

Legal Aid for the 21st Century: Trends in the Developed Economies

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Legal Aid for the 21st Century: Trends in the Developed Economies

“In England, justice is open to all---like the Ritz Hotel.” **James Mathew** 1830-1908 quoted in R. E. Megarry *Miscellany-at-Law* (1955).

“Access to Justice is a social good: the ability to participate in public redress or resolution systems is a measure of the health of any system of government, particularly in a democracy.” The Law Society, *Access to Justice Review* 2010 para 1.2

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Access to justice and the public good

The History of Legal Aid

The Justification for Legal Aid

The Challenges of Legal Aid & Justice

The Complex planned mixed model

Conclusion

Legal Aid for the 21st Century: Trends in the Developed Economies

Part 1 Access to justice and the public good

Legal Aid: a brief history

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“ In general...the phrase ‘access to justice’ has a well-accepted, rather vague meaning and denotes something which is clearly – like the rule of law – a good thing and impossible to argue you are against. The strength and weakness of the phrase is in its nebulousness”

Roger Smith

“Improving access to justice requires a broad examination of how the system and its various institutions influence each other and work together to support or limit people’s capacity to address legal problems and resolve disputes. Reforming one or more of the individual institutions or programs might assist current clients or users but will not provide sustainable access to justice benefits or increase the number or profile of beneficiaries. A whole of system examination is needed.”

Australian Government (2009) A Strategic Framework for Access to Justice in the Federal Civil Justice System: A guide for future action.

Legal Aid for the 21st Century: Trends in the Developed Economies

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Part 2 Legal Aid: a brief history

The Justification for Legal Aid

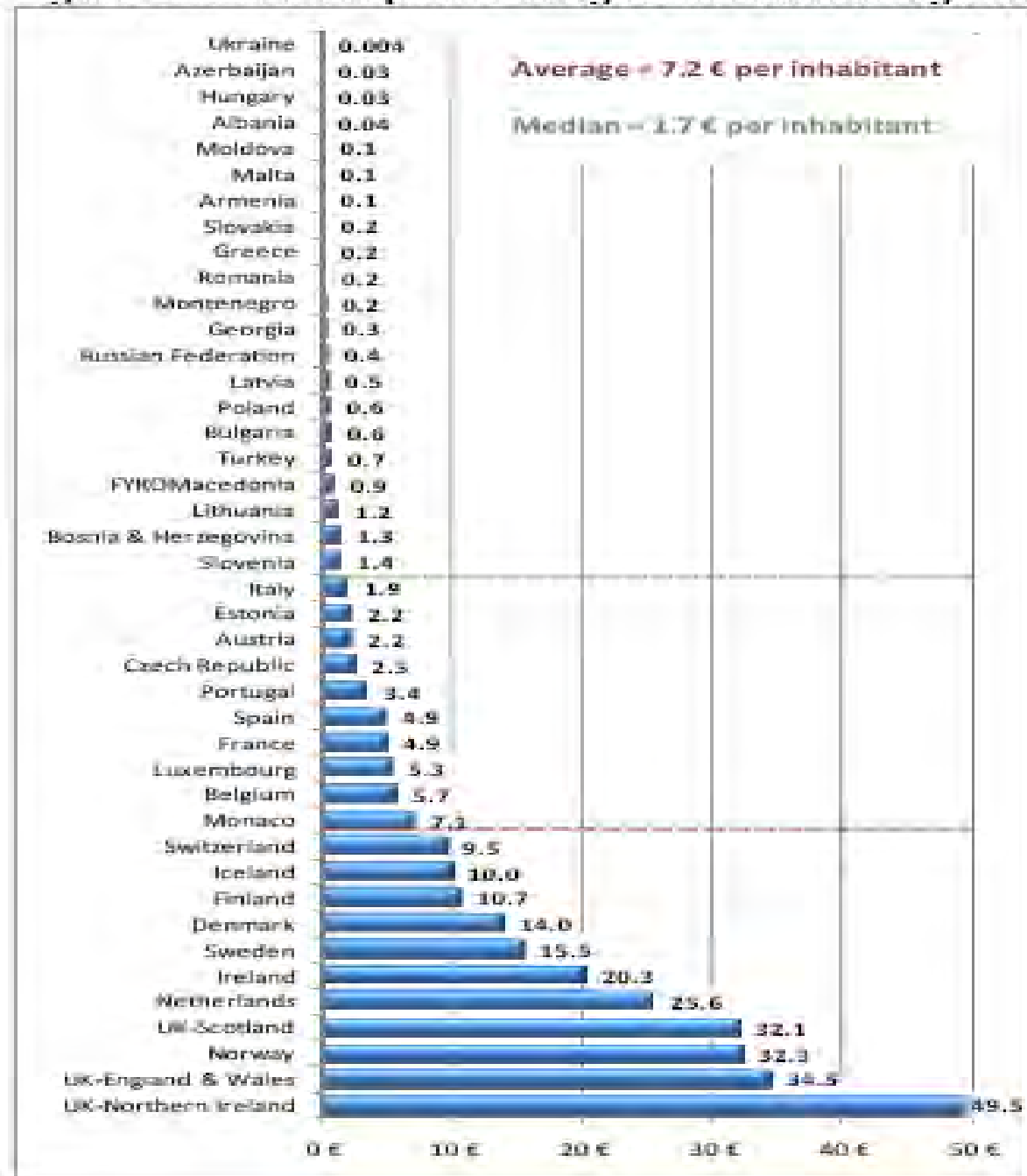
The Challenges of Legal Aid & Justice

“Those who don’t know history are
destined to repeat it.” Edmund Burke

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Figure 2.15 Annual public budget allocated to legal aid per inhabitant in 2008 (Q13)



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Legal Aid for the 21st Century: Trends in the Developed Economies

“not that they are a form of wealth, not that they are good for people, not that social change will result from distributing them, but rather that the just operation of the legal system demands a more equal distribution of the use of facilities collectively believed to be important to the realisation of legal entitlements and protections.”

John Griffiths

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Part 4 The Challenges of Legal Aid & Justice

a) Strategic planning

b) Affordability, rationing & prioritisation

c) Integrating supply & demand

Two jurisdictions divided by a shared tradition?

The complex planned mixed model

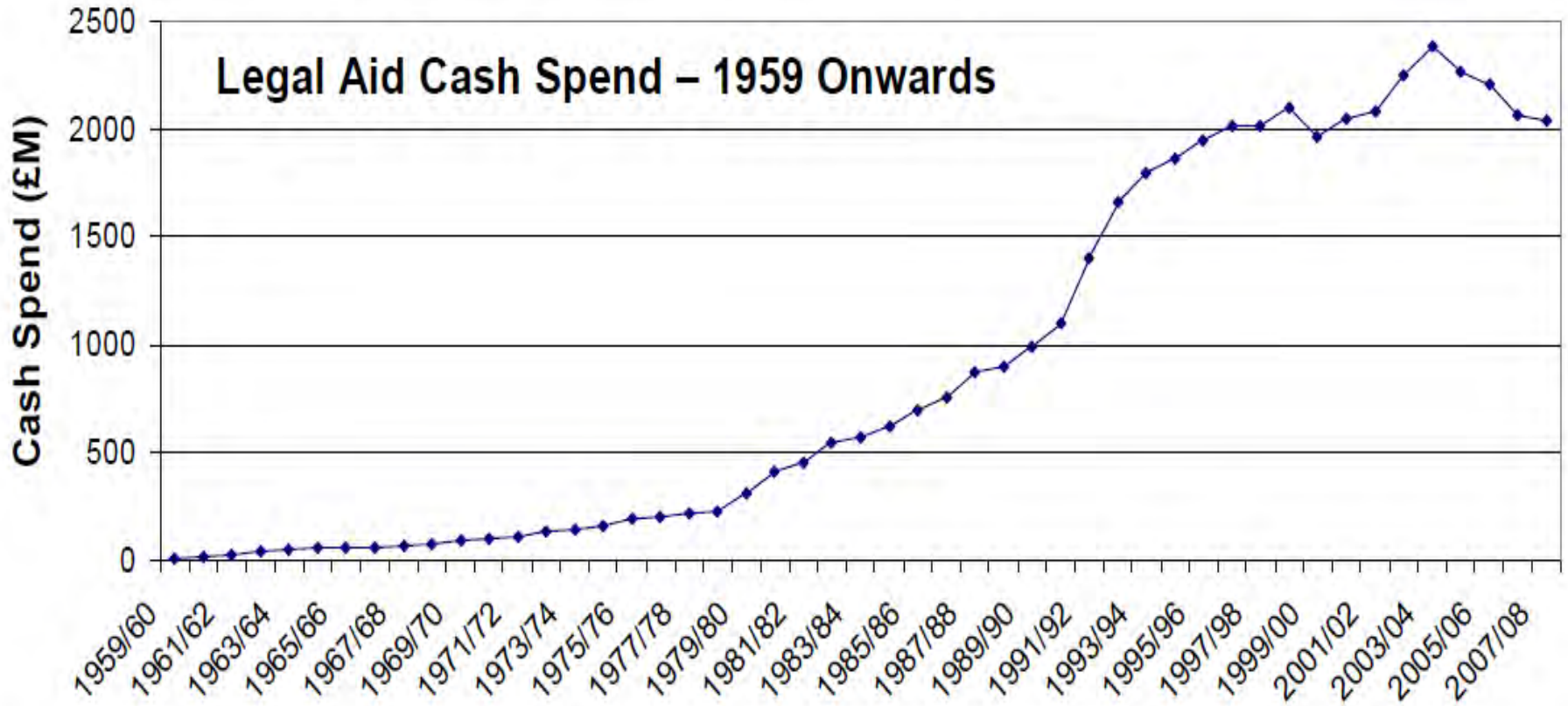
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“The rationing of legal aid is an attack on access to justice” Michael Zander, Hamlyn Lecture pp10-11.

“Justice shall not be rationed” Learned Hand

Legal Aid Expenditure in England and Wales (£M)



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Affordability, Rationing & Prioritisation

England & Wales

1. Hard cap (civil only)
2. Removing Money
Claims from scope
3. Funding Code

Scotland

1. *Demand led. No cap*
2. *No civil reduction but
A & A cut back*
3. *No FC but
“reasonableness”
redefined*

Affordability, Rationing & Prioritisation

“The only money that is left for civil legal aid is what is left over out of the budget after the requirements of criminal legal have been met.”

Lord Irvine

Affordability, Rationing & Prioritisation

4. Conditional fees,
uplift, ATE insurance
recoverable

+ Claims Cos

5. Eligibility drift

1998 52% 2005 41%

2008 29% 2010 36% of
population

4. *Speculative fees but
uplift, and ATE not
recoverable*

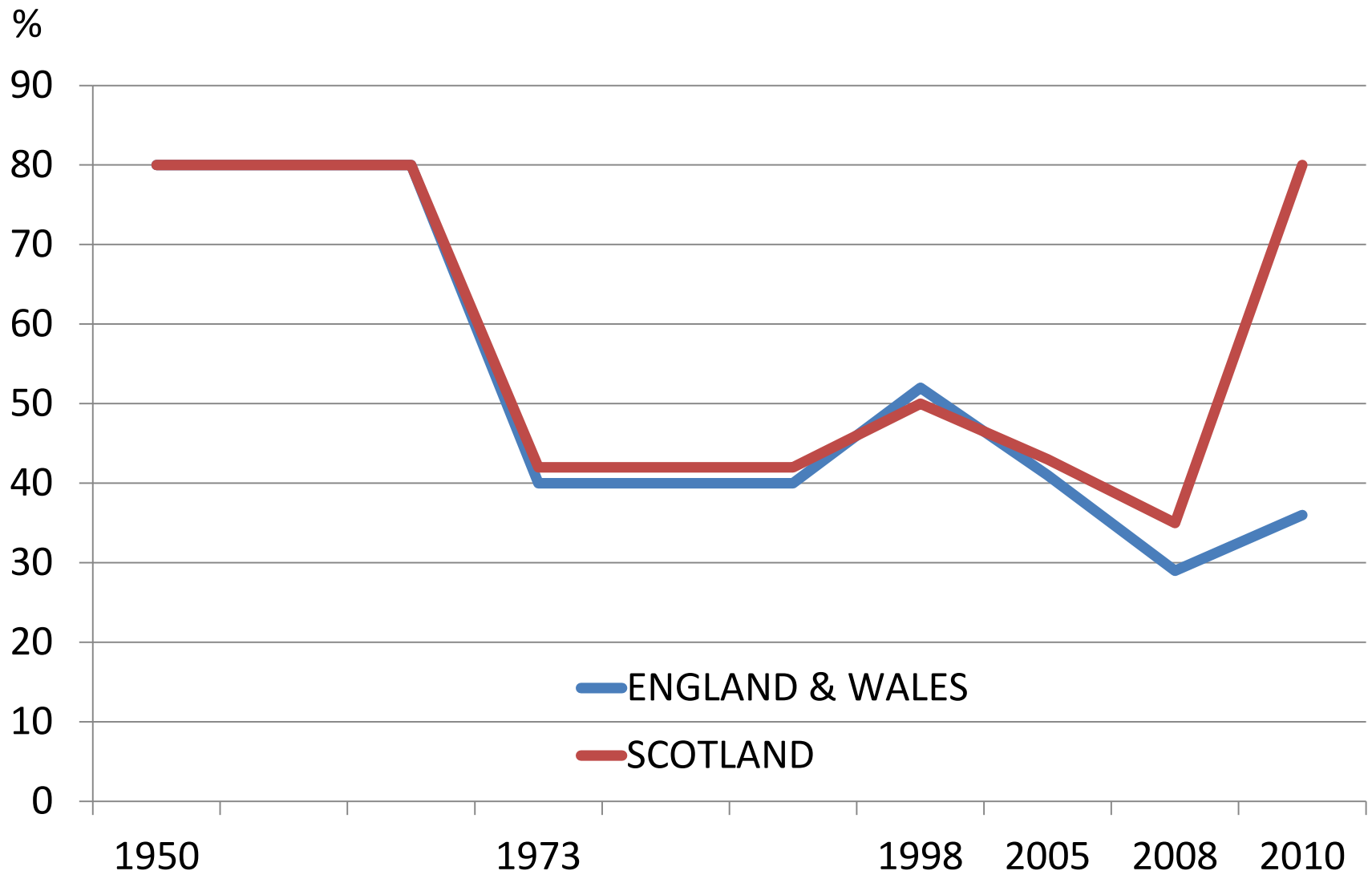
fewer Claims Cos

5. *Eligibility*

1998 55% 2005 50%

2009 raised to 80%

ELIGIBILITY FOR LEGAL AID 1950 -2010



Access to Justice: Whither Legal Aid ?

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- b) Affordability, rationing & prioritisation
- c) **Integrating supply & demand**

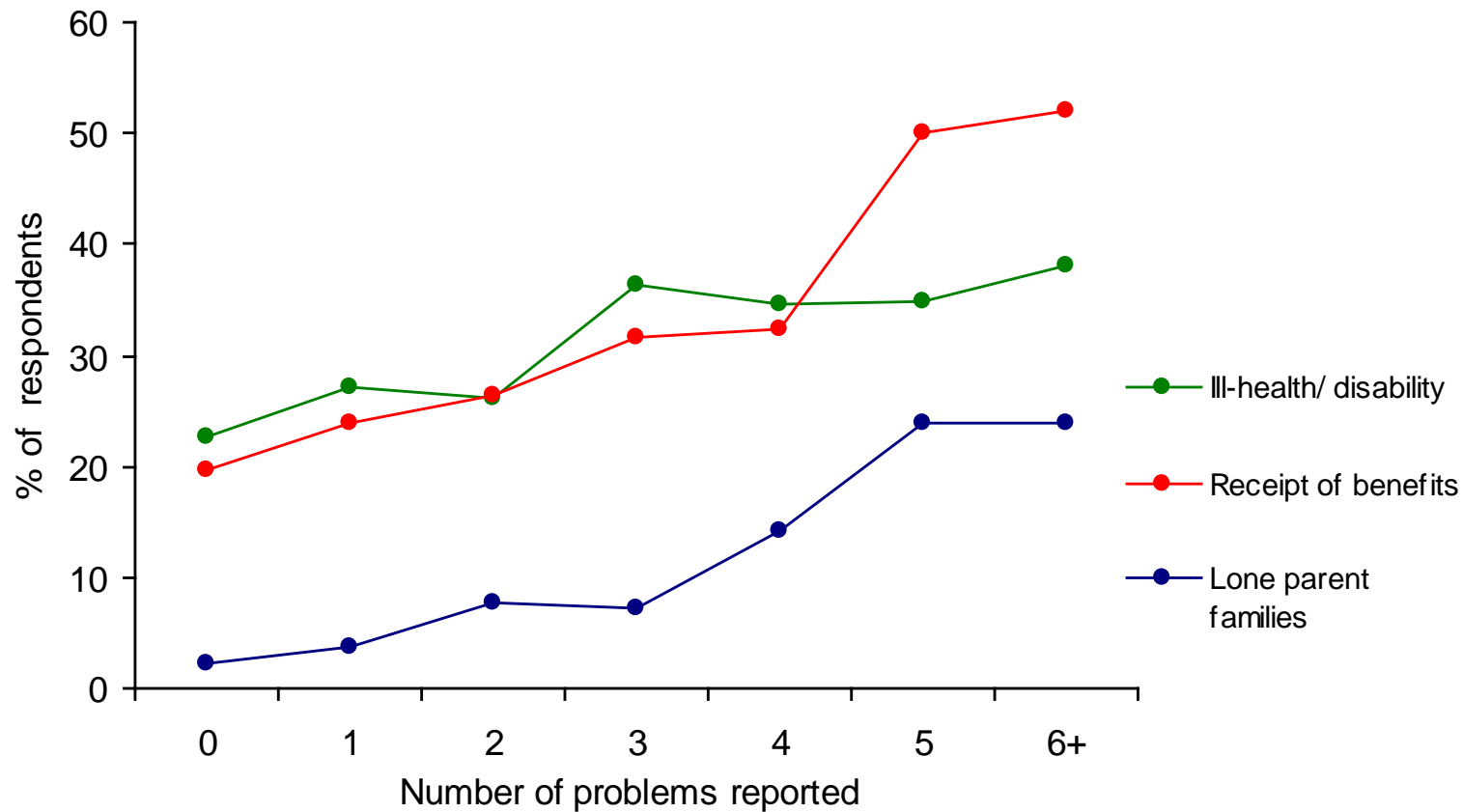
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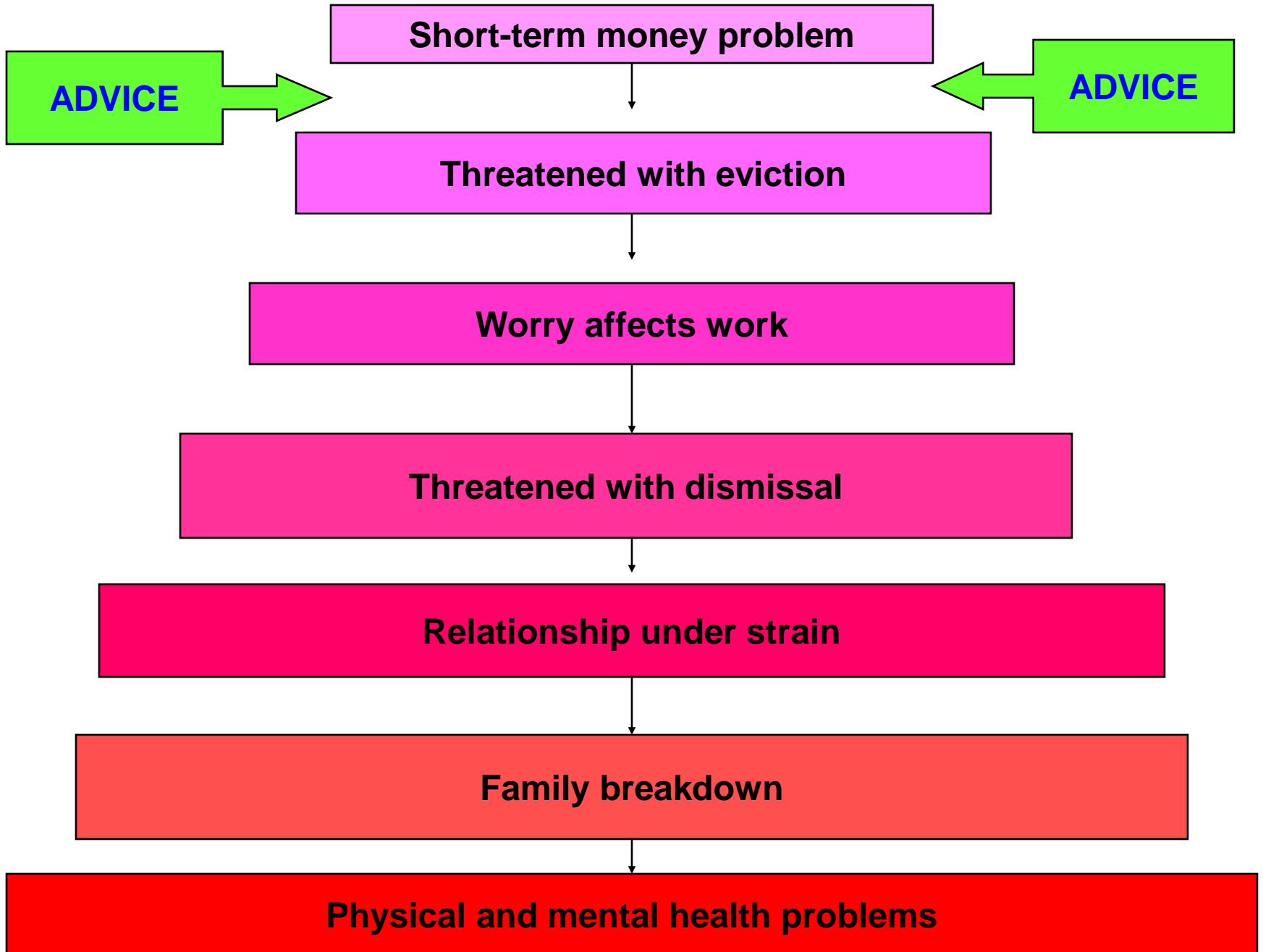
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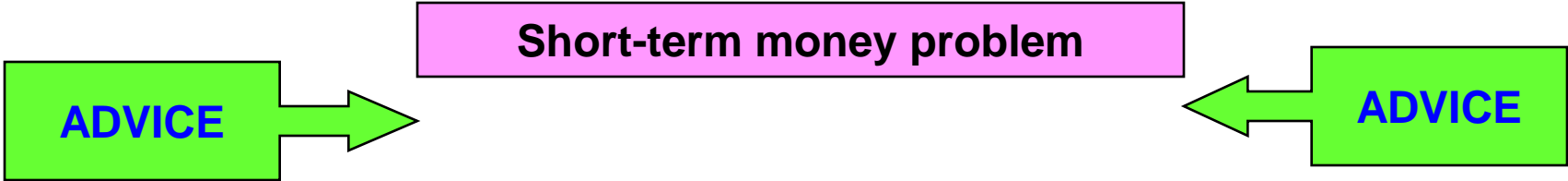
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England and Wales

Multiple Problems and Personal Circumstances







het Juridisch Loket

The Legal Services Counter
(LSC)

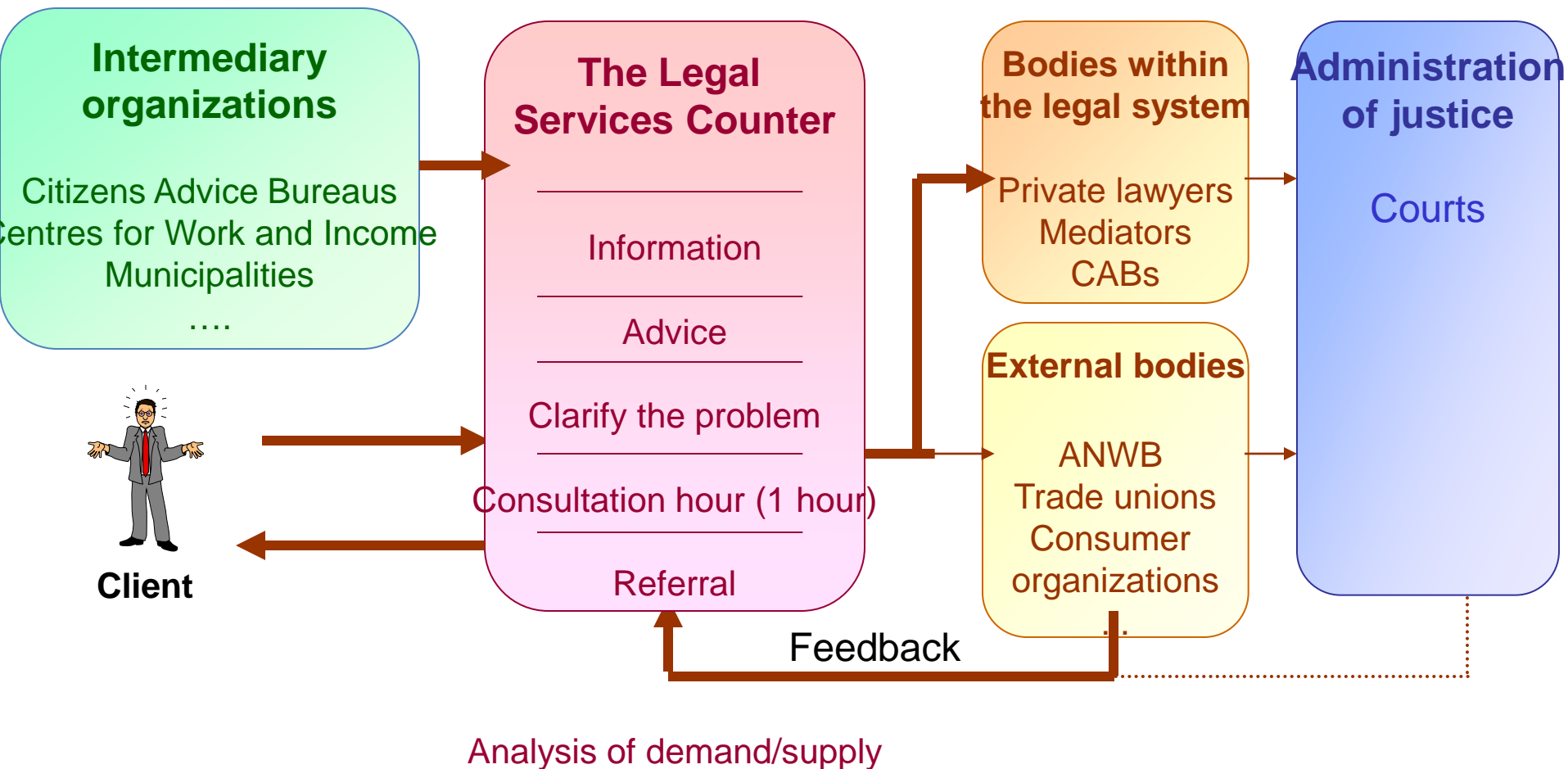
THE 30 LEGAL SERVICES COUNTERS NATIONWIDE

Het Juridisch Loket
vestigt zich in 30 steden:



Alkmaar	Dordrecht	Maastricht
Almelo	Eindhoven	Middelburg
Almere	Emmen	Nijmegen
Amersfoort	Enschede	Roermond
Amsterdam	Groningen	Rotterdam
Arnhem	Haarlem	Tilburg
Assen	Heerlen	Utrecht
Breda	Leeuwarden	Zaanstad
Den Bosch	Leiden	Zutphen
Den Haag	Lelystad	Zwolle

The Legal Services Counter in the legal chain









Integrating supply and demand

England & Wales

1. Concentrate Supply

30 : 70

70 : 30

Franchising

Exclusive Contracting

Scotland

No attempt to concentrate

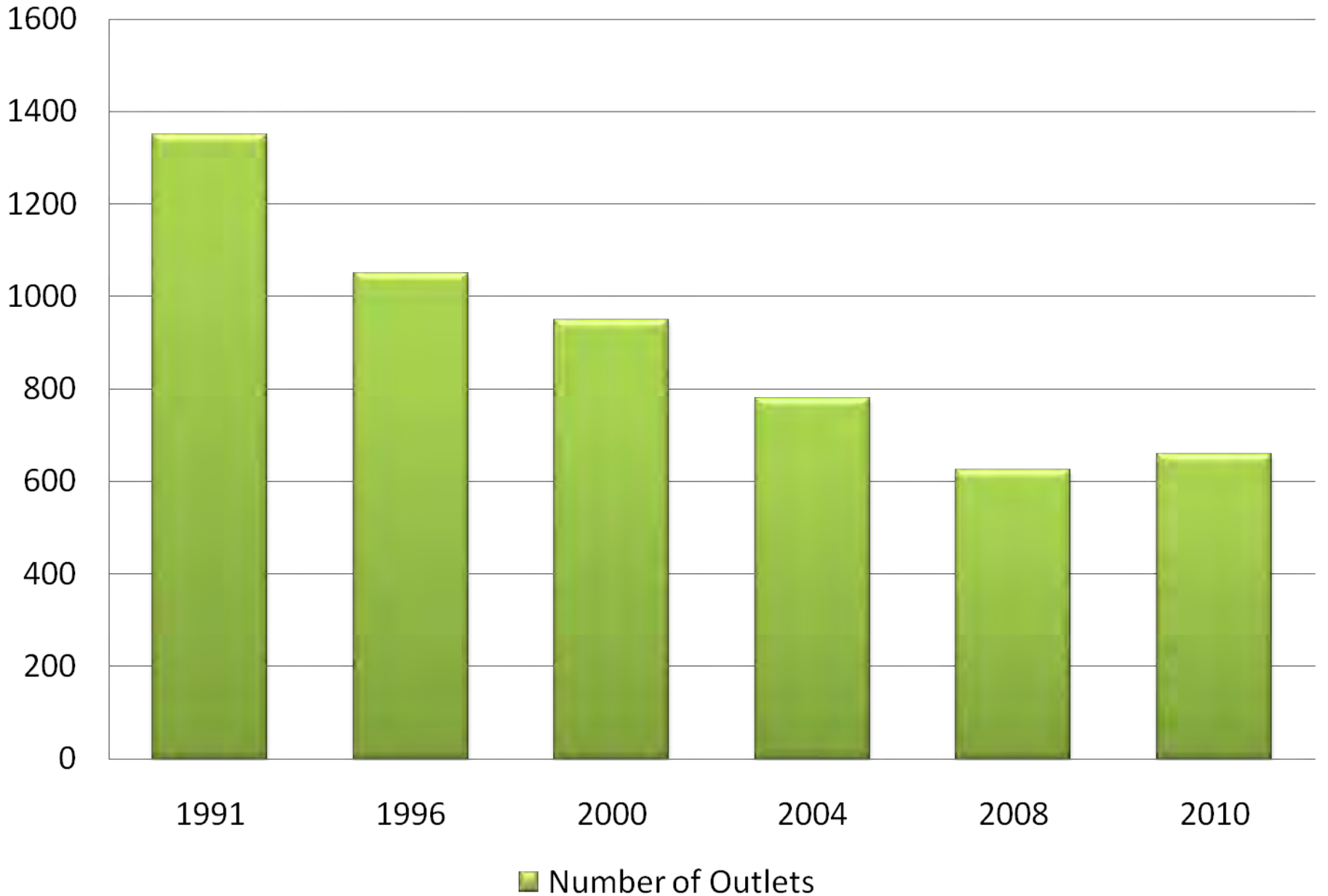
30 : 70

70 : 30

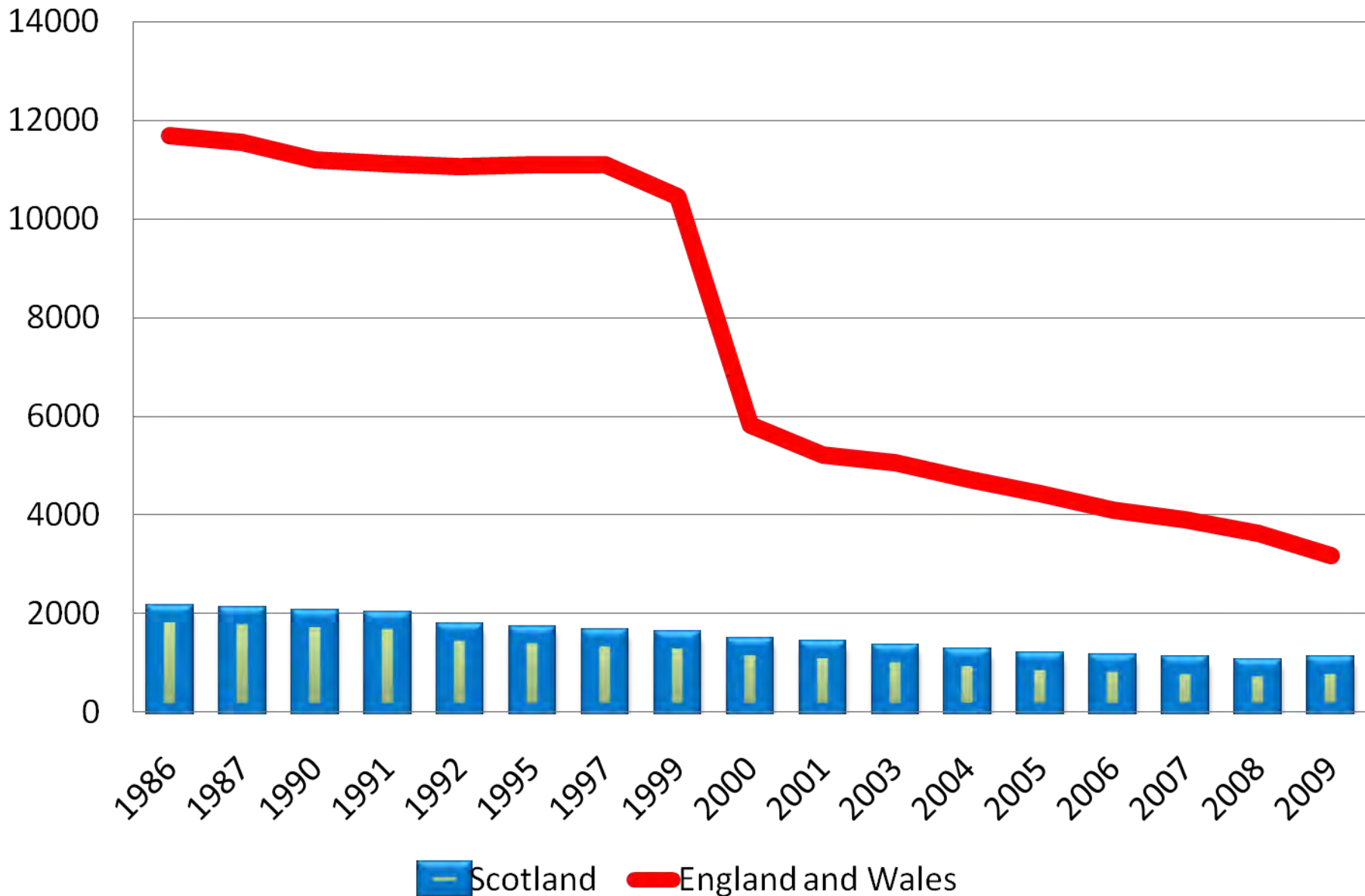
No Franchising

No Contracting

Number of Outlets Providing Civil Legal Aid in Scotland



Decline of Legal Aid Providers in Scotland and England and Wales



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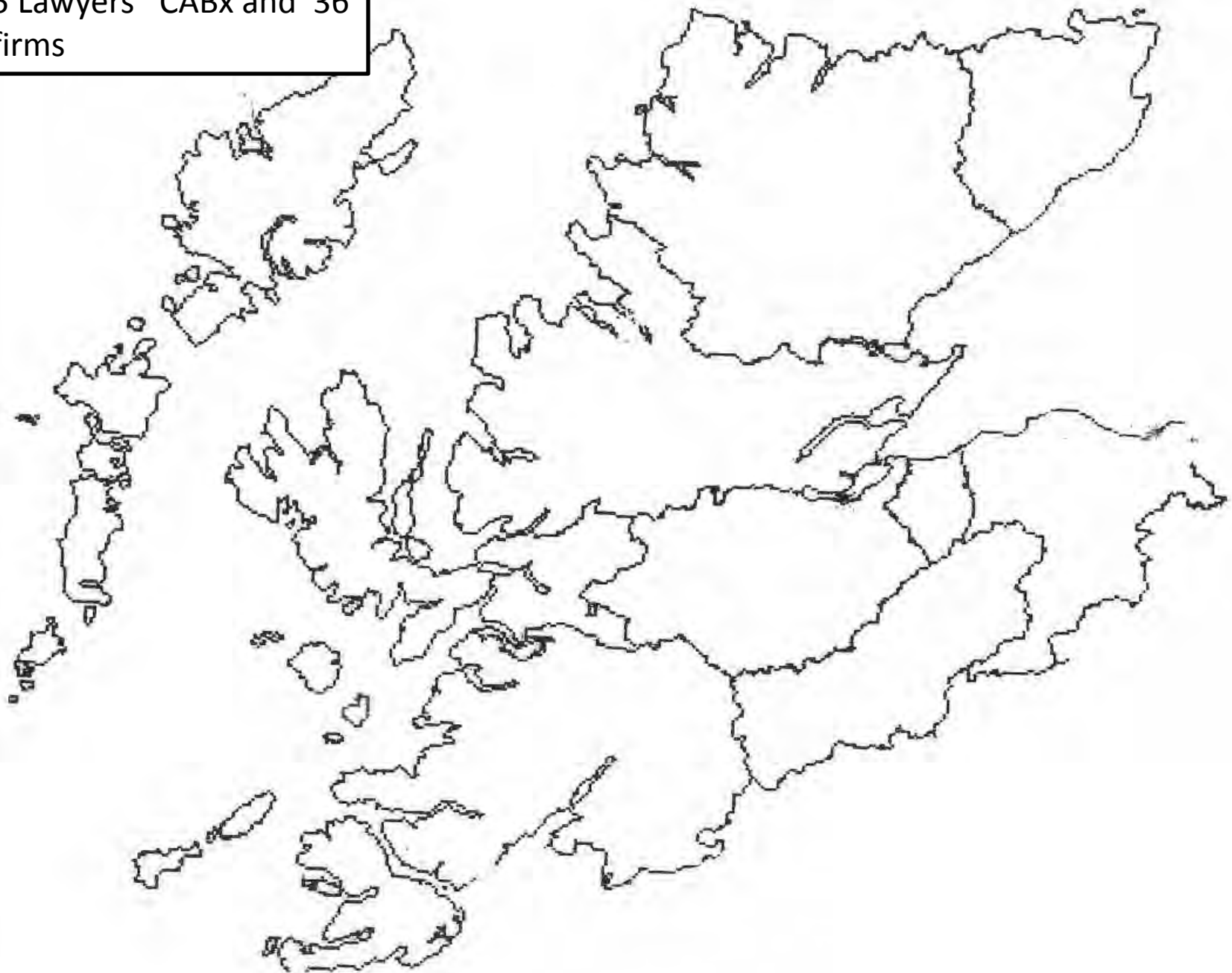
- a) Strategic planning**
- b) Affordability, rationing & prioritisation**
- c) Integrating supply & demand**

Part 5 The complex planned mixed model

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Highland Project

5 Lawyers CABx and 36
firms



The Highland Project

- One office covering wide rural and island area – 5 solicitors
- Protocol agreed with private bar – office refers to private sector wherever possible
- Private bar now referring cases to the office
High proportion of more difficult cases – the ones the private sector doesn't want
- This one office in 1st year did 10% of all cases across this huge area (served by 36 private firms).

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Affordability: New Money 1

- a) A statutory clawback;
- b) A flat contribution towards defence costs;
- c) Conditional fees and Contingency Fees;
- d) CLAF or Supplementary Legal Aid Fund;
- e) Legal Expenses Insurance

Legal the Developed Economies Aid for the 21st Century: Trends in

Affordability: New Money 2

- a) Pro Bono ;
- b) A levy on the profession;
- c) Ten per cent fee cut;
- d) Interest from Lawyer's Client Accounts;
- e) Polluter pays;
- f) Third party funders.

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Integrating supply and demand: New Providers

- a) Private profession;
- b) Publicly salaried lawyers;
- c) Paralegals employed by LAB or in Third Sector;
- d) Student law clinics;
- e) Alternative Business Structures.

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Integrating supply and demand: New Delivery forms

- a) Self representation and McKenzie Friends;
- b) Outsourcing and unbundling;
- c) Telephone advice lines;
- d) New technologies.

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Part 7 Conclusion