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Is the private supply chain under threat?

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Introduction

"It is, today, impossible for private individuals to find a lawyer prepared to take on interdicts on a legal aid basis in the Highlands and Islands, Dumfries and Galloway, the Borders, Edinburgh, Glasgow and East Kilbride. My firm is getting numerous calls each day from would-be clients in these regions pleading for representation."

1. This statement is taken from a recent national newspaper interview with the chair of Scotland's Family Law Association, who highlighted perceived shortcomings of the legal aid fee system for family law work. If true, her statement would mean that around half of Scotland's population lived in advice deserts, at least as far as interdicts¹ were concerned, including all of those in Scotland's two largest cities.
2. The Scottish civil legal aid system relies on private sector law firms choosing to undertake work on behalf of individual clients on a legal aid basis. Each firm will decide, some on a case by case basis, whether to provide a legal aid service. There is no compulsion on a firm to provide legal aid at all, or for a firm that does do legal aid to act in any particular case.
3. The quote above is perhaps the most extreme public statement of disquiet from a profession that has become increasingly vocal about its concerns as to the fees paid for legal aid work and their impact on firms' willingness to continue providing a legal aid service.
4. This paper outlines a number of issues to do with supply of civil legal aid services, both current and future. It presents some evidence to suggest that the profession's perception of supply is quite often more pessimistic than figures on actual legal aid activity would justify, considers why those who *are* exiting the system are doing so and explores steps that might be taken to prevent further erosion of the supply base or shore up supply in areas where it is already problematic.
5. The paper also poses a number of questions about future supply and sets out the aims of a programme of research that will hopefully answer at least some of these questions.

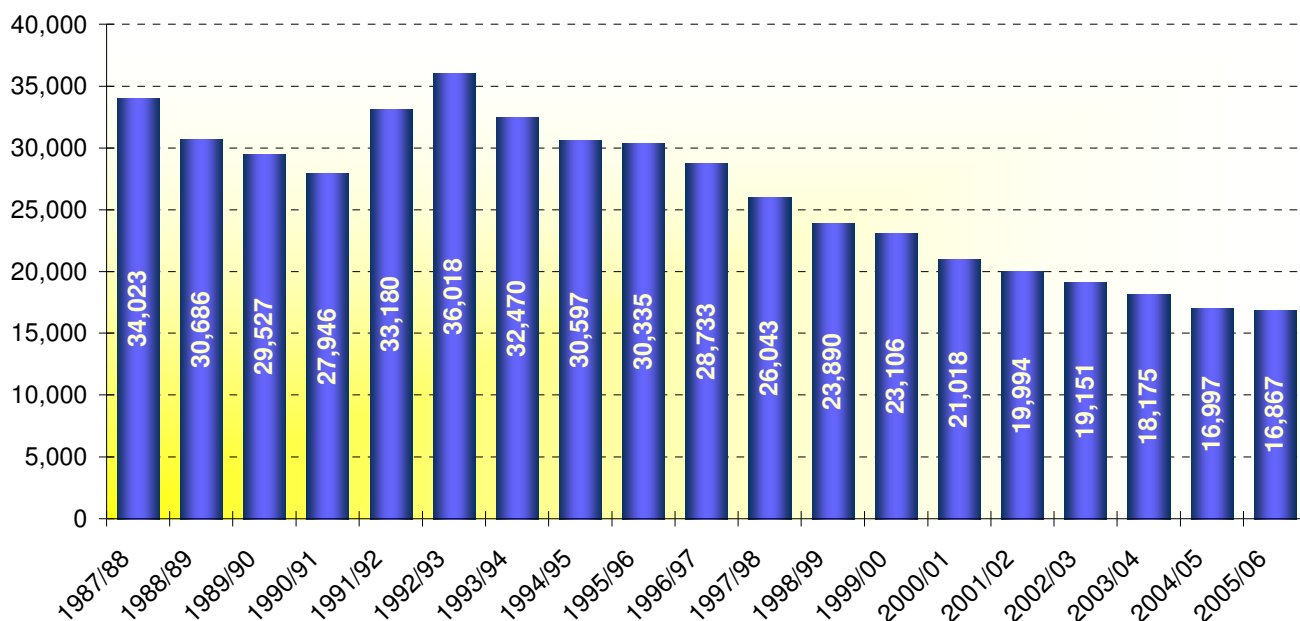
Current provision

6. Before considering levels of supply in terms of the number of firms providing a legal aid service, it is necessary to look at overall levels of civil legal aid activity.
7. Applications for civil legal aid have been falling since 1993/94 and continue to do so. The volume of applications fell only slightly in 2005/06 (down 1% compared to 2004/05). This is the first time in many years that there has not been a significant reduction in applications. Provisional figures for 2006/07 suggest a 3% reduction, although changes in family law which have resulted in a bringing forward of many divorce actions mean that it is difficult to distinguish the overall trend from the one-off effect of the reforms.
8. The Board also introduced a new computer case management system in 2005 which resulted in some recoding of detailed categories. This further complicates year on year comparisons, particularly for some case types. In particular, several types of case that were previously categorised as 'miscellaneous' and

¹ An interdict is a court order prohibiting a person from doing a particular thing. In this context, it will most often relate to alleged domestic abuse and be used to prevent an abusive spouse or partner from approaching the individual seeking the interdict.

formed part of an overall 'other' grouping for reporting purposes have now been given more specific detailed categories and have moved into more specific reporting groupings.

Applications for civil legal aid, 1987/88 to 2005/06



9. The long term reduction in applications has been particularly noticeable in categories relating to family and matrimonial work (including interdicts). At civil legal aid's peak in the early 1990s, these categories accounted for over three quarters of civil legal aid applications. In 2005/06, they accounted for 62%. The next biggest group of cases are those relating to reparation (personal injury and other damages), which have consistently made up between 12% and 15% of applications. A few areas have become more significant in recent years - housing, mental health and judicial review in particular – although each still makes up a relatively small share of the total.
10. The main factor in the slow down of the reduction of overall volume in the last couple of years appears to be reparation cases. Volumes in this category were substantially higher in the first half of 2005/06 as a result of a huge increase in the number of cases taken on behalf of prisoners in relation to the conditions in which they are held.
11. A further reduction in family/matrimonial/interdict was seen in 2005/06, but at 3% this was significantly smaller than the 13% reduction in the previous year. Again, changes in codes make it hard to identify very specific reductions, but it appears that there has been a significant reduction in interdict applications. As this category is particularly pertinent to the discussion of supply (and is specifically mentioned in the opening quote of this paper), this is considered in more detail below.

Protective orders

12. Figures on the number of divorces granted in Scotland over the last few years show that while the overall number of divorces has increased slightly since 2001, current levels are still lower than at any time in the previous 20 years or so.
13. More revealing is the fact that divorces on 'fault' grounds (unreasonable behaviour, adultery or desertion) have fallen far faster – by 60% in the ten years to 2005 (the most recent year for which detailed figures are available). In 2005, they represented only 15.5% of all divorces granted, down from 25% in 2000 (and 34% in 1996).

14. It is perhaps unsurprising, therefore, that the number of legal aid applications for 'fault-based' divorces has also fallen rapidly: if fewer people are getting divorced, fewer people will be seeking legal aid for divorce actions. However, while the reduction in divorce might have reduced the demand for divorce-related legal assistance, it does not follow that there will have been a proportionate decrease in the need for legal assistance in relation to the wider aspects of relationship breakdown.
15. It is likely that part of the reason for the fall in divorce is the fall in marriage that has occurred over the same period. This has been accompanied by an increase in cohabitation, and an increase in the number of children born to non-married and/or non-cohabiting parents. There is no evidence to suggest that fewer relationships overall (married or unmarried) are ending. Particularly when children or domestic abuse is present, the end of these relationships might still be expected to result in needs for legal assistance.
16. There is some concern, therefore, as to whether the trend in relation to interdicts or other protective orders is consistent with wider evidence about the prevalence of domestic abuse. Analysis of applications for legal aid in a range of family related categories, such as divorce or contact with children, shows that a significant proportion of applicants are also seeking some form of protective order.
17. If the trend in wider society has been a move from marriage and divorce towards cohabitation and separation and the prevalence of domestic abuse across all forms of relationship has not reduced, we would expect to see fewer legal aid applications for divorce but more for protective orders, either stand alone or alongside other family cases ('secondary' orders).
18. Our analysis shows that the proportion of family applications including some form of protective order has in fact remained much the same over the last five years. As the overall volume has fallen, so has the volume of cases including protective orders.
19. Stand alone interdict applications have fallen over the last few years, but less than other kinds of family action, and also now represent a higher percentage of all cases featuring protective orders (from 55% to 63%). This is consistent with the analysis of the decline of divorce above. However, this relative growth in stand alone interdict applications does not compensate for the reduction in secondary protective orders.
20. To summarise, our analysis suggests that the reduction in divorce applications is broadly consistent with wider societal trends. However, there is no evidence of any such wider trend that might explain the reduction in applications featuring protective orders, whether linked to a divorce application or not. If the need for legal assistance for protective orders has not abated in the same way as the need for legal assistance for divorces, the trends in civil legal aid applications suggest that fewer of those with a need for publicly funded legal assistance in relation to protective orders are having that need met.
21. There have been no specific changes in eligibility or contributions over the last few years that would account for fewer of those seeking protective orders applying for legal aid. There are three other possible explanations: those in need of protective orders are either not seeking legal help, are seeking it unsuccessfully or are getting the help they need, but not on a legal aid basis.

Issues of supply

22. Although the analysis above relates to protective orders, the reduction in civil legal aid applications has been across the board. While some aspects of the reduction can be explained by reference to wider societal trends (such as those on divorce) or the availability of other sources of funding or advice (such as conditional fees for personal injury work or central government advice sector funding for money advice), the question remains as to whether the overall downward trend is an issue of demand or supply, or if a combination of both, to what extent supply is an issue.
23. Following the reform of civil legal aid in 2003², the Board has monitored levels of supply across the country. The analysis below is based on work carried out for a report that was submitted to Scottish

² From October 2003, cases are remunerated on a block basis, in contrast to the detailed charge system previously in place. The block payments were calculated to deliver an increase in fees of 21%. Later stages of the reform required firms to

Ministers on the operation of the reforms. The data used for that report covers the period up to 2004/05. With the change in our computer system, it has not been possible to update this analysis in full, although we are working on this at present.

Overall numbers

24. Outlets undertaking civil legal aid fell by 11% in 2004/05 to 767, compared with a 7% fall the previous year. There has been a total reduction of 22% from the 987 outlets active in 2000/01.
25. Our previous research³ shows that the reduction in outlets is a longer term trend: there have been annual reductions in outlet numbers since at least 1996/97. There are now fewer civil legal aid outlets than at any time for which records are available.
26. It should be noted that outlet numbers are very sensitive to change, especially at a local level. A reduction in outlet numbers may be the result of a firm's only 'legal aid' solicitor moving from one local firm to another that also provides a legal aid service, with the second firm increasing their legal aid work as a result. Similarly, an increase in outlet numbers might be the result of a single 'legal aid' solicitor moving to another firm that did *not* previously do legal aid, with the solicitor continuing to provide a service at the new firm, while the old firm reduces the amount of legal aid they do.
27. The overall figures should also be set against the 7% fall in applications between 2003/04 and 2004/05 outlined above. It should be noted, however, that the Glasgow City Council area has over the last five years generated around 20% of all civil legal applications in Scotland. This means that Glasgow (and to a lesser extent Edinburgh, around 10% of applications) exerts a strong influence on the national figures. Thus while there was a 7% fall in civil applications in Scotland as a whole between 2003/04 and 2004/05, the *average* reduction across the 32 local authority areas was 10%⁴.
28. A similar effect is seen in relation to outlet numbers. Glasgow saw an 11% reduction in active civil legal aid outlets between 2003/04 and 2004/05; this both influenced and reflected the national reduction, also 11%. However, the average reduction across council areas was lower, at 9%. These effects should be borne in mind when interpreting the 'average' figures given in the text below: these reflect national totals, rather than averages of all council/travel to work areas, and so may be subject to 'big city skewing'⁵.

register with the Board to provide civil legal assistance, and to undergo peer review based quality assurance. New case-reporting requirements were introduced at the same time.

³ "Distribution of the Supply of Legal Aid in Scotland", Scottish Legal Aid Board, 2002.

⁴ The geographical analysis has been carried out at two levels: 'travel to work area' (TTWA) and council area. TTWAs are described as 'approximations to self-contained labour markets', based on commuting patterns. The two units of analysis have different strengths and weaknesses for different areas. For example, the Highland Council area covers a very large geographic area, making interpretation of the data analysis difficult: the concentration of outlets in Inverness (the only large centre of population) makes it hard to reach any conclusions about supply in other parts of the area. Using travel to work areas here allows the identification of smaller areas that might better reflect solicitor usage patterns.

By contrast, the Edinburgh travel to work area covers not only Edinburgh, but also a wider and in parts well populated area, comprising several distinct legal markets. This means that any changes in supply in those other areas cannot be identified separately. Using council areas provides a better level of detail here.

⁵ Using the average of each council area/TTWA is also subject to skewing problems of a different kind. Several (primarily rural) areas have small numbers of applications and outlets. Small volume changes in either can therefore result in very large percentage changes which will themselves skew an average of the 32 council areas, but have very little effect on the national picture. For example, Shetland saw a 40% fall in application numbers, but this amounted to only four applications.

Concentration of civil legal assistance work

29. There has been little change in the overall concentration of work amongst active outlets over the last three years. Most outlets do relatively small amounts of legal aid work.

Number of applications	2002-2003			2003-2004			2004-2005		
	Number of outlets	% of outlets	Cumulative %	Number of outlets	% of outlets	Cumulative %	Number of outlets	% of outlets	Cumulative %
1	101	11%	11%	107	12%	12%	88	11%	11%
2-5	190	20%	31%	177	20%	33%	145	19%	30%
6-10	149	16%	47%	128	15%	48%	118	15%	46%
11-25	218	23%	71%	208	24%	72%	197	26%	71%
26-50	181	19%	90%	157	18%	90%	144	19%	90%
51-100	79	8%	99%	66	8%	98%	58	8%	98%
100+	13	1%	100%	21	2%	100%	17	2%	100%
Total	931	100%		864	100%		767	100%	

30. The table above shows that, in each of the last three years for which data has been analysed, only around 10% of outlets submitted more than fifty civil legal aid applications (although the number submitting more than 100 has grown), with almost half of all active outlets submitting ten or fewer.

31. All other things remaining equal, the overall reduction in applications described above would result in a proportion of the 'low end' outlets seeing their civil legal aid volumes reduce to nil. To some extent at least, therefore, the reduction in outlets has to be a function of the reduction in volumes overall. Of course, the reverse may also be true: where more active outlets withdraw and this leaves too few outlets remaining to provide adequate cover in a particular area, the result may itself be a reduction in applications.

Geographic differences

32. As might be expected given the overall reduction in application volumes and active outlets nationwide, many travel to work and council areas have seen a general downward trend for both application numbers and numbers of active outlets.

- In 2004/05, 12 of the 54 travel to work areas (TTWAs) had more than 20 active outlets. This compares to 14 TTWAs with more than 20 outlets in both 2002/03 and 2003/04.
- By contrast, 25 areas had fewer than five active outlets, up from 22 in 2003/04 and 19 in 2002/03.
- Three of these areas have no outlets at all, but do not appear to have had any outlets for several years, if ever.
- There was no change in the number of active outlets between 2003/04 and 2004/05 in 20 areas.
- A further 5 areas saw an *increase* in the number of active outlets while the remaining 29 areas (54%) have seen reductions to varying extents.
- Of the 25 most vulnerable areas (those with fewer than 5 active outlets), 7 have seen a reduction in outlet numbers, 2 have seen an increase and 15 have stayed the same.
- No areas have lost all outlets, although one area has fallen from 3 outlets to 1.

33. Looking at the 32 council areas, the Shetland Islands and Western Isles have the lowest numbers of active outlets at three each.

- Over half of the 32 council areas have 20 or more active outlets.
- While 5 council areas have seen an increase in outlet numbers and a further 4 seen no change, 23 areas (72%) have seen some reduction. It should be noted that 11 areas had seen an increase in outlets the previous year. Nevertheless, all but five areas saw some reduction over the two years from 2002/03 to 2004/05.

34. As noted above, a very small number of areas have had no active outlets over the period: this number has not changed. In many of the low supply, less densely populated areas, the loss of a single outlet can result in a shift of 25% or more. For example, one area has seen a drop of 25% in overall supply – a result of a single firm stopping. Similarly, the withdrawal of two firms in another area has resulted in a

decrease in active outlets of 40%. However, while the former area saw an *increase* in the number of civil legal aid applications in 2004/05, the other area has seen a significant reduction.

35. These examples suggest that simple measures based on numbers of outlets may not tell the whole story. In the course of our work, we have also uncovered evidence that suggests that the reality on the ground may in fact be quite different to that suggested by the statistics.
36. One of the remote island areas has seen a significant reduction in both supplier numbers and the volume of applications submitted by those suppliers. However, tracking applicants instead of suppliers suggests that one firm from the mainland is actually the largest supplier in the area and that the overall number of applications had changed very little.
37. For our report to Ministers, we conducted a detailed analysis at individual area level, presenting case studies illustrative of particularly large changes in supply. We found that the extent of reductions in suppliers and applications varied between different types of case and different geographic areas, but that the overall trend has been downward, with very few types of case or geographic areas showing an increase in either applications or outlets over the period.
38. There are limits to how far analysis of the data alone can get behind the broad trends and identify more subtle changes. In particular, beyond the broad categories such as divorce or contact, there is nothing within the data that would help identify particular types of case, client or firm. This means that we cannot on the basis of this analysis be sure that volumes or supply are not reducing more for some kinds of case within a particular category than for others.
39. Nevertheless, the data clearly shows a disproportionate reduction in certain categories of case, such as divorce (particularly on grounds of unreasonable behaviour) and interdict. While some such changes can in part be explained by reference to broader societal trends, this does not appear to be the case in relation to interdicts. Even within the divorce category, there is also anecdotal evidence of difficulties in accessing solicitors to handle particular types of divorce, primarily the more complex cases.

Anecdotal evidence

40. Alongside the analysis we have conducted, we have been receiving anecdotal evidence of supply problems with increasing frequency. Often this takes the shape of correspondence from members of parliament, seeking information on the availability of services for constituents. Advice agencies, including women's aid groups, have also provided feedback on the availability or otherwise of solicitors to take on cases for their clients.
41. In several cases, we have responded to such concerns by looking in detail at the geographic area concerned. For example, we were told by Glasgow Women's Aid that only one firm in the city would take on family work for their clients. Our analysis suggested that 118 outlets had undertaken civil legal aid family work in that period (although a far smaller number – around 40 – had done so regularly).
42. We were also told by the Family Law Association (FLA) that no FLA firms in Aberdeen (Scotland's third city) were doing civil legal aid any more. The evidence suggested that 19 FLA firms were doing civil legal aid, several of those firms had increased their application volumes in the previous year, the overall volume of applications submitted by FLA firms had increased by 15% and they were together responsible for 73% of applications from the city.
43. However, in other instances, anecdotal evidence has alerted us to situations that we may not have identified ourselves for some time. In one rural area, we got reports that only one of the three firms in town was still doing legal aid. Analysis subsequently backed up this claim. In another, we were told by a local advice agency that no local firm would act for new clients. Again, our own data confirmed this to be the case.
44. Overall, the combination of data analysis and anecdotal evidence has led us to conclude that there have been general reductions in supply and that some areas now appear to be under-served. We do not think that the system is in freefall in the way that some of the more adventurous press reports would suggest. It is not impossible to find a solicitor to do an interdict case in Edinburgh or Glasgow, or several of the

other places referred to at the start of the paper, although in some places there have been very significant reductions. Some well established legal aid firms have greatly reduced their legal aid work, become more selective about the types of cases they are taking on or have in some cases stopped the work altogether.

Why is supply falling?

45. The main explanation offered by the profession for the reduction in supply is that solicitors are actively choosing not to do legal aid work because the level at which the fees are set by Parliament makes the work commercially unattractive.
46. Some firms argue that the work is not just unattractive but that it actually operates at a loss; it costs them more to provide the service than they can charge. Other firms suggest that they can make a profit from the work, but that they can make substantially better profits from other work (or from the same work charged on a private basis). A further group of firms is content to increase their civil legal aid workloads, presumably on the basis that they view it as profitable enough to be worthwhile.
47. For private clients, different lawyers can charge different amounts for the same work, depending on market conditions or levels of expertise. For legal aid work, the same rate is payable across the country and to all lawyers, although there are some variations in the effective rate that is paid for some different kinds of work. This means that the relative profitability of legal aid work may vary from place to place, type of work to type of work and individual lawyer to individual lawyer.
48. It is difficult to compare hourly rates for different kinds of work, as not all cases (legal aid or privately funded) are chargeable on an hourly rate basis. However, it is clearly the case that where hourly rates are chargeable, legal aid rates are well below their private equivalents.
49. It is also the case that the legal aid rates have risen less over the last 15 years or so than private rates. Levels of profitability have fluctuated, over time, between types of work, between firms and between parts of the country.
50. This has implications for legal aid supply. The Law Society of Scotland each year commissions a survey of law firms, collecting information on the costs of running a law firm with a view to establishing the rates that firms need to charge in order to turn a profit, as well as benchmarks for profitability against which individual firms can compare themselves⁶.
51. This survey points to increased profitability for the typical legal firm over the last few years, although this varies between types of firm and different parts of the country. One particularly striking trend over the last few years has been the rapidly increasing profitability of firms in "the country" i.e. outside the main towns and cities. For sole practitioners in these areas, profits have doubled in the space of five years.
52. While the survey should be treated with some caution as firms doing legal aid work cannot be separately identified and small firms (those most likely to do legal aid work) tend to be under-represented, these findings at very least suggest that legal aid is facing stiffer competition than ever from privately charged work. It is perhaps unsurprising that in this climate, some firms are electing to drop legal aid work.
53. This also ties in with some anecdotal evidence we have gathered ourselves from speaking to firms who are pulling out, especially some of those in island and other remote rural areas. They tell us that they simply do not need to do legal aid work any more – the volumes are so small and the sources of more profitable business so ready, they simply will not miss it.
54. However, we are concerned that some firms may be too eager to move away from legal aid on the basis of their perceptions of profitability, which can be quite different to the reality.

⁶ *Benchmarks and the Cost of Time: The 2006 Survey of Legal Practices in Scotland*, Pollock, J and Otterburn, A, Law Society of Scotland, 2007.

55. As part of our monitoring of the civil legal aid reforms, we conducted a survey of law firms. We banded the survey into groups based on volumes of applications submitted, and then analysed the responses by these bandings. As part of the survey, we asked the firms how much legal aid work they did. A large number of firms significantly *over*-estimated the number of legal aid cases they handled.
56. The reasons for this are unclear. It may be that the level of administration required in legal aid cases made the number of cases seem larger than it actually was. Another possibility is that the level of income the firms derived from their legal aid cases was at a level that made them think the volume was higher than it actually was. If so, this would suggest that individual legal aid cases bring in more income than firms perceive to be the case.
57. The survey also found that 82% of respondents did not believe that the reforms had delivered the intended increase in fees. A further part of the reform monitoring package involved the analysis of post-reform accounts submitted by firms. We used the files received to construct pre-reform style detailed accounts, with a view to establishing whether the cases had been paid more or less under the new block fee structure.
58. Our analysis suggests that the impact of the reforms varies between case types. Some cases will have seen a smaller increase, some will have become considerably more profitable and some will have resulted in lower payments than previously. On average, however, fees have gone up⁷.
59. To respond to the shortcomings of the block fee structure for some case types, a series of amendments were introduced earlier this year. This should ensure that all but the most exceptional of cases is significantly better paid now than previously. However, this does not appear to be the perception of the profession, or at least those most vocal within it. Two examples may help illustrate the gap between perception and reality.
60. As noted above, we are concerned that the number of applications for interdicts continues to fall rapidly. However, our analysis of accounts suggests that defended interdicts are likely to fair better than other types of case under the block fee arrangements, with solicitors seeing a substantial increase in the fees they would have been paid under the old system, particularly where they act for defenders. The difference is less marked in undefended interdicts, although even here we can see no reason for solicitors to regard this work as less profitable than previously.
61. However, we have also noted that some solicitors are not making best use of the available fees for interdict work, both within the civil legal aid block system and as between advice and assistance and civil legal aid. Clearly, if this approach is widespread, solicitors' expectation as to the fees payable for interdict cases will be far lower than the reality. This may have contributed to an unwillingness to take on these cases.
62. Another issue we have identified relates to travel time and costs. We have been told repeatedly that solicitors are no longer willing to take on cases where they have to travel to court because they are paid less – or nothing - for doing so since the civil legal aid reforms. However, the fee structure actually results in solicitors being paid up to 40% more for travelling now than previously.
63. In both of these examples, it seems that solicitors (or their accountants) have misunderstood the reforms, and are therefore failing to charge all that they may be entitled to. Clearly, this will affect their perception of profitability, if not actual profitability. We are seeking to address these and other misunderstandings through training and education for the profession.

⁷ The sample at the time of the report was biased towards shorter running cases that had concluded within two years or so of the reforms. As the reforms were designed to front-load the fees, these cases were always likely to appear more profitable. On that basis, we estimate that the overall increase once longer running cases have been taken into account will still be substantial but will be less than 21%.

64. However, it may be that for some, these issues are simply thrown up as an excuse to the individual client: the reality may be that the gap between legal aid fees and those chargeable for private work are now so large that no amount of improvement will bring some firms back into the system – or certainly no amount that public finances can realistically allow.
65. For other firms, the relative profitability of different types of case also appears to have led to cherry picking: clients with the cases perceived to be least profitable (such as complex family actions and interdicts) are those most likely to report difficulties in accessing help.

Responses to vulnerability of supply

66. Despite the concerns expressed by much of the profession, people in most areas continue to have access to legal aid lawyers for most types of case. However, there are areas and types of case where problems are already apparent. There are also areas where supply is vulnerable and may become problematic in future. A number of strategies might be adopted to address these actual or potential problems.

Improve fees

67. We may never be able to compete pound for pound with private work, but some further improvement in fees may have some impact. As already noted, a series of changes have recently been made which should address some of the profession's most pressing concerns about the block fee structure.
68. Ministers have also agreed to review the value of the unit (the building block of the block fee structure). We are currently analysing further files to contribute to Ministers' consideration of the case for a further increase.

Reduce bureaucracy

69. Solicitors have regularly told us that legal aid work is unattractive for two main reasons; poor fees and excessive administration. Certainly compared to most privately funded cases (although perhaps less markedly different to cases funded by insurance companies or trade unions), solicitors are required to answer not only to their client but also to a third party funder.
70. Solicitors have to apply for legal aid in the first place and then seek authority to incur additional expenditure as cases progress, for example if they require counsel, an expert witness, or to undertake unusually expensive work. At the end of the case, the solicitor has to account to the Board and may become involved in negotiations over allowable fees. The 2003 reforms also introduced a requirement on solicitors to inform the Board of progress with cases at certain key points or as time passes.
71. All of these interactions with the Board lead solicitors to feel that legal aid work brings with it a significant 'hassle factor'; many feel that this is not justified by the fees involved.
72. To respond to some of these concerns (and also to drive out inefficiencies in the Board's own administration of the legal aid system), we have now launched a project to review all aspects of the operation of civil legal assistance, identifying opportunities to simplify processes and cutting bureaucracy. We are hopeful that this will make the legal aid experience less irksome for solicitors and their clients, improving our relationship with our suppliers and keeping the administrative burden more proportionate to the value of the work to firms.

Support suppliers

73. Related to the reduction of bureaucracy, we want to develop structures whereby we proactively provide support to suppliers, to help them deal with legal aid more effectively and more efficiently, for their sake and ours, as well as for their clients'.
74. Legal aid is itself a complex process, with myriad regulations and related guidance. Solicitors, and particularly those who undertake small numbers of legal aid cases each year, often struggle to keep up to date with the legal aid rules and processes. This leads to a very high proportion of applications for

legal aid being returned as incomplete or otherwise incompetent, charges being deducted from accounts because they are not allowable and generally additional contact between the Board and the solicitor on matters that really should be dealt with effectively first time.

75. All of this further creates an impression of needless bureaucracy, when in fact it is more often than not inefficiency or ineffectiveness on the solicitor's part.
76. To address this, we are improving the guidance we make available to solicitors, making it more accessible and easier to keep up to date. We are also collating data on how different firms, or solicitors within firms, operate. We expect that it may come as a surprise to many partners that a high proportion of cases submitted by their firms are returned, or rejected, or refused (or indeed are sent to the wrong place to start with), leading to double handling on the firm's part (and ours). If by providing this information, along with enhanced guidance and training, we were able to drive out as many errors as possible, legal aid work would become more profitable, with or without any further increase in fees.

Use technology

77. We believe that technology can support supply in two main ways. First, by moving as many of our processes online as possible, we provide a faster and more efficient service to solicitors, freeing them up to act for their client without waiting for papers to pass back and forth through the postal system. We have invested considerably in our Legal Aid Online system and more and more firms are beginning to realise the benefits of going on line.
78. Second, we think that technology can help address some of the supply problems we are seeing in rural areas. Previous ILAG conferences have highlighted the advances made in other jurisdictions, including those with far remoter rural areas than Scotland. The profession and courts in Scotland have been slow to move forward with the use of technology as a tool for promoting access; we are keen to play our part in encouraging them to go further, faster. Does a solicitor really need to get on a plane to turn up for a 5 minute hearing in an island court, taking two days out of the office to do so?

Actively ensuring provision

79. All of the above strategies may help encourage firms to stay within the legal aid system or help them provide a service on a remote basis. However, there still appear to be areas where these steps will not *ensure* supply. The only way the Board can see to be sure that provision will be available in any given area at any given time is to employ its own solicitors.
80. Ministers have approved a Board proposal to employ a small number of solicitors to provide a civil legal assistance service in areas and types of case where private sector supply appears to be inadequate. We have recently appointed a Head of Service to lead this small network and will be opening our first offices this autumn.
81. We believe that employed solicitors bring with them a number of benefits:
- They would provide access to justice where that may be at risk due to declining numbers of solicitors willing to take on cases.
 - They would enable us to test whether supply in any given area (of law or geography) was adequate: statistics can only tell so much. If the demand for employed solicitors in any place falls short of our expectations based on patterns of previous supply, we might reasonably conclude that the number of remaining firms is adequate and that the reasons for the declining numbers is demand related. We think this unlikely, but it is an important proposition to test.
 - They would enable us to benchmark the cost of providing a full time civil legal assistance service. We will be able to 'fee up' cases dealt with by employed solicitors to assess the income they would have been able to generate in private practice. Comparing this to the actual cost of employing them will tell us something important about the viability of civil legal assistance as a commercial proposition. If we can't make it work economically (notwithstanding that cherry picking by private practice means the offices may be taking on a disproportionate number of 'less profitable' cases), what does this say about the fees payable to private solicitors?
 - They would provide a valuable insight into the operation of the civil legal assistance and wider civil justice and advice systems. As with our Public Defence Solicitors' Office (PDSO), they will help us identify issues and test new approaches within legal aid, as well as identifying specific

issues to do with the operation of the courts, or civil law itself. They could also help us engage at a practical level with users and other advice agencies, and give us some leverage with other providers and funders of services, such as local authorities, as we encourage better proactive planning of advice services.

- They would demonstrate that a joined-up approach was being taken, by linking with and complementing previously separate schemes for mediation, in-court advice, Board-employed solicitors in community settings, and the PDSO structure. This would be a significant step forward in demonstrating to external stakeholders that the Scottish Executive and the Board are taking active steps to develop a more strategic approach to supply.
- They would aim to establish more effective links with judicare provision through testing of proactive referral between judicare solicitors and directly employed solicitors, as well as between either type of solicitor and advice agencies

82. Several of these points can be seen as arguments in principle for the development of a mixed model of service delivery – a model that has started to develop in Scotland for criminal work with the PDSO, but which has never been tested on the civil side in this way. Although we are starting small, with fewer than 10 solicitors in the first instance, we anticipate that demand for their services will be high and that expansion may be required in fairly early course.
83. An expanded salaried service, alongside judicare provision, brings with it additional benefits, both in terms of ensuring current supply, but also looking to the future in terms of providing a training ground and alternative career structure for solicitors who may wish to provide a civil legal aid service but are unable to find positions in private firms where this is possible. Early signs are that we may be able to recruit experienced solicitors who have worked in legal aid for years, but whose firms are moving away from this work.
84. However, a further issue relates to the future supply of *new* solicitors able and willing to undertake legal aid work, either in private practice or directly employed in the private sector.

Future supply

85. Alongside concerns about current supply, there is increasing anecdotal evidence from the profession that those entering the profession are not interested in doing legal aid work and that the current generation will be the last to do this work. We have been told that it is impossible to find a trainee solicitor outwith the central belt or to do legal aid work (and particularly criminal legal aid work).
86. At the same time, we are aware that there are now more law graduates completing the post-graduate Diploma in Legal Practice (the primary route into the profession) than there are training places on offer in the profession. These two positions appear to be at least partially mutually inconsistent.
87. We have been concerned about future supply for a number of years and have been attempting with limited success to commission a joint research programme, along with the Scottish Executive and Law Society of Scotland. After several false dawns, we are now hopeful that real progress can be made soon.
88. The main aims of the research programme will be to
- Establish the number and characteristics of trainees (in particular the number of trainees in firms with some legal aid work and firms in rural areas) and any changes over time
 - Identify the career aspirations, choices and experiences of trainees and newly qualified solicitors
 - Identify the key factors affecting the career choices and experiences of trainees and newly qualified solicitors.
 - Describe and assess the experiences of Scottish firms in recruiting and retaining trainees and newly qualified solicitors.
 - Identify the key factors affecting the recruitment and retention of trainees and newly qualified solicitors.
89. The findings of this research will inform our future strategies for ensuring that sufficient new solicitors start their careers in legal aid firms or have sufficient career mobility to move to such firms regardless of where they train. This may include direct funding or subsidisation of the costs of legal aid firms offering traineeships, or the development of a significant training programme within an expanded salaried sector.

90. Alternatively, the research may suggest that there are untapped resources within the legal profession: solicitors who may be attracted into legal aid work, or work in rural areas, but who find unattractive the current career structures within the predominantly small firms undertaking the bulk of legal aid work.
91. We will hopefully be in a position to disseminate the findings of this programme at the next ILAG conference.

Conclusions: is the private supply chain under threat?

92. The evidence suggests that, in some places or for certain cases, the private supply chain is indeed under threat. However, we do not believe that these areas are forever 'lost' to the private sector, or that the problems we are seeing will necessarily spread to other areas. We are adopting a number of strategies to help encourage continued private supply, and are encouraged that in many areas where some firms are withdrawing from legal aid, others are expanding their legal aid business.
93. In short, rumours of the death of civil legal aid as delivered by the private sector appear to have been exaggerated – perhaps not greatly, but exaggerated nonetheless. With morale in the profession very poor and perceptions of the profitability of legal aid work very negative, despite significant recent improvements, we need to work hard to prevent it becoming a self-fulfilling prophecy. At the same time as actively supporting private provision, we need to develop a parallel system of employed solicitors to ensure that, should more suppliers exit the system, some form of safety net exists.
94. We also need to consider longer term structural issues. With the transformation of the age and gender balance of the profession, and in the context of increasing specialisation in legal practice, will the predominantly small, generalist practices on which legal aid has traditionally relied remain a viable practice model, able to attract new recruits and provide a legal aid service? If not, will the smaller number of larger – and growing - legal aid businesses we are now seeing have the capacity (or the will) to meet the demands that may otherwise go unmet? And what role will employed solicitors have in future – will they plug the odd gap, or will they be a significant feature of the legal aid landscape?