of Partially Eligible Benefit Units (4,614,970)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of	%
--------	---	-------------------	---	--------	---	--------	---	----------------------	---

								<u>Head Of Household</u>	
1	3.11	Single unemployed	11.78	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	44.56
2	13.43	Single employed	31.26	Northern	8.17	Local Authority Rented	24.39	Self employed	7.87
3	16.56	Single parent family	3.84	Yorkshire	10.56	Housing Association	5.35	Seeking work	2.96
4	19.10	No earner couple without kids	2.96	North West	13.16	Other Rented Unfurnished	4.74	Waiting to Start	0.13
5	18.60	No earner couple with kids	0.44	East Midlands	7.70	Rented Furnished	6.61	Sick or Injured	6.84
6	14.21	Single earner couple without kids	4.97	West Midlands	10.37	Mortgaged	33.56	Retired	28.36
7	11.08	Single earner couple with kids	7.77	East Anglia	4.01	Rental Purchase	0.21	Unoccupied	9.28
8	3.23	Two earner couple without kids	2.06	Greater London	10.20	Owned Outright	25.13	Child	0.00
9	0.46	Two earner couple with kids	6.05	South East	18.49	Rent Free	0.00		
10	0.21	Single Pensioner	21.73	South West	10.10				
		Couple Pensioner	7.16	Wales	7.24				

Data source: IFS Model

Figure 5.1.9 Option 1: Profile of Not Eligible Benefit Units (14,732,490)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of Head of Household	%
1	2.37	Single unemployed	2.08	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	61.32
2	2.27	Single employed	20.17	Northern	5.86	Local Authority Rented	6.16	Self employed	9.87
3	3.02	Single parent family	1.76	Yorkshire	9.02	Housing Association	1.62	Seeking work	1.24
4	4.32	No earner couple without kids	2.94	North West	11.20	Other Rented Unfurnished	2.66	Waiting to Start	0.08
5	8.28	No earner couple with kids	0.20	East Midlands	8.07	Rented Furnished	3.21	Sick or Injured	1.86
6	11.58	Single earner couple without kids	7.11	West Midlands	9.69	Mortgaged	52.82	Retired	22.11
7	14.24	Single earner couple with kids	7.29	East Anglia	4.64	Rental Purchase	0.26	Unoccupied	3.51
8	17.12	Two earner couple without kids	18.85	Greater London	12.16	Owned Outright	33.27	Child	0.00
9	18.20	Two earner couple with kids	18.94	South East	24.48	Rent Free	0.00		
10	18.60	Single Pensioner	9.98	South West	9.64				
		Couple Pensioner	10.68	Wales	5.23				

Data source: IFS Model

5.2 Option 2

Option 2 is identical to Option 1, but with the addition of childcare as an allowable expense. The actual cost of childcare is taken into account *only* if a parent is working.

Option 2 has a gross annual income cap of £24,000. The upper annual income limit is £8,137 and the lower annual income limit is £3,060.

OPTION 2
Gross income figure: £24,000
Higher income limit: £8,137
Lower income limit: £3,060
Income: Allowances: <ul style="list-style-type: none"> • Dependants' allowances <ul style="list-style-type: none"> - based on Income Support figures for April 2001 - maintenance payments allowed (actual amounts) • Employment expenses for people in work: £10 per week • Actual housing costs with a cap of £125 per week for benefit units without dependants, actual housing costs without a cap for benefit units with dependants • Allowance for childcare (actual cost) for people who work Passporting: <ul style="list-style-type: none"> • current passporting rules (Income Support, Income-based Jobseeker's Allowance) Capital (for Legal Representation): <ul style="list-style-type: none"> • upper disposable capital limit is £8,000, lower disposable capital limit remains at £3,000 Capital (for Legal Help) <ul style="list-style-type: none"> • Disposable capital limit is set at £3,000

Payments for childcare is an important expenditure, especially for single parent households. Table 5.2.1 and 5.2.2 provide background information on childcare expenditure in Great Britain, based on the Family Resources Survey²⁴.

Figure 5.2.1 shows the proportion of households in Great Britain that have weekly childcare costs. Figure 5.2.2 shows the mean amount spent each week on childcare by these households (term-time and holidays).

Figure 5.2.1 Proportion of all households with childcare costs (>£0 p.w.)

	Proportion of Households
Term-time	4%
Holidays	3%
Both	3%

Source: Family Resources Survey, Great Britain 1998-99

²⁴ The estimates are based on sample counts that have been adjusted for non-response using multi-purpose grossing factors that control for region, Council Tax Band and a number of demographic variables. Estimates are subject to sampling error and to variability in non-response. Questions about childcare on the Family Resources Survey (FRS) are asked in the following way. The adults in a benefit unit (a single adult or couple living as married and any dependent children) are asked: "Do you have any paid work at present?", and ONLY if yes then they are asked "Does anyone else normally have to look after (childname), because you are working?", which if answered yes leads into the childcare section. So, in summary, childcare questions on the FRS are only asked if a parent is working.

Figure 5.2.2 Mean weekly cost of childcare for households with childcare costs (>£0 p.w.)

	Mean cost per week (£)
Term-time	£55
Holidays	£68

Source: Family Resources Survey, Great Britain 1998-99

As can be seen, the actual proportion of benefit units with childcare expenditure is small (3%). However, for those 3%, childcare costs are a relatively substantial amount.

Legal Representation

Option 2 results in almost identical eligibility entitlement to the current scheme. As can be seen in Figures 5.2.3 and 5.2.4, Option 2 leads to very slight increase in full eligibility entitlement and to a 1.3% decrease in partial eligibility. Figure 5.2.3 shows that 148,750 benefit units move from partial eligibility to complete eligibility as a consequence of the changes to the test. 59,940 benefit units move from complete eligibility to being partially eligible. 211,480 benefit units move from being ineligible to being partially eligible. 15,670 benefit units move from being fully eligible to being ineligible. 463,200 benefit units move from being partially eligible to being ineligible.

Figure 5.2.3 Eligibility for Legal Representation in 2001/2002 under Option 2 (in 000s)

	Complete	Partial	None	Total Reformed Eligibility under Option 2
Complete	7,624.39	148.75	0.00	7,773.14
Partial	59.94	4,396.83	211.48	4,668.24
None	15.67	463.20	14,189.95	14,668.83
Total Current Eligibility for Legal Representation	7,700	5,008.76	14,401.43	27,110.76

Data source: IFS Model

Figure 5.2.4 Eligibility for Legal Representation in 2001/2002 under Option 2 (in percentages)

	Complete	Partial	None	Total Reformed Eligibility under Option 2
Complete	28.12	0.55	0.00	28.67
Partial	0.22	16.22	0.78	17.22
None	0.06	1.70	52.34	54.10
Total Current Eligibility for Legal Representation	28.40	18.48	53.12	100.00

Data source: IFS Model

Legal Help

As can be seen in Figures 5.2.5 and 5.2.6, full equalisation to the Legal Representation Option 2 leads to a substantial increase of 3,478,360 in eligible benefit units for Legal Help. Of the eligible benefit units, 8,268,600 benefit units were previously eligible for Legal Help, 3,762,550 benefit units were not eligible. 55.6% (15,079,070) benefit units are ineligible for Legal Help. Of these, 1.1% (284,170) benefit units were previously eligible.

Figure 5.2.5 Eligibility for Legal Help in 2001/2002 under Option 2 (in 000s)

	Complete	None	Total Reformed Eligibility under Option 2
Complete	8,268.60	3,762.55	12,031.14
None	284.17	14,794.89	15,079.07
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 5.2.6 Eligibility for Legal Help in 2001/2002 under Option 2 (in percentages)

	Complete	None	Total Reformed Eligibility under Option 2
Complete	30.50	13.88	44.38
None	1.05	54.57	55.62
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Figures 5.2.7 and 5.2.8 show the eligibility levels if the income limit is set at 75% of the difference between the up-rated Legal Help income limit under current rules (£4,438) and the upper income limit for Legal Representation under Option 2 (£8,137). The relevant income limit is £7,212.

As can be seen, this income limit leads to a substantial increase of 2,594,130 in eligible benefit units for Legal Help. Of the eligible benefit units, 8,190,900 benefit units were previously eligible for Legal Help, 2,955,880 benefit units were not eligible. 58.9% (15,963,420) benefit units are ineligible. Of these, 1.3% (361,860) benefit units were previously eligible.

Figure 5.2.7 Eligibility for Legal Help in 2001/2002 under Option 2 with a 75% increase (in 000s)

	Complete	None	Total Reformed Eligibility under Option 2 (75%)
Complete	8,190.90	2,955.88	11,146.91
None	361.86	15,601.56	15,963.42
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 5.2.8 Eligibility for Legal Help in 2001/2002 under Option 2 with a 75% increase (in percentages)

	Complete	None	Total Reformed Eligibility under Option 2 (75%)
Complete	30.21	10.90	41.11
None	1.33	57.55	58.88
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Winners and Losers

Figures 5.2.9 to 5.2.11 provide an overview of fully eligible, partially eligible and ineligible benefit units as predicted under Option 2 (Legal Representation).

In terms of winners and losers, single family benefit units profit from the introduction of a childcare allowance. As most lone parents are female, Option 2 increases eligibility for women, as compared to Option 1.

Other winners under Option 2 are single earner couples with children, the single employed, and bottom decile single benefit units. The losers under Option 2 are predominantly to be found in the middle-range and higher gross income deciles, living in the South East and London, mortgagees and some couples with and without children. A detailed analysis indicated that couples with children can be found amongst the losers because of not allowing for council tax expenditure. It should again, though, be borne in mind that the number of winners and losers are small.

Figure 5.2.9 Option 2: Profile of Fully Eligible Benefit Units (7,773,140)

<u>Decile</u>	<u>%</u>	<u>Benefit Unit Type</u>	<u>%</u>	<u>Region</u>	<u>%</u>	<u>Tenure</u>	<u>%</u>	<u>Employment Status of Head of Household</u>	<u>%</u>
1	28.66	Single unemployed	26.84	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	8.72
2	21.44	Single employed	3.86	Northern	8.37	Local Authority Rented	39.73	Self employed	4.29
3	18.81	Single parent family	17.11	Yorkshire	9.67	Housing Association	8.51	Seeking work	21.10
4	15.60	No earner couple without kids	4.22	North West	13.88	Other Rented Unfurnished	5.62	Waiting to Start	0.58
5	8.77	No earner couple with kids	7.21	East Midlands	7.85	Rented Furnished	6.64	Sick or Injured	8.17
6	4.50	Single earner couple without kids	1.09	West Midlands	10.28	Mortgaged	20.69	Retired	31.87
7	1.60	Single earner couple with kids	4.40	East Anglia	3.82	Rental Purchase	0.16	Unoccupied	25.26
8	0.42	Two earner couple without kids	0.41	Greater London	14.43	Owned Outright	18.65	Child	0.00
9	0.18	Two earner couple with kids	1.50	South East	15.74	Rent Free	0.00		
10	0.02	Single Pensioner	24.05	South West	8.52				
		Couple Pensioner	9.31	Wales	7.44				

Data source: IFS Model

Figure 5.2.10 Option 2: Profile of Partially Eligible Benefit Units (4,668,240)

<u>Decile</u>	<u>%</u>	<u>Benefit Unit</u>	<u>%</u>	<u>Region</u>	<u>%</u>	<u>Tenure</u>	<u>%</u>	<u>Employment</u>	<u>%</u>
---------------	----------	---------------------	----------	---------------	----------	---------------	----------	-------------------	----------

		Type						Status of Head of Household	
1	3.15	Single unemployed	11.72	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	44.78
2	13.36	Single employed	31.19	Northern	8.16	Local Authority Rented	24.20	Self employed	7.86
3	16.46	Single parent family	3.88	Yorkshire	10.60	Housing Association	5.33	Seeking work	2.99
4	18.97	No earner couple without kids	2.95	North West	13.14	Other Rented Unfurnished	4.81	Waiting to Start	0.12
5	18.51	No earner couple with kids	0.46	East Midlands	7.70	Rented Furnished	6.60	Sick or Injured	6.79
6	14.24	Single earner couple without kids	4.96	West Midlands	10.35	Mortgaged	33.70	Retired	28.22
7	11.25	Single earner couple with kids	7.80	East Anglia	4.05	Rental Purchase	0.23	Unoccupied	9.23
8	3.34	Two earner couple without kids	2.08	Greater London	10.11	Owned Outright	25.13	Child	0.00
9	0.52	Two earner couple with kids	6.25	South East	18.59	Rent Free	0.00		
10	0.21	Single Pensioner	21.56	South West	10.11				
		Couple Pensioner	7.16	Wales	7.20				

Data source: IFS Model

Figure 5.2.11 Option 2: Profile of Not Eligible Benefit Units (14,668,830)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of Head	%
--------	---	-------------------	---	--------	---	--------	---	---------------------------	---

								<u>of Household</u>	
1	2.38	Single unemployed	2.08	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	61.26
2	2.28	Single employed	20.18	Northern	5.85	Local Authority Rented	6.13	Self employed	9.89
3	3.00	Single parent family	1.65	Yorkshire	9.02	Housing Association	1.61	Seeking work	1.23
4	4.29	No earner couple without kids	2.94	North West	11.19	Other Rented Unfurnished	2.63	Waiting to Start	0.08
5	8.23	No earner couple with kids	0.19	East Midlands	8.07	Rented Furnished	3.21	Sick or Injured	1.86
6	11.56	Single earner couple without kids	7.13	West Midlands	9.70	Mortgaged	52.83	Retired	22.16
7	14.18	Single earner couple with kids	7.29	East Anglia	4.64	Rental Purchase	0.26	Unoccupied	3.52
8	17.14	Two earner couple without kids	18.93	Greater London	12.17	Owned Outright	33.33	Child	0.00
9	18.26	Two earner couple with kids	18.90	South East	24.48	Rent Free	0.00		
10	18.68	Single Pensioner	10.01	South West	9.64				
		Couple Pensioner	10.70	Wales	5.24				

Data source: IFS Model

5.3 Option 3

Option 3 is considerably more complex than Options 1 and 2, owing, mainly, to the addition of various housing related allowances.

As in Option 1 and 2, the gross annual income cap is set at £24,000. The upper annual income limit is £7,756 and the lower annual income limit is £3,079.

OPTION 3
Gross income figure: £24,000
Higher income limit: £7,756
Lower income limit: £2,766
Income: Allowances: <ul style="list-style-type: none">• Dependants' allowances<ul style="list-style-type: none">- based on Income Support figures for April 2001- maintenance payments allowed (actual amounts)• Employment expenses for people in work: £10 per week• Allowance for childcare (actual cost) for people who work• Actual housing costs with a cap of £125 per week for benefit units without dependants, actual housing costs without a cap for benefit units with dependants<ul style="list-style-type: none">- actual amounts council tax- standard allowance for water rates of £225 per yearFor homeowners (mortgaged and owned outright):<ul style="list-style-type: none">- repairs and maintenance- allowance for structural insurance
Passporting: <ul style="list-style-type: none">• current passporting rules (Income Support, Income-based Jobseeker's Allowance)
Capital (for Legal Representation): <ul style="list-style-type: none">• upper disposable capital limit is £8,000, lower disposable capital limit remains at £3,000
Capital (for Legal Help) <ul style="list-style-type: none">• disposable capital limit set at £3,000

Option 3 sees the introduction of council tax as an allowance.

A standard allowance for water rates of £225 was also added to Option 3. This is based on the treatment of water expenditure under present Legal Representation rules and information from the Office for Water Services (OFWAT). Average annual figures from OFWAT for 2000/2001 show that £106 is spent on water and £119 on sewage (these figures decrease for metered services to £87 for water and £102 for sewage). A standard allowance for water rates of £225 per year (sum of water and sewage expenditure) was therefore used.

Two additional allowances were also added for home owners (mortgaged and owned outright). £7.50 per week was used for repairs and maintenance and £3.14 per week was used for structural insurance. These figures were based on the Family Expenditure Survey (FES).

Legal Representation

As Figures 5.3.1 and 5.3.2 show, Option 3 sees a very slight increase in full eligibility, and a slight decrease in partial eligibility. Figure 5.3.1 indicates that 171,600 benefit units move from partial eligibility to full eligibility. 6,780 benefit units move from being ineligible under the current test to being fully eligible under Option 3. 34,320 benefit units move from complete eligibility to being partially eligible. 238,110 benefit units move from being ineligible to being partially eligible. 10,750 benefit units move from being fully eligible to being ineligible. 267,890 benefit units move from being partially eligible to being ineligible.

Figure 5.3.1 Eligibility for Legal Representation in 2001/2002 under Option 3 (in 000s)

	Complete	Partial	None	Total Reformed Eligibility under Option 3
Complete	7,654.93	171.60	6.78	7,833.31
Partial	34.32	4,569.28	238.11	4,841.71
None	10.75	267.89	14,156.53	14,435.18
Total Current Eligibility for Legal Representation	7,700	5,008.76	14,401.43	27,110.76

Data source: IFS Model

Figure 5.3.2 Eligibility for Legal Representation in 2001/2002 under Option 3 (in percentages)

	Complete	Partial	None	Total Reformed Eligibility under Option 3
Complete	28.24	0.63	0.03	28.90
Partial	0.13	16.85	0.88	17.86
None	0.04	0.99	52.22	53.25
Total Current Eligibility for Legal Representation	28.40	18.48	53.12	100.00

Data source: IFS Model

Legal Help

As can be seen in Figures 5.3.3 and 5.3.4, full equalisation to the Legal Representation Option 3 leads to a substantial increase of 3,681,810 in eligible benefit units for Legal Help. Of the eligible benefit units, 8,317,990 benefit units were previously eligible for Legal Help, 3,916,610 benefit units were not eligible. 54.87% (14,875,620) benefit units are ineligible for Legal Help. Of these, 0.9% (234,790) benefit units were previously eligible.

Figure 5.3.3 Eligibility for Legal Help in 2001/2002 under Option 3 (in 000s)

	Complete	None	Total Reformed Eligibility under Option 3
Complete	8,317.99	3,916.61	12,234.59
None	234.79	14,640.82	14,875.62
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 6.3.4 Eligibility for Legal Help in 2001/2002 under Option 3 (in percentages)

	Complete	None	Total Reformed Eligibility under Option 3
Complete	30.68	14.44	45.13
None	0.87	54.00	54.87
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Figures 5.3.5 and 5.3.6 show the eligibility levels if the income limit is set at 75% of the difference between the up-rated Legal Help income limit under current rules (£4,438) and the upper income limit for Legal Representation under Option 3 (£7,756). The relevant income limit is £6,927.

As can be seen, this income limit leads to a substantial increase of 2,868,880 in eligible benefit units for Legal Help. Of the eligible benefit units, 8,248,290 benefit units were previously eligible for Legal Help, 3,173,230 benefit units were not eligible. 57.9% (15,688,680) benefit units are ineligible. Of these, 1.1% (304,480) benefit units were previously eligible.

Figure 5.3.5 Eligibility for Legal Help in 2001/2002 under Option 3 with a 75% increase (in 000s)

	Complete	None	Total Reformed Eligibility under Option 3 (75%)
Complete	8,248.29	3,173.23	11,421.66
None	304.48	15,384.20	15,688.68
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 5.3.6 Eligibility for Legal Help in 2001/2002 under Option 3 with a 75% increase (in percentages)

	Complete	None	Total Reformed Eligibility under Option 3 (75%)
Complete	30.42	11.70	42.13
None	1.12	56.75	57.87
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Winners and Losers

Figures 5.3.7 to 5.3.10 provide an overview of fully eligible, partially eligible and ineligible benefit units as predicted under Option 3 (Legal Representation). Winners are predominantly mortgagees, single employees and couples with children, and from the lower to middle gross income deciles and pensioners. Couples with children benefit from the introduction of a council tax allowance. Again, the numbers are very small. Losers can be found in the middle gross income deciles, benefit units with large mortgages living in the South East and two-earner couples with children.

Figure 5.3.7 Option 3: Profile of Fully Eligible Benefit Units (7,833,310)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of Head of Household	%
1	28.41	Single unemployed	26.23	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	9.20
2	21.40	Single employed	3.88	Northern	8.41	Local Authority Rented	39.39	Self employed	4.67
3	18.94	Single parent family	17.05	Yorkshire	9.69	Housing Association	8.40	Seeking work	20.67
4	15.58	No earner couple without kids	4.25	North West	13.86	Other Rented Unfurnished	5.60	Waiting to Start	0.56
5	8.99	No earner couple with kids	7.13	East Midlands	7.86	Rented Furnished	6.43	Sick or Injured	8.15
6	4.49	Single earner couple without kids	1.14	West Midlands	10.42	Mortgaged	21.30	Retired	31.77
7	1.57	Single earner couple with kids	4.80	East Anglia	3.78	Rental Purchase	0.17	Unoccupied	24.99
8	0.43	Two earner couple without kids	0.51	Greater London	14.36	Owned Outright	18.71	Child	0.00
9	0.18	Two earner couple with kids	1.78	South East	15.70	Rent Free	0.00		
10	0.02	Single Pensioner	23.92	South West	8.53				
		Couple	9.31	Wales	7.38				

		Pensioner							
--	--	-----------	--	--	--	--	--	--	--

Data source: IFS Model

Figure 5.3.8 Option 3: Profile of Partially Eligible Benefit Units (4,841,710)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of Head of Household	%
1	3.23	Single unemployed	11.88	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	44.15
2	12.68	Single employed	29.52	Northern	8.21	Local Authority Rented	23.20	Self employed	7.55
3	16.34	Single parent family	3.81	Yorkshire	10.68	Housing Association	5.28	Seeking work	3.33
4	19.06	No earner couple without kids	3.11	North West	13.14	Other Rented Unfurnished	4.70	Waiting to Start	0.14
5	19.77	No earner couple with kids	0.48	East Midlands	7.97	Rented Furnished	6.60	Sick or Injured	6.84
6	14.59	Single earner couple without kids	5.58	West Midlands	10.21	Mortgaged	34.14	Retired	28.70
7	10.25	Single earner couple with kids	7.51	East Anglia	4.09	Rental Purchase	0.20	Unoccupied	9.29
8	3.43	Two earner couple without kids	2.31	Greater London	10.21	Owned Outright	25.87	Child	0.00
9	0.46	Two earner couple with kids	6.64	South East	18.32	Rent Free	0.00		
10	0.20	Single Pensioner	21.59	South West	10.11				
		Couple Pensioner	7.57	Wales	7.08				

Data source: IFS Model

Figure 5.3.9 Option 3: Profile of Not Eligible Benefit Units (14,435,180)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of Head of Household	%
1	2.34	Single unemployed	2.10	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	61.72
2	2.27	Single employed	20.67	Northern	5.76	Local Authority Rented	6.22	Self employed	9.84
3	2.70	Single parent family	1.59	Yorkshire	8.96	Housing Association	1.60	Seeking work	1.22
4	4.02	No earner couple without kids	2.87	North West	11.16	Other Rented Unfurnished	2.63	Waiting to Start	0.08
5	7.56	No earner couple with kids	0.18	East Midlands	7.97	Rented Furnished	3.26	Sick or Injured	1.76
6	11.45	Single earner couple without kids	6.96	West Midlands	9.66	Mortgaged	52.79	Retired	21.92
7	14.63	Single earner couple with kids	7.18	East Anglia	4.66	Rental Purchase	0.26	Unoccupied	3.45
8	17.38	Two earner couple without kids	19.12	Greater London	12.19	Owned Outright	33.24	Child	0.00
9	18.61	Two earner couple with kids	18.88	South East	24.72	Rent Free	0.00		
10	19.03	Single Pensioner	9.84	South West	9.64				
		Couple Pensioner	10.62	Wales	5.27				

Data source: IFS Model

5.4 Option 4

Option 4 is the most complex test of the four options. It is a departure from Options 1 to 3 in that some of the fixed allowances have been taken out, to be replaced with actual amounts spent. This radically alters the nature of the test and its relationship to income thresholds.

Option 4 has a gross annual income cap of £24,000. The upper annual income limit is £8,172 and the lower annual income limit is £2,840.

OPTION 4
<p>Gross income figure: £24,000 Higher income limit: £8,172 Lower income limit: £2,840 Income: Allowances:</p> <ul style="list-style-type: none">• Dependants' allowances<ul style="list-style-type: none">- based on Income Support figures for April 2001- maintenance payments allowed (actual amounts)• Employment expenses for people in work: £10 per week• Actual travel to work costs for people who work• Pension contributions with a cap of 6% salary• Allowance for childcare (actual cost) for people who work• Actual housing costs with a cap of £125 per week for benefit units without dependants, actual housing costs without a cap for benefit units with dependants<ul style="list-style-type: none">- actual amounts council tax- standard allowance for water rates of £225 per year <p>For homeowners (mortgaged and owned outright):</p> <ul style="list-style-type: none">- repairs and maintenance- allowance for structural insurance <p>Passporting:</p> <ul style="list-style-type: none">• current passporting rules (Income Support, Income-based Jobseeker's Allowance) <p>Capital (for Legal Representation):</p> <ul style="list-style-type: none">• upper disposable capital limit is £8,000, lower disposable capital limit remains at £3,000 <p>Capital (for Legal Help):</p> <ul style="list-style-type: none">• capital limit set at £3,000

Option 4 does not include a fixed weekly amount of £10 for employment expenses. Instead, it takes into account *actual* travel to work costs for people in work. Employment related expenses are also covered through taking into account pension contributions (6% salary). Lastly, childcare costs of people who work are allowed.

Option 4 does not include the housing cap of £125 per week for benefit units without dependants. Instead, actual housing costs are allowed for all benefit units.

In addition, Option 4 retains the allowances introduced in Option 3. These pertain to council tax expenditure, an allowance for water rates and, for homeowners, an allowance for repairs and maintenance and for structural insurance.

Legal Representation

As can be seen in Figures 5.4.1 and 5.4.2, Option 4 leads to almost identical eligibility entitlement to the current scheme. Option 4 results in a very slight decrease in full eligibility, and a slight decrease in partial eligibility. Figure 5.4.1 indicates that 61,790 benefit units move from partial eligibility to full eligibility. 8,540 benefit units move from being ineligible under the current test to being fully eligible under Option 4. 59,940 benefit units move from complete eligibility to being partially eligible. 169,010 benefit units move from being ineligible to being partially eligible. 11,120 benefit units move from being fully eligible to being ineligible. 292,140 benefit units move from being partially eligible to being ineligible.

Figure 5.4.1 Eligibility for Legal Representation in 2001/2002 under Option 4 (in 000s)

	Complete	Partial	None	Total Reformed Eligibility under Option 4
Complete	7,628.94	61.79	8.54	7,699.26
Partial	59.94	4,654.84	169.01	4,883.79
None	11.12	292.14	14,223.88	14,527.16
Total Current Eligibility for Legal Representation	7,700	5,008.76	14,401.43	27,110.76

Data source: IFS Model

Figure 5.4.2 Eligibility for Legal Representation in 2001/2002 under Option 4 (in percentages)

	Complete	Partial	None	Total Reformed Eligibility under Option 4
Complete	28.14	0.23	0.03	18.40
Partial	0.22	17.17	0.62	18.01
None	0.04	1.08	52.47	53.59
Total Current Eligibility for Legal Representation	28.40	18.48	53.12	100.00

Data source: IFS Model

Legal Help

As can be seen in Figures 5.4.3 and 5.4.4, full equalisation to the Legal Representation Option 4 leads to a substantial increase of 3,589,990 in eligible benefit units for Legal Help. Of the eligible benefit units, 8,280,990 benefit units were previously eligible for Legal Help, 3,861,790 benefit units were not eligible. 55.2% (14,967,440) benefit units are ineligible for Legal Help. Of these, 1.0% (271,780) benefit units were previously eligible.

Figure 5.4.3 Eligibility for Legal Help in 2001/2002 under Option 4 (in 000s)

	Complete	None	Total Reformed Eligibility under Option 4
Complete	8,280.99	3,861.79	12,142.77
None	271.78	14,695.65	14,967.44
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 5.4.4 Eligibility for Legal Help in 2001/2002 under Option 4 (in percentages)

	Complete	None	Total Reformed Eligibility under Option 4
Complete	30.55	14.25	44.79
None	1.00	54.21	55.21
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Figures 5.4.5 and 5.4.6 show the eligibility levels if the income limit is set at 75% of the difference between the up-rated Legal Help income limit under current rules (£4,438) and the upper income limit for Legal Representation under Option 4 (£8,172). The relevant income limit is £7,239.

As can be seen, this income limit leads to a substantial increase of 2,732,970 in eligible benefit units for Legal Help. Of the eligible benefit units, 8,203,500 benefit units were previously eligible for Legal Help, 3,082,100 benefit units were not eligible. 58.4% (15,824,600) benefit units are ineligible. Of these, 1.3% (349,260) benefit units were previously eligible.

Figure 5.4.5 Eligibility for Legal Help in 2001/2002 under Option 4 with a 75% increase (in 000s)

	Complete	None	Total Reformed Eligibility under Option 4 (75%)
Complete	8,203.50	3,082.10	11,285.75
None	349.26	15,475.33	15,824.60
Total Current Eligibility for Legal Help	8,552.78	18,557.42	27,110.76

Data source: IFS Model

Figure 5.4.6 Eligibility for Legal Help in 2001/2002 under Option 4 with a 75% increase (in percentages)

	Complete	None	Total Reformed Eligibility under Option 4 (75%)
Complete	30.26	11.37	41.63
None	1.29	57.08	58.37
Total Current Eligibility for Legal Help	31.55	68.45	100.00

Data source: IFS Model

Winners and Losers

Figures 5.4.7 to 5.4.9 provide an overview of fully eligible, partially eligible and ineligible benefit units as predicted under Option 4 (Legal Representation). Winners can be found predominantly amongst couples with children, bottom deciles, and people with low housing costs. Losers are pensioners and people who own their homes outright, and couples with children.

Figure 5.4.7 Option 4: Profile of Fully Eligible Benefit Units (7,699,260)

Decile	%	Benefit Unit Type	%	Region	%	Tenure	%	Employment Status of Head of Household	%
1	28.79	Single unemployed	26.87	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	7.92
2	21.28	Single employed	3.29	Northern	8.36	Local Authority Rented	39.70	Self employed	4.27
3	18.88	Single parent family	17.00	Yorkshire	9.66	Housing Association	8.46	Seeking work	21.10
4	15.64	No earner couple without kids	4.34	North West	13.89	Other Rented Unfurnished	5.57	Waiting to Start	0.57
5	8.67	No earner couple with kids	7.26	East Midlands	7.74	Rented Furnished	6.53	Sick or Injured	8.28
6	4.49	Single earner couple without kids	1.04	West Midlands	10.42	Mortgaged	20.69	Retired	32.41
7	1.55	Single earner couple with kids	4.53	East Anglia	3.78	Rental Purchase	0.17	Unoccupied	25.46
8	0.48	Two earner couple without kids	0.39	Greater London	14.43	Owned Outright	18.88	Child	0.00
9	0.18	Two earner couple with kids	1.38	South East	15.71	Rent Free	0.00		
10	0.06	Single Pensioner	24.39	South West	8.54				
		Couple Pensioner	9.51	Wales	7.46				

Data source: IFS Model

Figure 5.4.8 Option 4: Profile of Partially Eligible Benefit Units (4,883,790)

<u>Decile</u>	<u>%</u>	<u>Benefit Unit Type</u>	<u>%</u>	<u>Region</u>	<u>%</u>	<u>Tenure</u>	<u>%</u>	<u>Employment Status of Head of Household</u>	<u>%</u>
1	3.45	Single unemployed	11.70	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	43.26
2	13.36	Single employed	29.47	Northern	8.14	Local Authority Rented	23.36	Self employed	7.64
3	16.71	Single parent family	3.96	Yorkshire	10.64	Housing Association	5.28	Seeking work	3.21
4	19.07	No earner couple without kids	3.17	North West	13.16	Other Rented Unfurnished	4.81	Waiting to Start	0.14
5	19.68	No earner couple with kids	0.47	East Midlands	8.00	Rented Furnished	6.60	Sick or Injured	6.86
6	14.38	Single earner couple without kids	5.56	West Midlands	10.15	Mortgaged	33.49	Retired	29.57
7	9.42	Single earner couple with kids	7.78	East Anglia	4.12	Rental Purchase	0.18	Unoccupied	9.32
8	3.13	Two earner couple without kids	2.01	Greater London	10.38	Owned Outright	26.28	Child	0.00
9	0.63	Two earner couple with kids	5.89	South East	18.34	Rent Free	0.00		
10	0.18	Single Pensioner	21.91	South West	10.05				
		Couple Pensioner	8.08	Wales	7.03				

Data source: IFS Model

Figure 5.4.9 Option 4: Profile of Not Eligible Benefit Units (14,527,160)

<u>Decile</u>	<u>%</u>	<u>Benefit Unit Type</u>	<u>%</u>	<u>Region</u>	<u>%</u>	<u>Tenure</u>	<u>%</u>	<u>Employment Status of Head of Household</u>	<u>%</u>
1	2.32	Single unemployed	2.01	Region not Recorded	0.00	Tenure not recorded	0.00	Employee	62.24
2	2.26	Single employed	20.80	Northern	5.83	Local Authority Rented	6.26	Self employed	9.98
3	2.73	Single parent family	1.71	Yorkshire	8.99	Housing Association	1.62	Seeking work	1.21

4	4.04	No earner couple without kids	2.81	North West	11.15	Other Rented Unfurnished	2.64	Waiting to Start	0.08
5	7.72	No earner couple with kids	0.18	East Midlands	8.03	Rented Furnished	3.22	Sick or Injured	1.73
6	11.44	Single earner couple without kids	6.97	West Midlands	9.68	Mortgaged	53.08	Retired	21.37
7	14.81	Single earner couple with kids	7.20	East Anglia	4.65	Rental Purchase	0.27	Unoccupied	3.38
8	17.34	Two earner couple without kids	19.17	Greater London	12.13	Owned Outright	32.90	Child	0.00
9	18.44	Two earner couple with kids	19.22	South East	24.65	Rent Free	0.00		
10	18.90	Single Pensioner	9.58	South West	9.64				
		Couple Pensioner	10.35	Wales	5.26				

Data source: IFS Model

6. Take-up of Legal Representation

Introduction

The findings discussed in Chapter 5 focus on eligibility under the four options set out above. In order to estimate take-up, the characteristics of the eligible population (under the current system *and* under the four options) and *actual* applicants need to be compared. The objective was to estimate take-up by showing the relationship between benefit units currently *eligible* for Legal Representation, and benefit units currently *applying* for Legal Representation. This is an important distinction to make: the profile of the people eligible might be very different to the people who actually apply for Legal Representation. Although eligible, certain groups of people might be less likely to have a “justiciable” problem²⁵ or seek Legal Representation to solve a problem.

Data from the LSRC’s means assessment surveys²⁶ and from the Family Resources Survey were used to determine a propensity to apply for each of the applicant groups. The groups were classified according to age and family type (for methodological details see Chapter 3).

Cost Estimates

The data seems to suggest that there is a wide variation in the propensity to apply for Legal Representation amongst the different population groups. Not surprisingly, a single parent family’s likelihood of applying for Legal Representation in a family case is very high (amongst the fully [passported and non-passported] and partially eligible). Older couples without dependants are less likely to come forward and apply for Legal Representation in a family case. In non-family cases, the data indicate that younger age groups are more likely to apply. Pensioners are least likely to apply for both non-family and family cases.

By applying the propensities to apply under the current system to the eligible population generated by the four options, it was possible *to estimate* the number of Legal Representation certificates that the new tests would generate. Data from the LSC’s Corporate Information System (CIS) were used to derive figures for average net case costs²⁷. The scope changes to the system from April 2000 were taken into

²⁵ Genn defines a justiciable problem as a problem for which a legal remedy exists. See, Hazel Genn (1999) *Paths to Justice: What People Do and Think About Going to Law*. Hart Publishing, Oxford.

²⁶ Despite the changes to the legal aid scheme since 1998, it was not expected that the profile of applicants had radically changed. However, it was still felt to be important to conduct a new survey which would pick up any noteworthy change. It was found that the profile of applicants did not differ substantially to the 1998 survey.

²⁷ For non-contributory cases the following figures were used:

Basic net case costs (after costs recovered):

Family = £ 2435 (annually n=140,238)

Non-family = £ 4559 (annually n=38,527)

In contributory cases, contributions should be deducted from the above figures. This means that basic net case costs become

Family = £ 1857 (annually n=26,910)

Non-family = £ 3994 (annually n=7,393)

This is taking into account costs recovered (assumption of costs recovery in 1.2% of family and 3.19% of “other” cases) and contributions (averaging around £585).

account. However, it is unlikely that the full impact of the scope changes is reflected in the figures: changes implemented in April 2000 were difficult to observe in terms of case outcomes. The vast majority of bills going through the system in December 2000 were still pre-April 2000 cases.

None of the four options resulted in a major decrease or increase in cost (less than 1% difference for all options). However, given that the estimates are based on relatively small samples of Legal Representation applicants, all the results should be treated with caution.

Option 1

It was estimated that Option 1 would lead to a net decrease of around 2000 Legal Representation certificates (in the context of 200,000 certificates issued per year at present). There is a small decrease in family cases, and a very small increase in non-family cases. In other words, there would be a 1% decrease in Legal Representation certificates compared to the current Legal Representation scheme.

Option 2

It was estimated that Option 2 would lead to a net decrease of under 1000 Legal Representation certificates. There is a smaller decrease in family cases compared to Option 1 (this is not surprising as Option 2 includes an allowance for childcare which is likely to benefit those types of benefit units which would apply for Legal Representation in family cases). There is again a small increase in non-family cases. So, altogether, there is less than a 1% decrease in Legal Representation certificates compared to the current Legal Representation scheme.

Option 3

It was estimated that Option 3 would lead to a net increase of around 2,630 Legal Representation certificates. There is an increase in family cases as well as in non-family cases. In other words, there is a slightly more than 1% increase in Legal Representation certificates compared to the current Legal Representation scheme.

Option 4

It was estimated that Option 4 would lead to a net decrease of less than a 1000 Legal Representation certificates. There is a slight increase in non-family cases, and a slight decrease in family cases.

Statutory charge was also considered. The charge can impact on the costs of successful cases where costs are not recovered. Per case, either non-contributory or contributory, it is approximately £250.

7. Conclusion

The first phase of the means assessment research project started as an essentially exploratory and theoretical piece of research. The aim was to produce possibilities for radical change to civil legal aid means assessment. The project results pointed towards promising routes which were taken forward in the second phase of the research project.

This second phase has seen the detailed investigation of four means assessment test options. The four tests represent a range of potential options for means assessment. At the one end of the continuum, we have presented an extremely simple and straightforward test (Option 1). At the other end, we have investigated a means test with a number of relatively complex allowances (Option 4). Clearly, in terms of administrative ease, simpler means tests are preferable to more complex tests which are more complicated to provide information for and to assess. A simple means test might also be more conducive to ensuring that all applicants are treated equitably. This might not always be the case in a test which has a complicated system of allowances and contains discretionary elements. It can be argued that this is the main disadvantage of the current Legal Representation test.

However, do simple tests such as Option 1 and Option 2 outlined in this report take account of the subtleties of people's lives? They clearly cannot do so to nearly the same extent as Option 4 or the current test. Is the choice then between administrative ease and rough justice and a complicated assessment process and taking account of how individuals lead their lives? This question can be partly answered by referring to the eligibility aspect of our research project. All 4 Options result in almost identical eligibility levels compared to the current Legal Representation test. In terms of overall eligibility numbers there are therefore few, if any, "losers". As has been stressed throughout this research report, none of the Options were ever devised with the aim of cutting eligibility. The four options tend to target, according to Family Resources classifications, those benefit units who might be thought of as the most "deserving". However, it should be borne in mind that "deserving" and "fair" are inherently subjective terms - their "definitions" will differ according to the historical context and political beliefs.

Appendix 1

Legal Aid Means Testing in Context: Historical Development and Research

This appendix presents an overview of the historical development of the means test for the purposes of legal aid eligibility²⁸. It will highlight that from the Middle Ages to the mid-1940s, legal aid was confined to the very poor. In 1945 the Rushcliffe Committee proposed that legal aid should be for the great majority of the population who could not afford lawyers. The Committee recommended a means test that would include around 80% of the population. However, although Governments accepted the broad policy behind the Rushcliffe Committee's recommendations, they proved more difficult to implement in practice. For example, by 1959 the means test was still operating under rates originally set in the mid-1940s. This appendix will illustrate how the means test was updated in 1960, declined again until the 1970 uprating, and then declined against earnings (if not inflation) until a major 1979 increase. In 1986, the policy changed with the first actual cash downrating. Eligibility was cut again in 1993.

This appendix will also discuss the actual means assessment procedure used over the past 50 years. It will provide details on how, when the Rushcliffe scheme came into operation in 1950, the actual mechanics of means testing were conducted by the National Assistance Board (NAB). At the time, the NAB operated a highly discretionary, complex and personal system. For example, officers would normally interview applicants. Postal assessment was only introduced in 1978. The transfer of means assessment from the Benefits Agency (the NAB's successor) to the Legal Aid Board in 1997/1998 improved the transparency and consistency of decision-making further. However, the present means test still shows some elements of a tradition of complex means testing.

The historical overview is followed by a discussion of a selected number of projects which have investigated civil legal aid eligibility over the last 30 years.

1. History of the Means Test

From the Middle Ages to the 1940s

The foundations of the present legal aid system date from the Legal Aid and Advice Act of 1949. Some form of legal aid scheme, however, has existed in England for five centuries. In the Middle Ages a charitable legal aid scheme was available to paupers through the *informa pauperis* procedure. This procedure, which gave access only to the superior courts, existed for over four hundred years. It was, however, as Sachs has pointed out, "of only occasional use in practice"²⁹. The actual means test was conducted by judges who declared paupers qualified if they had less than £5. The court had lists of lawyers who were willing to act for free. In the 1780s a new rule was introduced which saw litigants who won more than £5

²⁸ I am grateful to Tamara Goriely for the information she made available to me on the history of the means test.

²⁹ Sachs, E. (1951), *Legal Aid*, Eyre & Spottiswoode, London, p.4.

contribute £4 to the cost of their case. In 1883 *defendants* qualified for the *informa pauperis* procedure as well.

In 1914, the *informa pauperis* procedure was replaced by the *poor person's procedure* (a phrase which was thought to carry less stigma), helping people in civil cases under the Rules of the Supreme Court. It applied to the High Court and Court of Appeal only. The *poor person's procedure* did not apply to cases in the Country Courts or to civil cases in the Magistrates' Courts.

If the applicant had insufficient means the court would contact a solicitor who was prepared to act for the client on a charitable basis. Out of pocket expenses had to be paid for by the client. The *poor person's procedure* was amended irregularly as a result of reports by various Committees.

From the outset, the *poor persons procedure* was confronted with the problem of rising divorce rates after the first world war. It became increasingly difficult to locate solicitors and barristers willing to act free of charge.

In 1919, therefore, a "committee tried to cut down the number of cases by imposing a strict income test and requiring all applicants to pay a £5 deposit (Lawrence, 1919)".³⁰

However, this did not result in a noticeable improvement and a second Committee was set up to report in 1925, with the consequence that the Law Society took over responsibility for administering the *poor person's procedure*. The cost of administration was paid for by a government grant. The Law Society established a scheme whereby provincial law societies organised committees to locate lawyers willing to work free of charge.

"The Poor Person's Procedure was, thus, still squarely based upon charity and catered only for the truly indigent; it did not touch the problem of the many, no less in need, who were neither sufficiently well-off to obtain legal assistance at their own expense nor sufficiently poor to avail themselves of the facilities provided."³¹

Most of the work conducted under the *poor person's procedure* continued to concern matrimonial disputes. Even before the beginning of the second world war, the problem of finding solicitors willing to act for poor clients without receiving any payment caused concern. The second world war served to worsen the situation and resulted in making "improvised measures necessary to enable Service personnel to obtain the requisite legal assistance from both branches of the legal profession".³² In 1942, for example, salaried solicitors were employed in the Law Society's Divorce Department.

³⁰ Goriely, T. (1996), Law for the poor: the relationship between advice agencies and solicitors in the development of poverty law, in *International Journal of the Legal Profession*, Vol. 3, Nos. 1/2, p. 215-248, p.219.

³¹ Pollock, S. (1975), *Legal Aid - The First 25 Years*, Oyez Publishing, London, p.13.

³² Sachs, E. (1951), *Legal Aid*, Eyre & Spottiswoode, London, p.14

The Rushcliffe Committee's proposals

Ultimately, the problems with the poor person's procedure resulted in the Lord Chancellor establishing a Committee, chaired by Lord Rushcliffe. This Committee met in spring 1944 and reported in 1945. Against a general social demand for a new inclusive welfare state, the Committee's brief was to review the existing legal aid provisions and to make recommendations.

In the report, "the Rushcliffe committee designed a comprehensive scheme, covering county courts (which dealt with most housing matters), tribunals and inquests".³³ The Committee suggested that people should be able to get legal help without being labelled as "poor persons". The Committee also stated that many people of "moderate means" might need legal aid in special circumstances. It was also proposed that lawyers receive remuneration for their services.

In order for middle income groups to be included amongst the eligible, the Rushcliffe Committee recommended that there should be a sliding scale of contributions for people who were to receive legal aid. Free legal aid should be available to those people who were unable to pay anything towards the cost of their case. In effect, this approach,

"...did away with any hard and fast dividing line between those who were too poor to pay anything in respect of civil proceedings and those who could pay something. In place of that rigid line there is now a flexible system under which an attempt is made to estimate the amount, if any, which those who have reasonable grounds for taking, defending or being a party to proceedings can afford to pay for them."³⁴

The Rushcliffe Committee's report formed the basis of the Legal Aid and Advice Act 1949. The principles underlying this Legal Aid legislation, in line with most of the Rushcliffe Committee's recommendations, were as follows:

- (a) "irrespective of means, there must be access to all courts within the jurisdiction and to the legal services required to make that right effective, including such advice and assistance as may obviate the need for recourse to a court;
- (b) those availing themselves of such facilities should be required to pay towards the cost of the services received no more than they can reasonably afford (if anything), having regard to their actual resources;
- (c) the services provided must be of the same standard as apply in respect of those able to pay their own way, including the right to choose the legal advisor;

³³ Goriely, T. (1996), Law for the poor: the relationship between advice agencies and solicitors in the development of poverty law, in *International Journal of the Legal Profession*, Vol. 3, Nos. 1/2, p. 215-248, p.224.

³⁴ The Rt. Hon. The Viscount Jowitt of Stevenage, Foreword, In Sachs, K.C. (1951), *Legal Aid*, Eyre & Spottiswoode, London, p.V.

- (d) the lawyers providing the services, and those responsible for the granting of legal aid, must remain professionally independent;
- (e) no restriction must be imposed, whether upon the lawyer or the assisted client, save as may be necessary to prevent abuse of the facilities of the Scheme;
- (g) the cost not met by contribution or otherwise should be borne by the community.³⁵

The Rushcliffe's Committee's Proposals in Practice

The Act resulted in a sophisticated, though complex, means assessment procedure. *Disposable income* and *disposable capital* had to be calculated for every applicant in order to determine eligibility and whether a contribution was required. Contributions from income were paid by twelve monthly instalments. This was changed in 1993, with contributions from income paid on a monthly basis for the lifetime of the case.

The conception of *disposable income* and *disposable capital* denoted the following calculation: the applicant had to make a statement in regard to both his or her gross income and capital. Income tax, national insurance contributions and other deductions were made before specific allowances like rent, dependants' allowances and other recurring obligations such as hire purchase commitments were deducted from the gross income figure. With this deduction from gross income, the applicant's *disposable income* was known.

The National Assistance Board (NAB), responsible for the administration of welfare payments and operating within the Department of Health and Social Security, was responsible for determining applicants' means³⁶. A special legal aid section was established. Officers in the section would normally interview the potential legal aid recipient to determine the validity of the applicant's means and the appropriate disregards and allowances. Clearly, legal aid means assessment at this stage in the history of the means test was a highly discretionary procedure. It was only in 1978 that a Financial Provisions Working Party recommended that postal assessment should be applied to all legal aid assessments.

At the time, the Legal Aid and Advice Act of 1949 was described optimistically as providing "a service for those of poor or moderate means without rival anywhere in the world"³⁷. The eligibility rules did, indeed, make around 80% of the population eligible for civil legal aid on income grounds.

In practice, however, the legal aid scheme was only used to a limited extent during the 1950s. As Goriely has pointed out

³⁵ Pollock, S. (1975), *Legal Aid - The First 25 Years*, Oyez Publishing, London, p.6.

³⁶ At the time of the Rushcliffe Committee the subject of means-testing was a sensitive one. Folk-memories were strong of the dreaded household means-test imposed during the depression on the 1930s, and the Law Society did not want to be involved in such an intrusive activity. It was therefore decided that the task of means-testing should be delegated to the National Assistance Board, which ran an early precursor to Income Support.

³⁷ The Rt. Hon. The Viscount Jowitt of Stevenage, Foreword, In Sachs, K.C. (1951), *Legal Aid*, Eyre & Spottiswoode, London, p.V.

“the use made of the High Court legal aid scheme fell every year until 1959, as the divorce rate fell, High Court litigation reduced, and the means test was eroded by rising wages. The county court scheme was not implemented until 1956, and then failed to find many takers. In 1956-57, instead of the estimated 15,000 applications for county court certificates, the Law Society received only 2,220”³⁸.

One of the main reasons for the low take-up of the scheme were the oppressive financial conditions required for people to qualify on the means test. Also, the contributions required from working families proved heavy, and considerably reduced the use made of the scheme. By 1959 the number of certificates issued had been reduced from 39,453, in 1950, to 22,917.

The financial conditions were harsh because the Legal Aid and Advice Act of 1949 was implemented using suggestions for disposable income and capital thresholds from 1948. Consequently, the financial requirements to qualify can be described as out-of-date soon after the implementation of the Act. As Pollock states, the financial terms of the Scheme,

“already stringent when the Scheme began, had become increasingly severe in their effect through inflation. The number of persons qualifying to receive legal aid was thereby steadily reduced, the number able to obtain it on a nil contribution likewise dwindled and the contributions for those who were presumed able to pay towards the cost incurred became increasingly harsh.”³⁹

The means test: downratings and upratings over the last 40 years

As the financial requirements to qualify for legal aid had been fixed by statute in 1949, further legislation was necessary to uprate the income and capital thresholds. This took place with the Legal Aid Act in 1960, which not only uprated the means test but also allowed for future changes to the means test by regulation. Under the powers given by the Legal Aid Act 1960, income and capital limits can be adjusted at regular intervals. Consequently, in the early 1960s the number of certificates started rising drastically. However, as Murphy and Evandrou have pointed out

“the limits for eligibility were raised only twice in the first two decades of the scheme, in 1961 and 1970. These increases were in line with price inflation rather than earnings inflation over the intervening period. However, by the early 1970s it was becoming recognised that the proportion of the population covered had fallen substantially. From 1974, financial uprating became more frequent, around once a year”.⁴⁰

Growth of the scheme accelerated further in spring 1979 when disposable income limits were raised substantially, just before the Labour government lost office in a general election. Dependants’ allowances were also increased, setting them at 150% of the rates for dependants under the Supplementary Benefit (SB). This was

³⁸ Goriely, T. (1996), Law for the poor: the relationship between advice agencies and solicitors in the development of poverty law, in *International Journal of the Legal Profession*, Vol. 3, Nos. 1/2, p. 215-248, p.227.

³⁹ Pollock, S. (1975), *Legal Aid - The First 25 Years*, Oyez Publishing, London, p.76.

⁴⁰ Murphy, M. & Evandrou, M. (1993) *Legal Aid Eligibility in Britain: Calculation and interpretation or recent trends*, unpublished draft report to the Law Society, p.15.

subsequently altered again to the rule, still in place at present, which sees the same dependants allowance as found in the Income Support regulations. As a result of the increases, eligibility on income grounds increased to about 80%.

In contrast to the changes brought about in 1979, “the Lord Chancellor’s Department made the first formal reductions in eligibility since the legal-aid scheme was created, down-rating allowances by approximately one-sixth”⁴¹ in 1986. Eligibility decreased to around 60%.

The Establishment of the Legal Aid Board

The establishment of the Legal Aid Board (LAB) in 1989 brought significant change to the legal aid scheme. Responsibility for the administration of legal aid passed from the Law Society to the Legal Aid Board. The Board’s overall remit from the Lord Chancellor was to ensure that legal advice, assistance, mediation and representation were made available to those in England and Wales who required help.

The assessment limits from 1989 onwards are depicted in figures 1.1 and 1.2. As can be seen, whereas the income limits have been increased virtually every April, the capital limits have remained static for often a considerable number of years. The present capital limits have not been changed since 1992.

Figure 1.1 Assessment Limits, 1989-2000 (all cases, excluding personal injury cases)

Computation period commences	Lower income limit	Upper income limit	Lower capital limit	Upper capital limit
From April 89	£2,515	£6,035	£3,000	£6,000
From April 90	£2,515	£6,350	£3,000	£6,310
From April 91	£2,860	£6,350	£3,000	£6,310
From April 92	£3,060	£6,800	£3,000	£6,750
From April 93	£2,294	£6,800	£3,000	£6,750
From April 94	£2,382	£7,060	£3,000	£6,750
From April 95	£2,425	£7,187	£3,000	£6,750
From April 96	£2,498	£7,403	£3,000	£6,750
From April 97	£2,563	£7,595	£3,000	£6,750
From April 98	£2,625	£7,777	£3,000	£6,750
From April 99	£2,680	£7,940	£3,000	£6,750
From April 00	£2,723	£8,067	£3,000	£6,750

⁴¹ Gray, A. M. (1994), *The Reform of Legal Aid*, In *Oxford Review of Economic Policy*, Vol.10, No.1, p. 51-68, p.57.

Figure 1.2 Assessment Limits, 1989 -2000 (personal injury cases only)

Computation period commences	Lower income limit	Upper income limit	Lower capital limit	Upper capital limit
From April 89	£2,515	£6,035	£3,000	£6,000
From April 90	£2,515	£7,000	£3,000	£6,310
From April 91	£2,860	£7,000	£3,000	£6,310
From April 92	£3,060	£7,500	£3,000	£8,560
From April 93	£2,294	£7,500	£3,000	£8,560
From April 94	£2,382	£7,780	£3,000	£8,560
From April 95	£2,425	£7,920	£3,000	£8,560
From April 96	£2,498	£8,158	£3,000	£8,560
From April 97	£2,563	£8,370	£3,000	£8,560
From April 98	£2,625	£8,571	£3,000	£8,560
From April 99	£2,680	£8,751	£3,000	£8,560

The establishment of the Legal Aid Board did not halt the increase in the number of civil legal aid certificates issued. However, changes in eligibility and other legislative alterations in April 1993 resulted in a noticeable decrease in eligibility to around 50% of the population as disposable income and capital thresholds were reduced. Around half of the population in England and Wales remain eligible for Legal Representation to this day.

In 1994, the Lord Chancellor's Department (LCD) published a consultation paper looking at the issue of "Legal Aid for the Apparently Wealthy"⁴², seeking views on policy issues involving the granting of both criminal and civil legal aid and on how the means test could be better targeted. The Lord Chancellor announced proposals in April 1995. Changes were sought partly due to the few highly-publicised, highly expensive and high-profile cases where individuals leading apparently affluent lifestyles were in receipt of legal aid. The proposals resulted in the establishment of a Special Investigations Unit (SIU) to identify and investigate the means of applicants with complex or unusual financial affairs, and who are apparently wealthy⁴³. Cases are referred to SIU by assessment officers or by the Board/Commission either before or after legal representation (formerly civil legal aid) has been granted. SIU is an important mechanism to ensure only applicants who qualify financially are admitted to the legal aid scheme.

⁴² Lord Chancellor's Department, *Legal Aid for the Apparently Wealthy*, 1994.

⁴³ These cases are when one or more of the following seem to apply:

- the applicant or partner has assets overseas
- the applicant or partner has access to assets or income apparently owned by others
- the applicant or partner has a wealthy lifestyle (such as an expensive car, house or jewellery)
- the applicant or partner has interests in a business with substantial assets
- the applicant or partner has other complex personal financial affairs, which may include personal insolvency or having assets subject to mareva injunction or an asset freezing order
- legal claims of significant value are being pursued by or against the applicant or partner
- the applicant or partner is reputed to have significant income or assets
- the applicant or partner has re-arranged their financial affairs so that they now apparently qualify for legal aid

Transfer of Civil Legal Aid Means Assessment

Until April 1997 the Benefits Agency's Legal Aid Assessment Office at Preston was responsible for civil legal aid means assessment. The Legal Aid Board's area offices forwarded information relevant to means assessment by post to the Benefits Agency. Decisions on financial eligibility were then posted back to the area offices.

The Legal Aid Board brought the means test "in house" between October 1997 and February 1998: on a phased basis, the means assessment process was transferred to the then thirteen area offices. The transfer of responsibility to the Legal Aid Board represented an opportunity for undertaking a full review of the content of the rules and guidance relating to means assessment, so as to achieve, within the existing legal aid framework, a number of improvements. Key aims of the transfer were to improve upon fairness, efficiency, transparency and consistency of decision making. An increase in overall quality and control was expected to flow from the transfer.

In consultation with the Law Society and the Advice Services Agency (ASA), new guidance and documentation was produced with the aim of simplifying and streamlining processes and rules as applied in Preston.

The Legal Aid Board also computerised and integrated means assessment into its Corporate Information System (CIS). Overall, the Board was able to increase control as a consequence of conducting means assessment "in house", instead of an outside agency being responsible for determining applicants' means.

There was also an improvement in terms of processing passported applicants. Applicants in receipt of Income Support or Income-based Jobseeker's Allowance are passported to free, non-contributory civil legal aid, now Legal Representation. Recipients of these two benefits do not have to go through the process of having their means assessed. Details of applicants on Income Support and Income-based Jobseekers' Allowance are now faxed to the Benefits Agency in Glasgow who report back to the regional means teams within 24 hours, verifying whether the applicant is in receipt of either benefit. This method of verification has been highly successful. Previously, an enquiry form was sent to the relevant district office of the Benefits Agency for confirmation that the applicant was in receipt of Income Support. The district office only replied if the applicant was not in receipt of the benefit. This paper-based system, relying solely on negative confirmation, was criticised by the National Audit Office:

"In the National Audit Office's view the system operating in February 1995 for confirming an applicant's income support status was neither prompt nor reliable. This increases the risk that those who are not on income support may wrongly qualify for legal aid; and that some who do qualify may not get it."

The Legal Services Commission and Means Assessment at Present

On 1 April 2000, the Legal Aid Board was replaced by the Legal Services Commission (LSC). The LSC runs two schemes: the civil scheme for funding civil cases as part of the Community Legal Service (CLS), and the Criminal Defence Service (CDS) for funding criminal cases. The different levels of service in civil matters are: Legal Help, Help at Court, Approved Family Help, Help with Mediation,

General Family Help, Family Mediation and Legal Representation. At present, different regulations govern the financial eligibility for the different schemes.

For Legal Representation, the financial eligibility application is sent to the relevant regional office, where the decision is made as to whether applicants qualify on the means test. There are twelve Regional Offices covering different geographical regions throughout England and Wales. They are as follows: London, South Eastern, Southern, South Western, Wales, West Midlands, North Western, North Eastern, Yorkshire & Humberside, East Midlands, Eastern, Merseyside. The offices' boundaries are depicted in Figure 1.3.

2. Research on Civil Legal Aid Eligibility

Most of the debate over the last 25 years on legal aid eligibility has taken place in a heated and controversial climate. As Murphy and Evandrou wrote in 1993,

“historically, the estimation of the numbers of people eligible for civil legal aid has attracted considerable controversy. This has become more widespread following the present Government’s proposals to reduce substantially the numbers eligible for legal aid.”⁴⁴

Despite much interest in and research on civil legal aid eligibility in the 1970s and at the beginning of this decade, there has been a distinct lack of research on the means test and its consequences on eligibility in recent years. Further, research which has actually investigated the possibility of changing the means test - testing the consequence of changes and investigating viable alternatives - has been virtually non-existent. Also, much of the work on eligibility has computed eligibility on income grounds only. It is likely that these eligibility estimates overestimate the percentage of the eligible population, as the capital test can act to make applicants who would qualify on income ineligible.

The Financial Provisions Working Party in the 1970s

A Financial Provisions Working Party, chaired by Cyril Glasser, was established in the early 1970s and consisted of members of, amongst others, the Law Society, the Lord Chancellor’s Department and the Supplementary Benefits Commission.

In the 26th Legal Aid Annual Report of 1975-1976, a summary of the Working Party’s study on financial eligibility for legal aid was published, focusing on civil legal aid means testing from 1950 to 1976.⁴⁵ Part of the study consisted of research conducted with figures obtained from the Family Expenditure Survey (FES). The Family Expenditure Survey data provides detailed information on income and expenditure⁴⁶. It was used to estimate the groups of the population eligible (on income grounds only) as a consequence of the financial conditions laid out in the means test.

It was estimated that in 1973, as regards income, 41% of the household population were eligible for legal aid, with 21% of couples with a household head aged under 65 being eligible. 78% of one-parent families were found eligible on grounds of their income. The study, however, found evidence that the contributory system was resulting in financial hardship to single-parent families receiving legal aid.

The Working Party further stated that the civil legal aid limits had neither increased in line with supplementary benefit rates nor with the rise in household incomes. At the same time, the expenditure and risks of litigation were relatively high. Both of these factors were contributing to legal aid only being available to those with very limited income or no income at all. However, as Glasser pointed out at the time,

⁴⁴ Murphy, M. & Evandrou, M. (1993) *Legal Aid Eligibility in Britain: Calculation and interpretation or recent trends*, unpublished draft report to the Law Society, p.14/15.

⁴⁵ Lord Chancellor’s Office, *26th Legal Aid Annual Reports (1975-1976)*, London, Her Majesty’s Stationary Office, 1976, p.78-82.

⁴⁶ The Family Expenditure Survey is a large-scale government social survey. It includes details of over 6,000 households and is carried out annually by the Office for National Statistics.

“since 1973 increases in the legal aid limits have been linked to changes in supplementary benefits scale rates. As a result, it seems likely that the overall decline in eligibility noted above has been largely arrested”.⁴⁷

It is interesting to note here that in the 27th Legal Aid Annual Report, the Financial Provisions Working Party recommended that “there is scope for much further reduction in the cost of administration by simplifying the financial conditions of legal aid”⁴⁸. They further suggested that “the financial conditions should be as simple and comprehensive as possible”⁴⁹.

Research on Eligibility in the late 1980s and early 1990s

In November 1989, the Lord Chancellor announced a review of the legal aid means test. The review was conducted by the Lord Chancellor’s Department, with assistance from the Scottish Home Office and Health Department, the Northern Ireland Court Service, the Legal Aid Board, the Scottish Legal Aid Board and the Department of Social Security’s Legal Aid Assessment Office. Other bodies involved included The Law Society, the Association of British Insurers, the Automobile Association and the Trades Union Congress. The review looked at legal aid in the overall context of legal services and the legal system. The resulting consultation paper⁵⁰, published in 1991, also discusses the merits of

- universal eligibility for legal aid (with high contributions for the wealthier)
- discretion to waive the upper eligibility limit in more expensive cases
- a safety net legal aid scheme (operating when a case proves to be beyond the means of the litigant).

As part of the review, a detailed analysis of legal aid eligibility was conducted. The Family Expenditure Survey (FES)⁵¹ of 1989 was used to give information based on a representative sample of the population. The information derived from the Family Expenditure Survey was supplemented by data collected during June 1990 on applications for non-matrimonial civil legal aid. The sample consisted of 7,935 cases. The analysis focused on the relationship of gross and disposable income, sources of income, income allowances, capital and contributions to the cost of legal aid.

Data, concentrating on costs, was also collected from closed legal aid files. This sample, drawn from the Legal Aid Board Accounts Department’s computer, consisted of 17,523 cases.

Using the Family Expenditure Survey, the review team estimated that 63% of households were eligible for civil legal aid, on income grounds only. This figure

⁴⁷ Lord Chancellor’s Office, *26th Legal Aid Annual Reports (1975-1976)*, London, Her Majesty’s Stationary Office, 1976, p.80.

⁴⁸ Lord Chancellor’s Office, *27th Legal Aid Annual Reports (1976-1977)*, London, Her Majesty’s Stationary Office, 1978, p.110.

⁴⁹ Lord Chancellor’s Office, *27th Legal Aid Annual Reports (1976-1977)*, London, Her Majesty’s Stationary Office, 1978, p.110.

⁵⁰ Lord Chancellor’s Department, *Eligibility for Civil Legal Aid, A Consultation Paper*, June 1991.

⁵¹ The Family Expenditure Survey provides an information on many aspects of household expenditure and income (by household income, composition, size, type and location). It is based on about 7,000 households in the United Kingdom. The FES has been in operation since 1957.

decreased to 51% when capital was taken into account (although it should be noted that eligibility on capital grounds is difficult to compute reliably).

The LCD research also showed that under the present system, gross income was not necessarily a reliable indicator of eligibility. It was found that

“the allowance system produces a wide range of gross income (about £11,000 to £25,000), in which all three outcomes (free, contributory or ineligible) occur to a significant degree. There is also a small number of higher income households which are eligible”.

The LCD means survey also indicated that whilst 6% of those with total gross incomes of *less than £7000 were ineligible* for legal aid, 20% of applicants with gross incomes *over £25,000 were eligible*. The findings demonstrated further that “the two key variable factors which affect eligibility and the size of any contribution are clearly the dependants’ and housing allowances”⁵². It is important to point out that these findings relate to the more generous eligibility levels operating up to 1993.

The review team also looked at the pattern of contributions. Not surprisingly, they found that the higher the contribution to be paid, the more likely an offer of civil legal aid was not taken up. Contributions of up to £50 were refused by 4.2% of applicants, whereas offers for contributory legal aid of over £926 were refused by 50% of the applicants. These results are in line with the results in Woolfson’s and Plotnikoff’s “Report of Study into Reasons for Refusal of Offers of Contributory Civil Legal Aid”⁵³. They, too, found that the greatest number of refusers were to be found amongst applicants offered legal aid with a contribution above £926. Many within this applicant group were required to pay a contribution from their capital.

The review team’s data also showed that only 28% of the applicants in the means survey had capital resources, and of these only 5% had capital above the lower disposable capital limit of £3,000.

At about the same time to the LCD research, Murphy and Evandrou from the London School of Economics (LSE) looked at changes in eligibility, taking a ten year comparison: 1978-1980 to 1988-1990⁵⁴. The study focused on whether some groups had become especially vulnerable over the course of these years. As in the research conducted in the 1970s and by the LCD in the early 1990s, the Family Expenditure Survey (FES) was utilised. The study investigated eligibility on income grounds only.

Murphy and Evandrou found that between 1980 and 1990, eligibility levels for civil legal aid and the Green Form scheme decreased drastically for all socio-economic groups⁵⁵, whereas eligibility for criminal legal aid increased. They estimated that in

⁵² Lord Chancellor’s Department, Review of Financial Conditions for Legal Aid, In *Eligibility for Civil Legal Aid, A Consultation Paper*, June 1991, p.102.

⁵³ Woolfson, R. & Plotnikoff, J. (1996), *Report of Study into Reasons for Refusal of Offers of Contributory Civil Legal Aid*, The Legal Aid Board, June 1996.

⁵⁴ Murphy, M. & Evandrou, M. (1993) *Legal Aid Eligibility in Britain: Calculation and interpretation on recent trends*, unpublished draft report to the Law Society.

⁵⁵ Socio-economic groups is a term used to describe people with jobs of similar social and economic status.

the year 1979-1980 79.5% of benefit units⁵⁶ were eligible for civil legal aid. This contrasts with their estimation of 63.5% in 1989-1990.

Murphy and Evandrou established that eligibility varied dramatically as regards different groups of the population. The researchers found that eligibility was higher for younger and older age groups. It was also higher for non-married as opposed to married persons, although eligibility increased with the number of dependent children in a family. Not surprisingly, a further finding included that lower occupational social classes were more likely to be eligible for legal aid. Eligibility also tended to be higher amongst pensioners and single parents, and women were more likely to be eligible than men.

In terms of noticeable differences between 1980 and 1990, Murphy and Evandrou noted that “individuals of pensionable age experience the most substantial reductions in eligibility for both Civil Legal Aid and Green Form⁵⁷. Eligibility for two-parent families also decreased substantially. In terms of employment status, the least affected group were the unoccupied. In contrast, eligibility within the working population decreased substantially. As regards housing tenure, the researchers found that

“at the lower limit for civil legal aid, although eligibility of *outright* owners halved, eligibility for those with a *mortgage* remained fairly static, and eligibility actually increased for persons living in the local authority sector⁵⁸”.

Murphy and Evandrou also found regional variation in eligibility. In 1990, eligibility in East Anglia, the East Midlands and the South East was below average.

Further Research

In 1996, the National Audit Office (NAO), published a report on civil legal aid means testing after having reviewed means assessment at the Assessment Office in Preston in February 1995.⁵⁹ At the time, the Legal Aid Assessment Office in the Benefits Agency had around 240 staff, and cost around £3.5 million to run.

The National Audit Office investigated the accuracy and depth of means testing, the targeting of investigations and cases where legal aid was granted without a full means assessment. It was found that the system for ensuring the accuracy of means assessment worked well. However, the NAO also concluded that “under the current system of means testing - based on limited verification of applicants’ means - there is an inherent risk that applicants may not disclose all their assets and income⁶⁰”.

⁵⁶ Benefit unit is a standard Department of Social Security term and defined as a single adult or married/living as married couple and any dependent children. The term benefit unit is used throughout as a description of an individual/groups of individuals regardless of whether they are in receipt of any Social Security benefits.

⁵⁷ Murphy, M. & Evandrou, M. (1993) *Legal Aid Eligibility in Britain: Calculation and interpretation or recent trends*, unpublished draft report to the Law Society, p.13.

⁵⁸ Murphy, M. & Evandrou, M. (1993) *Legal Aid Eligibility in Britain: Calculation and interpretation or recent trends*, unpublished draft report to the Law Society, p.41.

⁵⁹ Report by the Controller and Auditor General, National Audit Office, *Civil Legal Aid Means Testing*, London: HMSO.

⁶⁰ Report by the Controller and Auditor General, National Audit Office, *Civil Legal Aid Means Testing*, London: HMSO, p.24.

Appendix 2: Legal Help and Legal Representation Test

Legal Representation Test

Legal Advice is funded by the Legal Services Commission under the Legal Help Test (see below); however, if this advice does not resolve the applicant's legal problem, a case may require substantive investigation or to be taken to court. Different types of Legal Representation can cover this work.

- Investigative Help

This form of Legal Representation is limited to the investigation of the strength of a proposed claim, and is only available for a case where the prospects of success are not clear and the investigation is likely to be expensive. Any solicitor may apply for Investigative Help on the behalf of an applicant, but in personal injury and criminal negligence cases, and in immigration and mental health judicial cases, the solicitor must have a contract with the Legal Services Commission (LSC). This requirement will be extended to all types of civil cases from 1 April 2001. Applications are assessed by LSC regional offices.

- Full Representation

The main form of Legal Representation can cover all work needed to take legal proceedings to trial and beyond. It is available in both family and civil cases, but different merits criteria and financial criteria exist for different types of cases. For example, representation at a mental health tribunal is available regardless of the applicant's financial resources, but there must be a reasonable case for funding, whereas representation before the immigration adjudicator, or immigration appeal tribunal, is subject to an assessment of the applicant's financial resources (same as for Legal Help, see below) and special merits criteria. For personal injury, clinical negligence, immigration, family and mental health tribunal cases, Full Representation is only available from solicitors contracted to the LSC. As with Investigative Help, this requirement will be extended to all categories of work from 1 April 2001. In most cases, an application for Full Representation will be assessed by LSC regional offices.

- Courts and Cases covered by Legal Representation

Legal Representation is available for cases in:

- The House of Lords
- The High Court and Court of Appeal
- County Courts
- Some Cases in Family Proceedings Court⁶¹
- The Employment Appeal Tribunal

⁶¹ This is part of the magistrates' court. Cases are covered about marriage and the family, including separation, maintenance (except where the Child Support Agency has jurisdiction), residence, contact and defended adoption proceedings.

- The Mental Health Review Tribunal; Immigration Adjudicator and Immigration Appeal Tribunal

It is not usually available for cases in the Coroners' Court and most other tribunals.

Legal Representation is not usually available for cases covering: personal injury arising out of negligence (other than clinical negligence); most cases arising out of business proceedings; most cases involving disputes about partnerships, companies or trusts; boundary disputes; libel and slander.

- Qualification for Legal Representation

In order to qualify, an applicant must qualify financially and meet the merits criteria relevant to his/her type of case, as set out in the LSC "Funding Code".

The solicitor decides whether the applicant qualifies financially for Legal Representation before the mental health review tribunal, immigration adjudicator, immigration appeal tribunal or in a limited range of family cases in the magistrates' court. Assessment officers at the LSC regional offices assess means in most other cases. A Special Investigation Unit (SIU) determines means in complex cases.

To assess whether an applicant qualifies financially, officers may need to see evidence of an applicant's finances, including bank statements, savings books and details of earnings. The finances of an applicant and his/her partner, if living as a couple, must be added together unless the relationship is at an end and they live apart, or if there is a conflict of interest between them (e.g. in a divorce case).

For most types of Legal Representation, those on income support or income-based job seeker's allowance qualify automatically for funding without having to pay a contribution. For other applicants, funding is granted only if disposable capital⁶² and disposable income⁶³ are within current financial limits.

In these cases, expected income for the following 12 months is assessed and income tax, National Insurance, superannuation, pension contributions, employment expenses (i.e. fares to work, trade-union membership and child care where reasonable), rent, water rates, council tax, mortgage repayment (to a maximum mortgage debt of £100,00, and allowances for family and dependants⁶⁴ are

⁶² Disposable Capital is calculated by assessing the value of a client's capital (savings, whether in cash, investments, banked) and anything owned of substantial value. The value of the client's primary residents (up to £100,000), household furniture and effects and the value of the object about which the case is being taken are not included. Neither are back to work bonuses, payments under the Community Care (Direct Payments) Act 1996. From the total capital, allowances for any dependants are subtracted: £355 for one dependant; £535 for two; £635 for three; and £100 for each extra dependant.

⁶³ Disposable income is calculated by taking actual income for the previous seven days and deducting from it: income tax and national insurance contributions; £29.75 for the client's partner whether or not there is a conflict of interest (if separated or divorced, the actual maintenance paid in the previous seven days is deducted); an allowance of £26.60 for every child/dependant aged 15 or under, and £31.75 for those aged 16 or over. Allowances for rent, rates and other expenses are built in. Disability Living Allowance, Attendance Allowance, Constant Attendance Allowance, Council Tax Benefit, Housing Benefit, payments made under the Earnings Top-Up Scheme or the Community Care Direct Payment scheme are not counted as income.

⁶⁴ The allowances for family and dependants are calculated on an annual basis and are as follows:
Partner: £1,551

deducted. Disability Living Allowance is disregarded, as are payments made under the Earnings Top-up scheme, the Community Care Direct Payment Scheme, and any back to work bonus under section 26 of the Job Seekers Act 1995.

If disposable income is £8,067 or less, the applicant qualifies on income for all types of Legal Representation except the categories detailed below. However, the applicant must also qualify under capital assessment; Legal Representation is granted for these cases if disposable capital is £6,750 or less.

The exceptions to the above assessment criteria are: for Legal Representation before the immigration adjudicator or immigration appeal tribunal, funding is granted if disposable capital is less than £1,000, and disposable income is £84 per week or less; if the applicant receives income support, income based job seeker's allowance, Working Families Tax Credit (if the credit is not more than £70 per week) or Disabled Persons Tax Credit, they will be eligible on income, but capital will still need to be assessed (for these two categories, see also assessment for Legal Help and Help at Court below); for Legal Representation in a limited range of family cases in the magistrates' court, funding is granted if disposable income is £180 per week or less, and disposable capital is £3,000 or less, but a contribution from income may be requested; Legal Representation before the mental health tribunal is not subject to a means test.

- Contributions to be paid

If the applicant is eligible for Legal Representation in a limited range of family cases in the magistrates' court, a weekly contribution of one third of any income over a net limit of £76 per week must be paid. If the applicant is eligible for Legal Representation before the mental health review tribunal, or immigration adjudicator or immigration appeal tribunal, no contributions are payable from either income or capital.

For all other types of Legal Representation, if disposable income is £2,723 or less, no contribution is to be paid. If it is between £2,723 and £8,067, the applicant must pay towards the cost of the case from his/her income. The monthly contribution will be the excess of disposable income above the £2,274 divided by 36.

No contributions are payable from capital for Legal Representation before the immigration adjudicator or immigration appeal tribunal and in a limited range of family cases in the magistrates' court.

For all other types of Legal Representation, if disposable capital is assessed as £3,000 or less, or if the applicant receives income support or income-based job seeker's allowance, no contribution is required. If disposable capital is over £3,000, a contribution of all disposable capital over £3,000 will be required immediately.

Dependant Children and relatives: Aged 15 or under
£1,387

Aged 16 or over

£1,656

Men and women of 60 or over may benefit from an extra allowance. If their annual disposable income is less than £2,723, then certain amounts of savings are disregarded so that they can still qualify for funding⁶⁵.

If the LSC regional office decides that an applicant qualifies financially and also that his/her case satisfies the merits criteria, it will either issue a certificate, or, if there is a contribution to be paid, send an offer of a certificate. No contributions need to be paid until the applicant accepts the offer, whereon a contribution from savings must be paid immediately, and any contribution from income by monthly instalments, of which the first is paid on acceptance of the offer.

If there is an alteration to the applicant's levels of income or capital, the LSC regional office must be notified immediately, and his/her means may be reassessed.

Legal Help and Help at Court

Legal Help and Help at Court can only be provided by a solicitor or legal adviser who has a contract with the LSC. These two levels of service enable people of small or moderate means to get help from a solicitor or adviser until his/her charges reach a total of £500 (the figure is higher for immigration asylum cases). Once this limit is reached, further work can only be carried out with the authority of the LSC regional office.

If an applicant qualifies financially, no contribution has to be paid. To qualify, both disposable capital and income must be within current financial limits.

As in the funding criteria for Legal Representation before an immigration adjudicator or immigration appeal tribunal, if the applicant receives income support, income based job seeker's allowance, Working Families Tax Credit (if the credit is not more than £70 per week) or Disabled Persons Tax Credit, they will be eligible on income, but capital will still need to be assessed. If disposable capital exceeds £1,000, the applicant is ineligible. Disposable income must be £84 per week or less to qualify for funding. If the applicant is eligible for Legal Help or Help at Court, no contribution, from either income or capital, is to be paid.

⁶⁵ Allowances for men and women over 60 are as follows:

Annual Disposable Income Disregarded (excluding net income derived from capital)	Amount	of	Capital
Up to £370	£35,000		
£371-670	£30,000		
£671-970	£25,000		
£971-1,270	£20,000		
£1,271-1,570	£15,000		
£1,571-1,870	£10,000		
£1,871-2,273	£5,000		

Appendix 3: Family Resources Survey

Background

The Family Resources Survey (FRS) is a survey of private households in Great Britain, first launched in October of 1992 to meet the information requirements of the Department for Social Security (DSS). Other government surveys traditionally used by the Department had relatively small sample sizes and therefore did not provide sufficiently reliable information on many groups in society that were of particular interest to the DSS.

Households interviewed in the survey are asked a wide range of questions. Some of the information is available elsewhere; however, the advantage of the FRS is that it provides new or detailed information in a number of areas and brings some topics together on one survey for the first time. Its main areas of focus are; household characteristics, income and benefit receipt, tenure and housing costs, assets and savings, carers, and occupation and employment.

Although the FRS was designed with the DSS's needs specifically in mind, it also contains information that is of interest to other government departments and outside researchers.

Methods

Field work is carried out jointly on behalf of the DSS by interviewers from the Office for National Statistics (ONS) and the National Centre for Social Research (NCSR) using Computer Assisted Personal Interviewing (CAPI). As data is collected via interviews, households are visited only once. The average interview lasts about one hour and twenty minutes, but times vary according to the size and circumstances of each household. The FRS aims to interview all adults in a household.

The interview schedule has two parts: the first covers household level information such as the relationship of individuals, tenure and housing costs; the second asks each adult about their employment, benefits, pensions, investments and other income. Interviewers are encouraged at all stages of the interview to consult documentation wherever possible, in order to verify the accuracy of the data.

As with the Family Expenditure Survey (FES), data is stored at the level of the household, benefit unit and individual. However, the FRS uses a different definition of household: people at the same address who share either one meal a day or share a living room (the FES definition is of people at the same address who share meals and common housekeeping).

For selection purposes, the FRS uses a stratified cluster probability sample from the Royal Mail's small users Postcode Address File (PAF) – a list of all addresses where less than 50 items of mail are received a day – which is updated twice a year⁶⁶.

⁶⁶ The first level of selection is of 1752 postcode sectors called Primary Sampling Units (PSUs). Each PSU is stratified by 24 units and then by three other variables derived from the 1991 Census of Population [heads of households in socio-economic groups 1-5 and 13; total unemployment rate; proportions of households that are owner-occupied]. This set of stratifiers is chosen to have a

However, like some other household surveys, the FRS excludes the offshore Scottish islands and the area to the north of the Caledonian canal.

For the 1998-1999 survey, the sample size was 34,636 households, with an overall response rate of 66%. Regional response rates varied: the lowest was in the Greater London area, with 62%, and the highest in Wales with 73% of all households responding fully. The variation in response rates reflects those of other major surveys including the Census of Population: response rates are generally lower in large city areas. Also, for a British survey of the size and complexity of the FRS, the total response rate of 66% is not considered unreasonable. However, it is considered a priority issue for the FRS to obtain as much information as possible about its non-responders.

The DSS has commissioned a study of non-response to the FRS. Based on the ACORN code⁶⁷ of a household, it found that for the years 1995-1996 and 1996-1997 combined, eight of the 11 areas with a response rate significantly below average had ACORN codes from one to 27, indicating that the FRS under-represents wealthier households. Similarly, nine of the 14 areas with a significantly higher than average response rate were found to be in the less prosperous half of the ACORN codes, suggesting that the FRS is over-representing poorer households.

When comparing response rates to those of the FES, it was found in both cases that the lowest response rate came from the 'partially gentrified multi-ethnic areas'. The ACORN Type with the highest rate of response to both surveys was the 'agricultural villages, home based workers group'.

Since 1995, greater emphasis has been placed on the importance of harmonising inputs and outputs from major official surveys, in order to make differing results comparable. The FRS has set the standard for a number of harmonised questions, but many more on the FRS are being changed to fall in line with other Government surveys.

maximum effectiveness on the accuracy of two key variables: household income and housing costs. Stratification ensures that the FRS sample is representative of the population as a whole.

Within each PSU a sample of addresses is selected. In 1998-1999, 23 addresses were selected per PSU. To improve comparability between years, each year half the PSUs from the previous year's sample are retained and new addresses within them selected.

⁶⁷ CACI Limited 1994. All rights reserved. ACORN is a geo-demographic classification system drawn from 1991 Census data aimed at identifying consumer markets.

Appendix 4: Optimisation

The values of the Lower Limit (LL) and Upper Limit (UL) used in options 1-4 were found through an optimising procedure. We assume that the ideal system would be one which simplified the assessment procedures whilst changing no-one's entitlement state (from, say, fully to partially entitled, or from partially entitled to not entitled). In other words, in an ideal system, all benefit units would be on the diagonal in our main output tables.

We implemented a simple measure of the extent to which the pattern of entitlements from our reformed Legal Aid systems deviated from this ideal. Each benefit unit whose state changed was given a score; our error measure was then the aggregate of these scores for all benefit units in the FRS. Since we considered some changes to be more severe than others, our score had the following properties:

- among the losers, poor benefit units scored more, whilst among the gainers, the rich scored more;
- benefit units moving from full to no entitlement, or vice versa, scored more than benefit units moving to or from partial entitlement.

Formally, the measure is this:

let

pos1 be the benefit unit state under the current system, and

pos2 be the state under the new system;

decile be the income decile of the benefit unit;

let full entitlement = 0

partial entitlement = 1

no entitlement = 2

then:

IF pos1 > pos2 THEN

err := decile * (pos1 - pos2);

ELSE IF pos2 > pos1 THEN

err := (10.0 - decile) * (pos2 - pos1);

END;

The value of err is calculated for each benefit unit whose state has changed and the results summed across them all. The Model was then programmed to find the values of LL and UL which minimised this measure, using an implementation of Brent's method⁶⁸.

Whilst the exact optimal LL and UL levels are dependent on the error function used, experiments with several other error measures suggest that most reasonable measures produce quite similar optimal levels for LL and UL: one such is simply counting the number of benefit units off-diagonal in each of the main tables - this is equivalent to scoring all changes as 1.

⁶⁸ Press W.H., Flannery B.P., Teukolsky S.A. and Vetterling W.T. (1994) *Numerical Recipes in Pascal*, Cambridge University Press, sec 9.3

