Legal aid and low income

Professor Donald Hirsch
Director, Centre for Research in Social Policy
Overview

• Who do Civil Legal Aid means regulations include and exclude, based on income?

• The Minimum Income Standard (MIS) as a benchmark for determining the affordability of justice

• Applying MIS to the means regulations

• The wider picture – trends in low income
Who do Civil Legal Aid means regulations include and exclude, based on income?
Legal aid contribution to £500 a month legal costs, by monthly earnings

**Single person**

- **Gross income limit, £2,657**
- **Disposable income upper limit, £733**
- **Disposable income lower limit, £315**

### Monthly income

- £0
- £500
- £1,000
- £1,500
- £2,000
- £2,500
- £3,000

### Monthly earnings

- £0
- £100
- £200
- £300
- £400
- £500
- £600
- £700
- £800
- £900
- £1,000
- £1,100
- £1,200
- £1,300
- £1,400
- £1,500
- £1,600
- £1,700
- £1,800
- £1,900
- £2,000
- £2,100
- £2,200

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<th>Monthly earnings</th>
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Gross income limit, £2,657
Disposable income upper limit, £733
Disposable income lower limit, £315

Monthly earnings

Legal aid contribution to £500 a month legal costs, by monthly earnings
Single person
Gross income: £2,657
Disposable income limit: £733
Disposable income lower limit: £315

Legal aid contribution to £500 a month legal costs, by monthly earnings

Single person

Legal aid contribution to £500 a month legal costs, by monthly earnings

Monthly income

Gross income limit, £2,657
Disposable income upper limit, £733
Disposable income lower limit, £315

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Monthly income

Gross income
Disposable income
Disposal income upper limit, £733
Disposal income lower limit, £315
Legal aid
Private contribution
1. Do people with £733 “disposable income” have enough to cover reasonable legal costs?

2. Do people with £315-733 “disposable income” have enough to contribute to legal costs?
A benchmark: the Minimum Income Standard

- A national benchmark of how much is needed for minimum living standard
- Based on regular research, with annual updates
- Independent – funded by Joseph Rowntree Foundation, conducted by Loughborough University
- Contemporary: based on what members of the public consider the minimum acceptable in the UK 2018
A benchmark: the Minimum Income Standard

Method:

• Deliberations by groups of members of the public
• Detailed discussion about what people need in their lives
• Building consensus – jury principle
• But not the product of any one group
• Budgets for different household types
A benchmark: the Minimum Income Standard

The standard it represents

**Definition:**
A minimum standard of living in the UK today includes, but is more than just, food, clothes and shelter. It is about having what you need in order to have the opportunities and choices necessary to participate in society.

**In:** healthy diet, respectable clothing, moderate social activity, 1 week holiday in the UK, mobile phone, TV

**Out:** foreign holiday, i-phone, paid-for TV channels
A benchmark: the Minimum Income Standard

Adoption as a national standard

Basis for accredited Living Wage

Charity basis for means testing individuals in need

Supreme Court 2017 employment tribunals case
Concluded fees unaffordable: require people to live below MIS threshold

Rejected Lord Chancellor’s argument that some costs could be temporarily forgone: means “sacrificing ordinary and reasonable expenditure for substantial periods of time”.
Supreme Court employment tribunals

R (UNISON) v Lord Chancellor [2017] 3 WLR 409

Precedent: in addressing access to justice in relation to affordability -

“Where households on low to middle incomes can only afford fees by sacrificing the ordinary and reasonable expenditure required to maintain what would generally be regarded as an acceptable standard of living, the fees cannot be regarded as affordable.”
Are legal services affordable in these terms? If one were to say:

“Where households on low to middle incomes can only afford the cost of civil justice by sacrificing the ordinary and reasonable expenditure required to maintain what would generally be regarded as an acceptable standard of living, access to civil justice cannot be regarded as affordable…”
Applying MIS to the means regulations

Income available before and after contribution to legal costs - single person with partial legal aid

“Disposable income” according to Means Regulations

MIS budget requirement (net of rent), £900

Disposable income to meet budget:

Before legal costs

After legal costs

Full legal aid only if disposable income 60% below MIS…

…at highest income at which legal aid available, contribution to legal costs lowers income from 14% to 36% below MIS…

…above this level, full legal costs paid from income that’s still too low
Applying MIS to the means regulations

Disposable income to meet budget:
Before legal costs

Full legal aid only if disposable income 45% below MIS…

Disposable income to meet budget:
After legal costs

…at highest income at which legal aid available, contribution to legal costs lowers income from 25% to 35% below MIS…

“Disposable income” according to Means Regulations

Income available before and after contribution to legal costs - couple 2 children with partial legal aid

MIS budget requirement (net of rent) £2,062

…above this level, full legal costs paid from income that’s still too low
Trend in low income over time

Couple with children aged 4 and 7, on out-of-work benefits

Income on benefits as % of budget:
- Family 2 children: 2008 68%, 2018 60%
- Lone parent: 68%, 60%
- Couple: 62%, 58%
Trend in low income over time

Lone parent working full time on minimum wage

- MIS budget
- Income working full time, after paying for childcare
- Income working part time, no paid childcare

Disposable income as % of budget:

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<th>2008</th>
<th>2018</th>
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<tbody>
<tr>
<td>Lone parent, 2 children</td>
<td></td>
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<tr>
<td>Working full time</td>
<td>97%</td>
<td>80%</td>
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<tr>
<td>Working part time, no paid childcare</td>
<td>87%</td>
<td>80%</td>
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## Trend in low income over time

Chance of being in household with income below MIS:

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<th>2008/09</th>
<th>2016/17</th>
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<tr>
<td>Whole population</td>
<td>26%</td>
<td>30%</td>
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<tr>
<td>Parent</td>
<td>32%</td>
<td>37%</td>
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<tr>
<td>Lone parent working full time</td>
<td>28%</td>
<td>45%</td>
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Conclusions

• Some people with too little to make ends meet are denied legal aid
• Others with much too little are eligible for partial legal aid – but unlikely to afford contributions

• Freezing of legal aid limits mirrors benefits freeze
• But a big increase in means tested levels would now be needed to make a difference
Further detail

Priced out of Justice? Means testing legal aid and making ends meet

Law Society, 2018

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