

Commission on Justice in Wales - Submission by Citizens Advice Swansea Neath Port Talbot

Introduction

We welcome the opportunity of providing information to the Commission on Justice and have already provided the report we submitted to the Bach Commission post- Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) including some case examples of problems individuals faced due to the lack of legal aid in social welfare law. This submission includes some case study evidence examples and some statistics in respect to the trends in demand for advice seen by CASNPT since the implementation of LASPO in 2013. In the attached Appendix we provide some brief responses to the Consultation Questions.

Background and Direct Organisational Impact of LASPO

Until the law changed in March 2013 we successfully delivered legal aid services amounting to over £250,000 per annum (a quarter of our total income), dating as far back as May 1998 in the case of Swansea delivery. The Royal Assent of LASPO in July 2012 started the process of radical review of our personnel, structure and service delivery. Our Trustee Board reviewed our operations and decided to end two additional activities as they impacted upon and didn't enhance our core delivery. During 2012 – 13 (the first year post-merger of the Neath Port Talbot and Swansea Citizens Advice organisations) four other fixed term funded projects came to end with the organisation not achieving replacement funding. In total a third of income was being lost and there was a consequent need to reduce the staffing complement by around 12 posts. Redundancy consultations led to a number of voluntary redundancies and just two 'compulsory'. A number of staff offered to reduce their working hours in order that the number of individuals remaining was higher than anticipated. Services were redesigned along a Systems Thinking methodology known as the Vanguard Method. The two fixed site premises leased by the organisation in Neath and Port Talbot were closed and services were delivered 'through other people's front doors'.

Welsh Government belatedly provided some replacement specialist advice funding during 2013 – 14 but this was considerably lower than the previous legal help levels. This ended in March 2014. A further opportunity arose through the allocation of WG funding in the form of the Frontline Advice Services grant. Our All Wales specialist benefits telephone service which commenced in October 2014 is being undertaken by a combination of previously legal help funded advisers and former local authority (NPT and CCS) Welfare Rights Team workers so the experience is extensive. A full time equivalent debt and benefits service is provided on a face to face basis in Neath Port Talbot.

Our service regularly comes across individuals where there is no longer any free legal help for complex problems as well as areas where the law lets people down. We provide some examples of these using anonymised case studies.

Areas where the regulations are not sufficiently robust to support individuals

1. Housing Disrepair: *A client who lived in private rented property and who had involved the local Environmental Health department (EHD) due to lack of safe electrical wiring and extreme dampness was told by the EHD that cases to enforce landlords' responsibility can often take up to 18 months to reach Court. (CA-130074612. Neath resident – landlord was licensed with Rent Smart Wales)*

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2. Unlicensed Landlords: We welcome the introduction of a licensing scheme for people living in and moving into private rented property, however, we are coming across an increasing number of people whose landlord is not registered or accredited through Rent Smart Wales. This is causing significant hardship for those individuals who rely on state support through Housing Benefit or Universal Credit. Neither local authority housing benefit departments or the Department of Work and Pensions will consider a client has liability for housing costs where the landlord is unlicensed despite there being in place a tenancy agreement to evidence that a contract has been entered into for the property and a rent liability. We are coming across individuals throughout our area in Swansea and specifically the Port Talbot part of Neath Port Talbot County Borough who are becoming destitute since they are unable to meet their rent payments and maintain a roof over their head without this support. We would particularly like to see a continued awareness campaign targeted at both landlords and at people looking for private sector accommodation about the role of Rent Smart Wales. We believe the cases that we see and the anecdotal evidence that often it is unlicensed landlords who will house people dependent on 'housing benefit' and who will house homeless people (one of our partners informed us of this). However, we believe this is simply a masking of an underlying homelessness problem – the individuals have no protection from eviction and no protection from retaliatory eviction in the event that they raise issues of disrepair.

Case Study 1 – Client's landlord attempts illegal eviction *Client is having support from Gofal and Housing Options as the 3 bedroomed private sector property in which she lives alone is owned by an unlicensed landlord. Client's benefits are not going to include any housing costs because the landlord is not accredited by Rent Smart Wales. CASNPT are assisting with income maximisation and the other partners are identifying options for moving accommodation. When client came to our service she was highly emotional throughout the interview because of the problems she is facing. (CA-134378900. Aberavon)*

Case Study 2 – Hardship due to unlicensed landlord *Client and his wife and son who has disabilities are living in private sector accommodation. Father has stopped work following a stroke and his wife also has health problems. They have been disadvantaged by the client's last payment from employment and additionally the housing costs paid with Universal Credit are lower than the rent they have to pay for their accommodation. It is not possible for the client to access a Discretionary Housing Payment due to the fact the tenancy is let by an unlicensed landlord. (CA-137131382. Aberavon)*

Areas in which there are gaps in free advice

- a) Civil Court Claims: Clients defending, starting or engaged in a civil court claim of some kind turn to CASNPT for support in calling to account faulty or defective services through legal action, to defend legal action taken by creditors and to navigate their way through the various civil procedures and rules. We do not have the capacity or expertise to offer this type of help save in some limited cases that fall within our debt Advice brief. Solicitors can be costly and people are put off pursuing claims or end up with judgements by default.
- b) Employment Tribunal Claims:

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The lack of legal help and other free help particularly for the growing number of people in the service sector which is generally non-unionised has left gaps in social welfare law. Capacity and expertise is very limited but the associated procedures to take a matter to Tribunal are much more complex than when the process was capable of being supported by legal help. The online claiming and largely digital processes are restrictive to individuals who do not have the IT competence or whose first language is not English. Many people were initially put off by claiming due to the fees as has been evidenced elsewhere in the drop in claims going to Tribunals and so the Court decision to rule unlawful the introduction of the fees is welcomed by our service since this helps to redress some of the imbalance in the employer / employee relationship. However, more could be done in terms of legal education to ensure individuals are more aware of their employment rights and responsibilities - this could start in schools as part of the Careers services support. We are aware of numbers of young people who do not pursue any type of redress because of lack of awareness and as some of the case studies below show many non-British nationals who are often discriminated against for a range of reasons by unscrupulous employers.

Zero hours contracts are often associated with individuals whose employers believe they have limited rights due to their 'foreign' origin. We have seen numerous employers of European nationals whereby the employees have been underpaid, dismissed for exercising a statutory right and who give little regard to Equality issues such as pregnancy rights.

Case Study 1 – *Greek National on zero hours client (and his wife) worked for Pizza company. Client states he was underpaid throughout the entire 8 months he worked for them and that his wife was also. When he raised the matter with the employer he was dismissed.* (CA-136894015. Swansea West)

Case Study 2 – *Client of Spanish origin queried why his pay had been deducted to the tune of 48 hours and was dismissed. Employer refused to pay up by asserting client only had a zero hours contract.* (CA-136499529. Swansea West)

Case Study 3 – Impact of Austerity in Public Services. *Client claims mental health conditions exacerbated by heavy workload and working conditions. Client worked for a statutory service and alleged unreasonable expectations on the level of salary and workload such that her mental health condition had exacerbated.* (CA-134923925. Swansea West)

Case Study 4 – *Client had a 'casual hours' contract. After she informed the employer she was pregnant she was moved from her cleaning and receptionist role based on shift work to a day only cleaning role without consultation. While the employee was able to negotiate reduced hours due to the expectations in this revised role, when she took a week's sick leave including hospitalisation for pregnancy related illness, she was dismissed.* (CA-134351963. Swansea West)

During a trawl of just three months cases from 1 February to 30 April 2018 we encountered two examples of where a client's employer had become insolvent but had

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subsequently opened a new business doing similar activities and had flouted the TUPE regulations.

- c) Discrimination matters: Discrimination is a field requiring considerable knowledge and expertise. While the University of Cardiff offers a valuable programme for advisers and the Equality and Human Rights Commission offer some 'second tier' support it is not always possible for individuals or organisations to build up sufficient experience through having routine cases to draw upon. Citizens Advice Newport have achieved a specialism in this area through Frontline Advice Services grant funding but can only offer a once a month face to face appointment facility in our area.
- d) Immigration: At CASNPT we are licensed to deliver Immigration Advice to level one (General). The majority of our work in this category relates to assisting refugees and their families with applying for Travel Documents. The activity is largely administrative but requires authorisation from an OISC accredited organisation. However, the time to undertake this exercise can be anything up to an hour for each applicant including working through an interpreter in the majority of cases. We have a partnership arrangement with a local organisation who can assist with some of the language skills to work with the individual and their family to gather the necessary supporting paperwork.

We have long argued that the process of Travel Document applications could be bolted on to someone's Refugee entitlement – part of the provision of the British Residence Permit. If this was the case there would be savings to the Home Office as well as charity organisations like ourselves and the individuals would not have to go through the lengthy wait to gain the document. It is our experience and that of our partner agency that after a lengthy asylum application individuals want to meet up on neutral territory with family members who have remained in their home country.

- e) Family Law: After LASPO was implemented in April 2013 our organisation began to see an increasing number of people with Family Law issues. We also became aware of firms merging and closing and fewer firms overall being able to provide free legal help both through the remaining legal aid scheme including in areas around domestic violence and in other areas. Our own pro-bono Family Law rota saw the number of firms participating reduce from 13 to around 6 currently.

Organisational Impacts

Client Profile Changes

Since LASPO replacement 'Specialist' social welfare funding received by our organisation has been specifically targeted at Welfare Benefits and Debt matters. This has therefore skewed our client profile and the number of issues individual clients bring to us. Due to the successive changes in Welfare Benefits we have also seen the number of unique clients reducing as they are bringing different types of issues. It is not unheard of to assist a client, for instance, with two Tribunal appeals at the same time or on occasions for Employment Support Allowance and Personal Independence Payment entitlement and reviews of entitlement.

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The following graphics for each year since 2014-15 show how our client demographics have therefore changed for our organisation's activities:

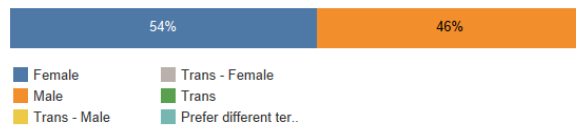
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2014 – 15

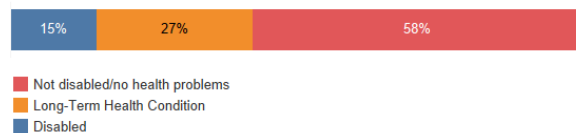
Issues (part 1) All Issues (part 2) All Issues (part 3) All Select count type Clients Select clients for this report Number of Clients 8,021

This reports shows the demographics for clients with selected AIC issues; we don't have profiles for all clients, percentages are based on clients with known profiles. Please note for this report, count by clients should be selected

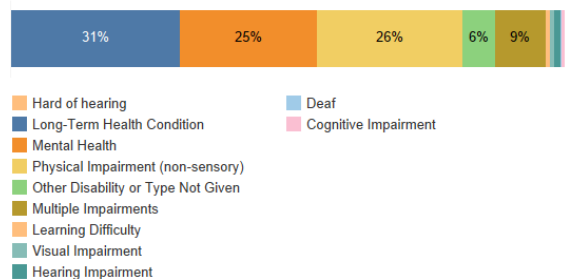
Gender



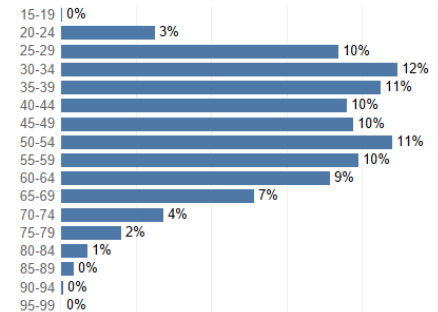
Disabled / Long term health condition



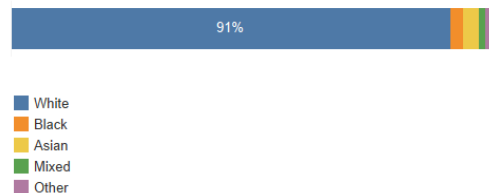
Type of disability (% of disabled clients)



Age



Ethnicity



Here only 42% of clients have described themselves as having a long term health condition or disability of whom 25% say it is a mental health condition. 14% of clients are over 65 (working age).

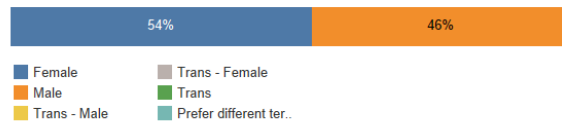
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2015 – 16

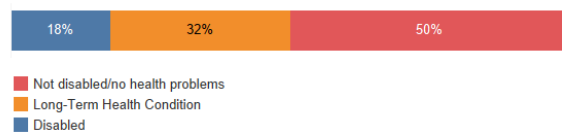
Issues (part 1) All Issues (part 2) All Issues (part 3) All Select count type Clients Select clients for this report Number of Clients 7,464

This reports shows the demographics for clients with selected AIC issues; we don't have profiles for all clients, percentages are based on clients with known profiles. Please note for this report, count by clients should be selected

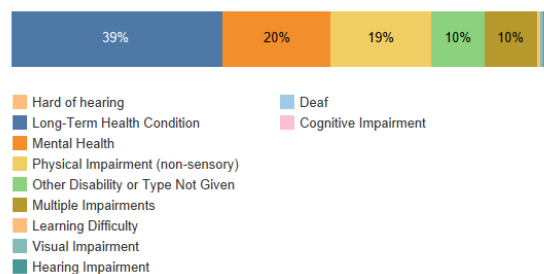
Gender



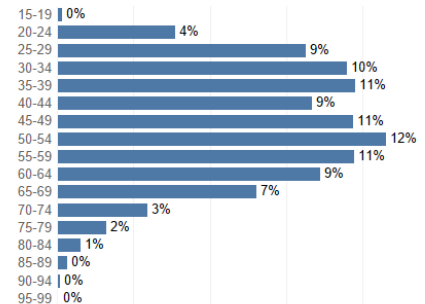
Disabled / Long term health condition



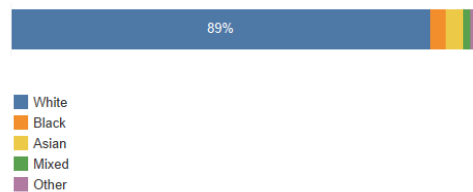
Type of disability (% of disabled clients)



Age



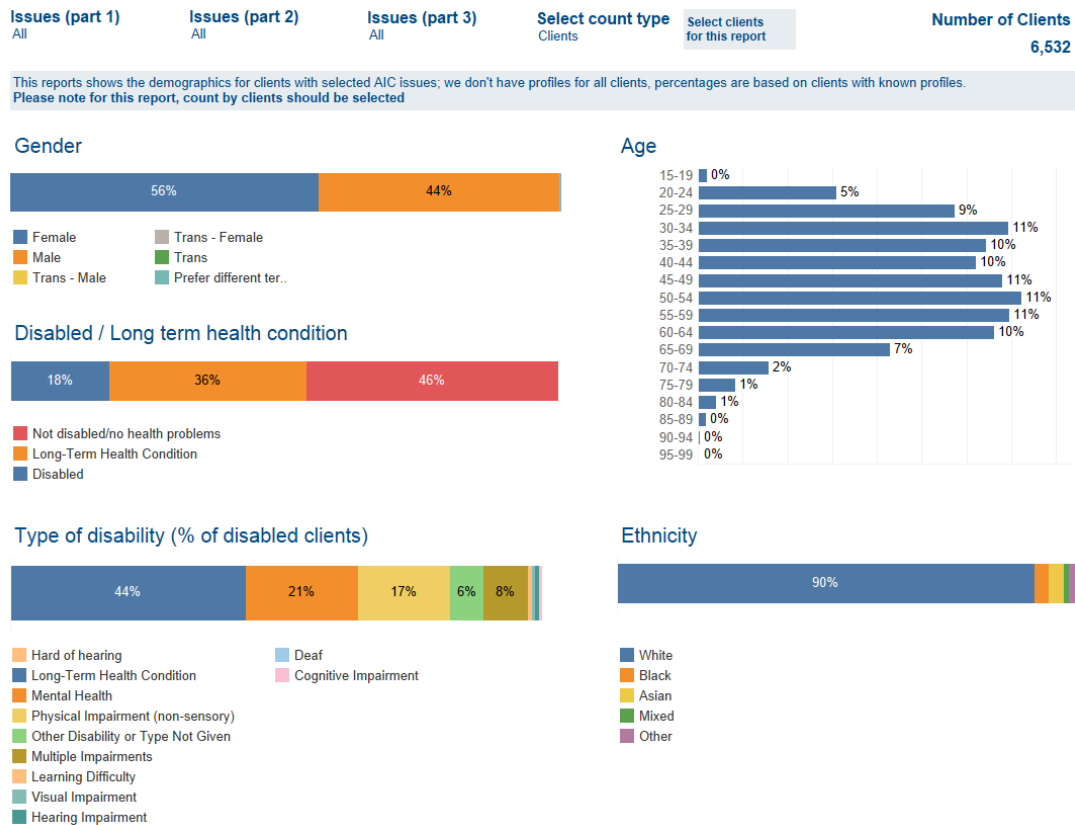
Ethnicity



Here 50% of clients described themselves as having a long term health condition or disability of whom 20% say it is a mental health condition and 13% of clients are over working age.

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2016 -17



During 2016 – 54% described themselves as having a long term health condition or disability of whom 21% say it is a mental health condition 11% of clients are over working age.

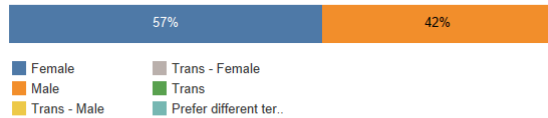
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2017 - 18

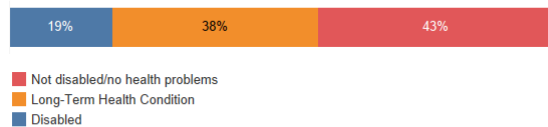
Issues (part 1) All Issues (part 2) All Issues (part 3) All Select count type Clients Select clients for this report Number of Clients 5,000

This reports shows the demographics for clients with selected AIC issues; we don't have profiles for all clients, percentages are based on clients with known profiles. Please note for this report, count by clients should be selected

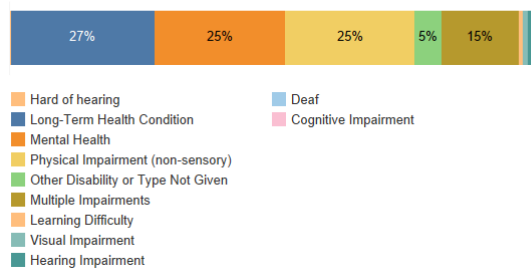
Gender



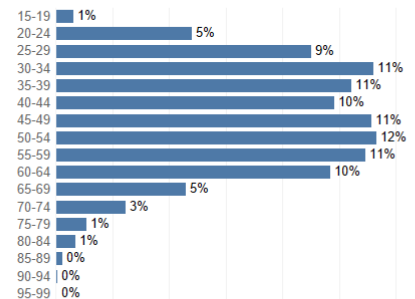
Disabled / Long term health condition



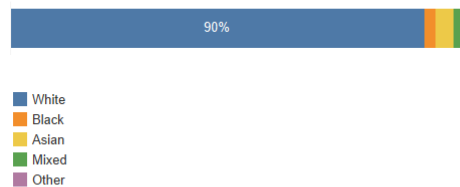
Type of disability (% of disabled clients)



Age



Ethnicity



In the last year 57% of clients described themselves as having a long-term health condition or disability of whom 25% say it is a mental health condition and only 10% of clients were over working age. We know that in the last year the local Age Cymru organisation in Swansea has significantly reduced its services and is a much slimmer organisation than it has been so we are not aware that there are other services for older people that are assisting individuals in these age ranges and therefore suggest there are gaps in these services and more so when statutory and other services are moving to a digital by default approach.

Lack of funding for Disbursements

- a) Medical Evidence costs. There is considerable inconsistency in respect to evidence that a medical practitioner will provide to support a benefit claim or appeal and within this there are varying levels of fee charged by the practitioner. Without a defined budget for disbursements the organisation has to rely on individual clients to negotiate with their own GP what will be provided and whether there is a cost. In some cases the client is willing to pay despite being in reduced financial circumstances awaiting the case outcome in other it is not possible for the client to pay. We have raised this issue with senior Assembly Members with a view to them looking at how individual GPs may support individuals who rely on state benefits for support could be required through their contracts with Welsh Government to provide a consistent no-fee level of support to individuals in this situation.
- b) Interpretation and Translation costs. The City and County of Swansea specifically has been an area of dispersal for asylum seekers and refugees more so as part of the Syrian resettlement programme. This has led to an increase in face to face support from individuals and families whose first language is not English. Currently the organisation is paying between £300 - £700 per month in telephone translation costs provided by specialist agencies. Under Legal Help this would have been a disbursement. During the 2017 – 18 CASNPT spent in excess of £3,900 on interpretation in respect to supporting clients directly. (However, it is worth noting that a separate fund exists within the Money Advice Service funding for clients who we assist with a debt problem and this therefore is exclusive of interpretation and translation in respect to debt matters).

First and Last Resort for Legal Advice

While CASNPT consider they have a role in supporting individuals to choose a suitably qualified legal adviser there are often clients who come to us prior to going to a solicitor to ask our opinion or returning from a solicitor to check whether what the solicitor has told them is correct. We think there is probably need to ensure the general public have greater ‘trust’ in solicitors to avoid this duplication of effort and we have been pleased to work with the Solicitors’ Regulation Authority (SRA) to improve this. Though on occasion we do come across clients whose solicitors have let them down and there is a gap in resources to be able to assist the client further to progress the matter short of using the SRA due to the technical nature of the substantive matter in the first place:

Case Study 1 – Solicitor not fully advising clients regarding rights to review or reassess contributions towards Criminal Legal Aid costs (CA-135057335. Swasnea East)

Client went to Prison following his criminal case consequently his financial circumstances changed but the solicitor refused to complete the relevant form for reviewing/reassessing this. Client now out of Prison has a Final Charging Order on his property as a consequence.

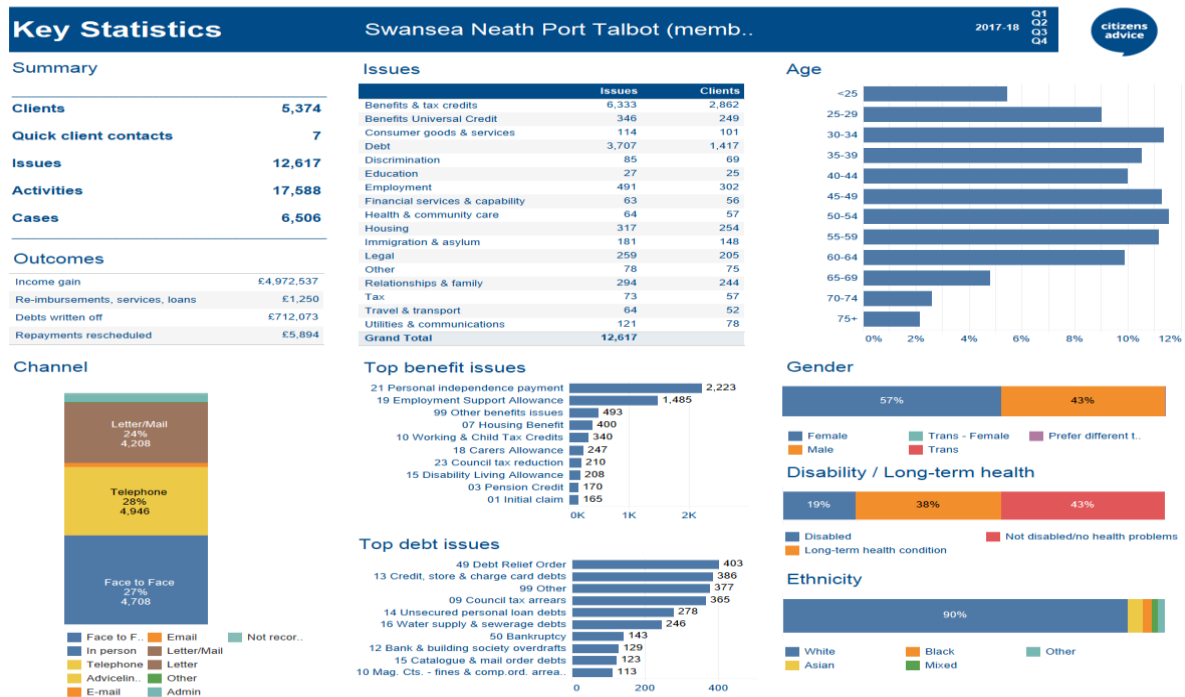
Case Study 2 – Client instructed a solicitor to assist with a small claim against a builder. Negotiations took place between the builder’s solicitor and their client with a stalemate being reached. The builder’s solicitor then put in a conflict of interest objection to the client’s solicitor stating that her solicitor had acted for his client in a previous unrelated conveyancing matter. The solicitor therefore left client at a crucial point without any support. (CA-130074612. Gower)

Changing Volume of Issues Compared with Volume of Clients

Looking at the trends for advice demand within our service over the last four years the data below indicates an increase in the number of issues on average per client of 2.35 in 2017 – 18 from 1.9 in 2014 – 15. Coupled with the changes in client demographics (first language and precipitated by welfare reform) and targeting of funding to welfare benefits and debt in the main the service is supporting fewer clients with more issues. The organisation possesses no knowledge of new sources of advice funding which has diverted some of its demand (at the level it delivers) but instead gains greater referrals from other organisations funded to support wellbeing or homelessness for its targeted services e.g. through supporting people and Work and Health programmes or because statutory services have ceased certain levels of support. The only conclusion we can come to (being cognisant of the recently published Advice Needs Analysis report by Welsh Government) is that many people are not getting access to advice or are ‘giving up’ on pursuing any resolution to their problems through lack of Advice capacity.

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2017-18

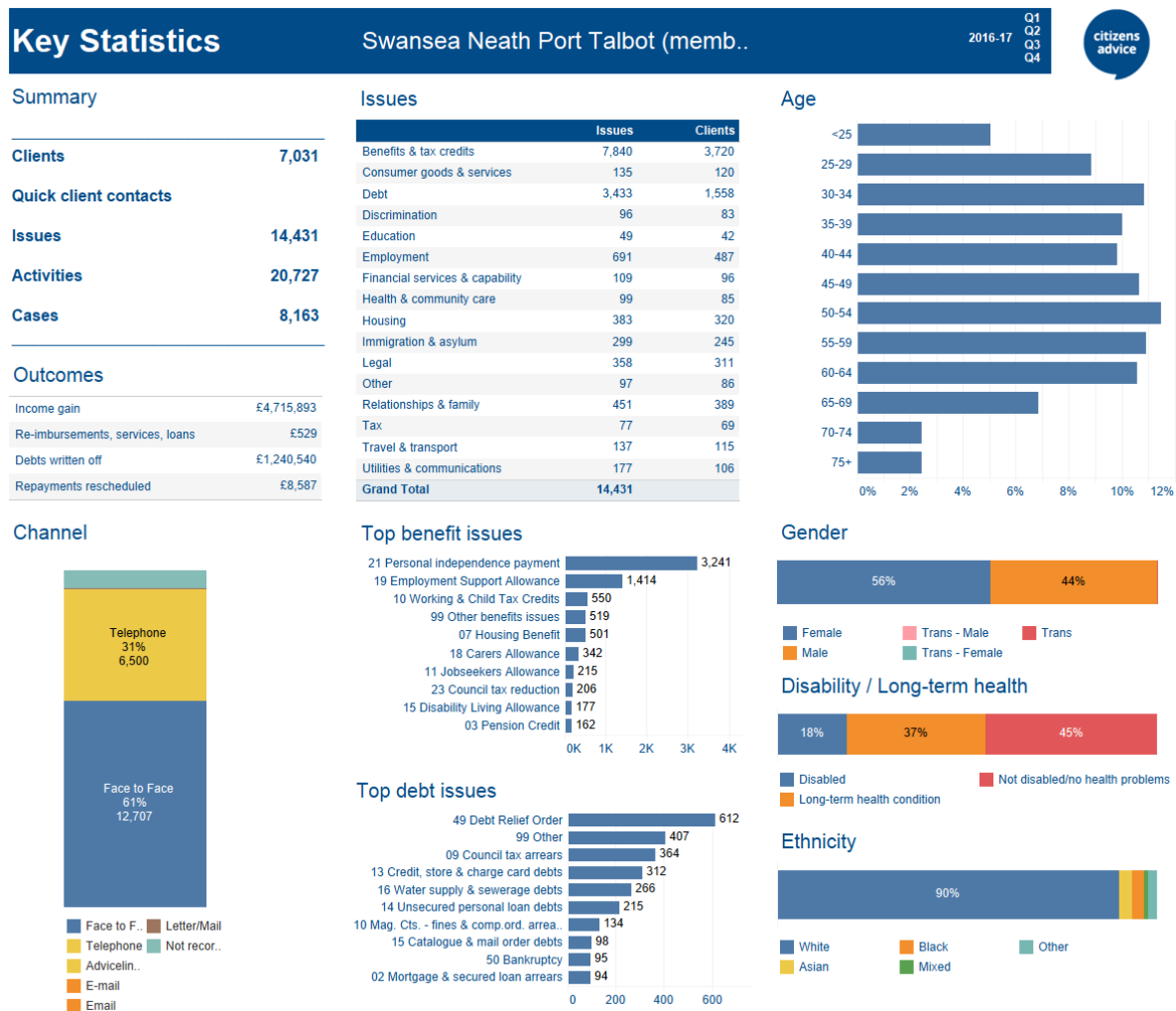


In 2017 – 18 clients on average brought 2.35 issues. But clients with Debt problems brought on average – 2.6 issues.

4.5 % of clients brought Relationship and Family issues. 5.6% of clients brought Employment issues. 2.8% of clients brought Immigration issues. 4.7% of clients brought Housing problems.

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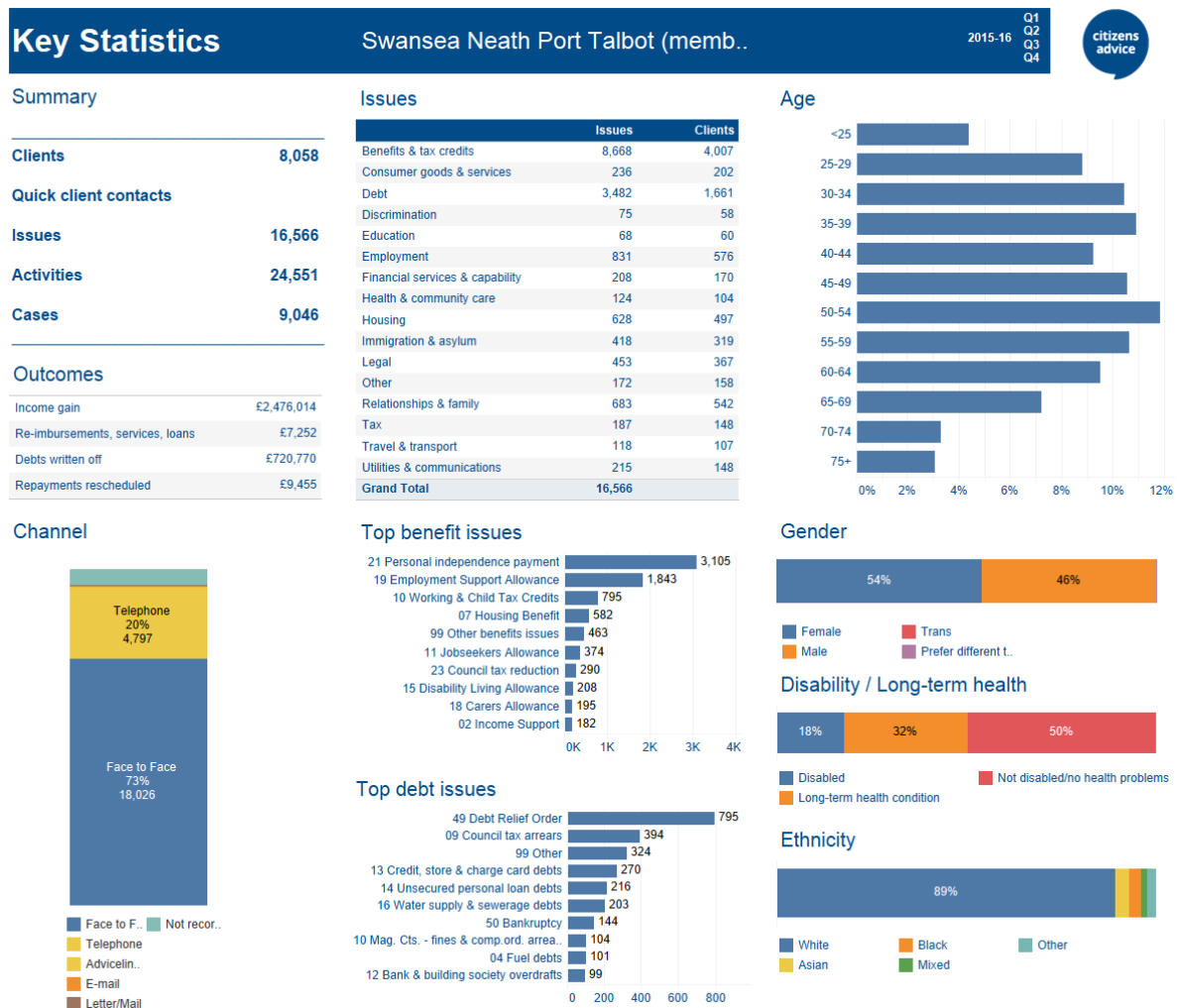
2016 – 17



During 2016 – 17 clients on average brought 2 issues. 5.5% of clients brought Relationship and Family issues. 6.9% of clients brought Employment issues. 3.5% of clients brought Immigration issues. 4.6% of clients brought Housing problems.

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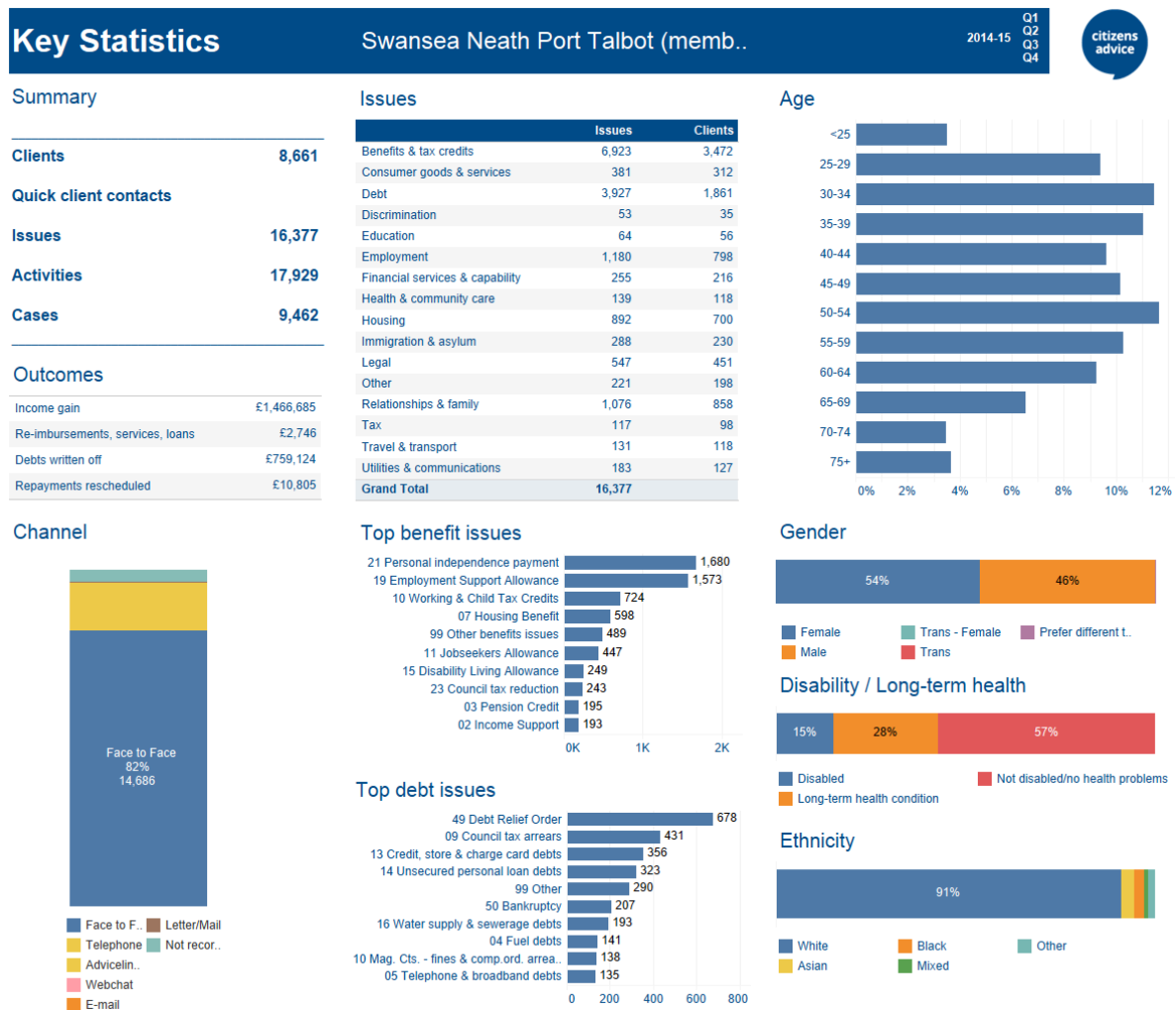
2015 – 2016



Clients brought on average 2 issues during 2015 - 16. 6.7% of clients brought Relationship and Family issues. 7.1% of clients brought Employment issues. 4% of clients brought Immigration issues. 6.2% of clients brought Housing problems.

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2014 – 2015



During 2014 – 15 clients brought on average 1.9 issues. 10% of clients brought Relationship and Family issues. 9.2% of clients brought Employment issues. 2.7% of clients brought Immigration issues. 8% of clients brought Housing problems.

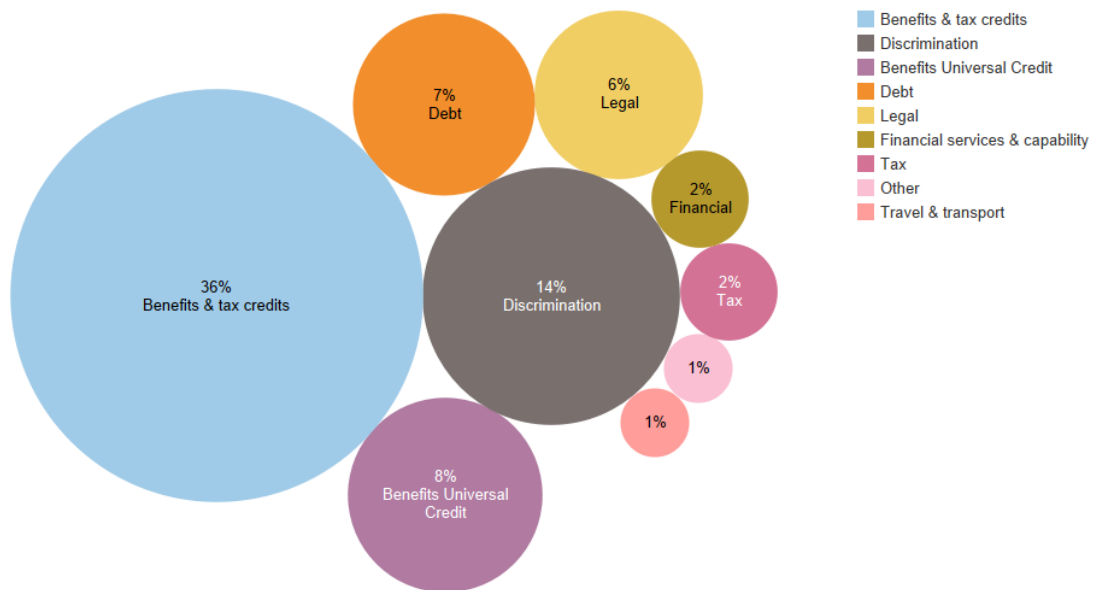
Problem ‘Clusters’

From 1 December 2017 Local Citizens Advice offices such as our own moved to a new CRM system. We are now able to analyse the ‘cluster’ of client problems and the following graphics show for the period 1 December 2017 to 31 March 2018 for specific main categories of enquiries the associated ‘other’ issues that the client brought:

Cluster report - Employment part 1 issues

citizens advice

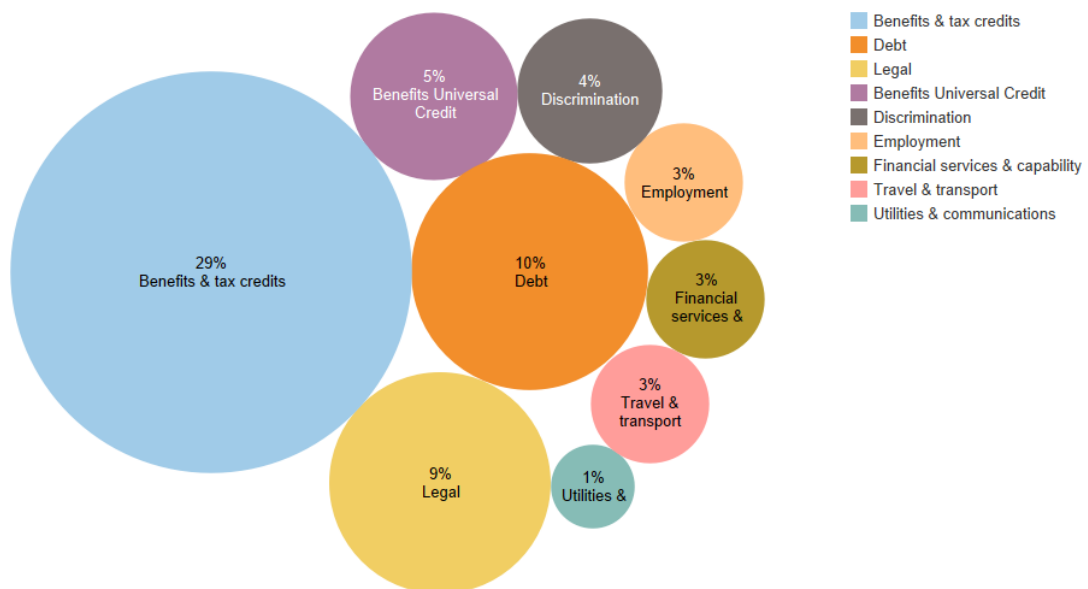
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The graphic shows that 77 % of clients with work related problems brought other advice issues during the period.

Cluster report - Housing part 1 issues

citizens
advice

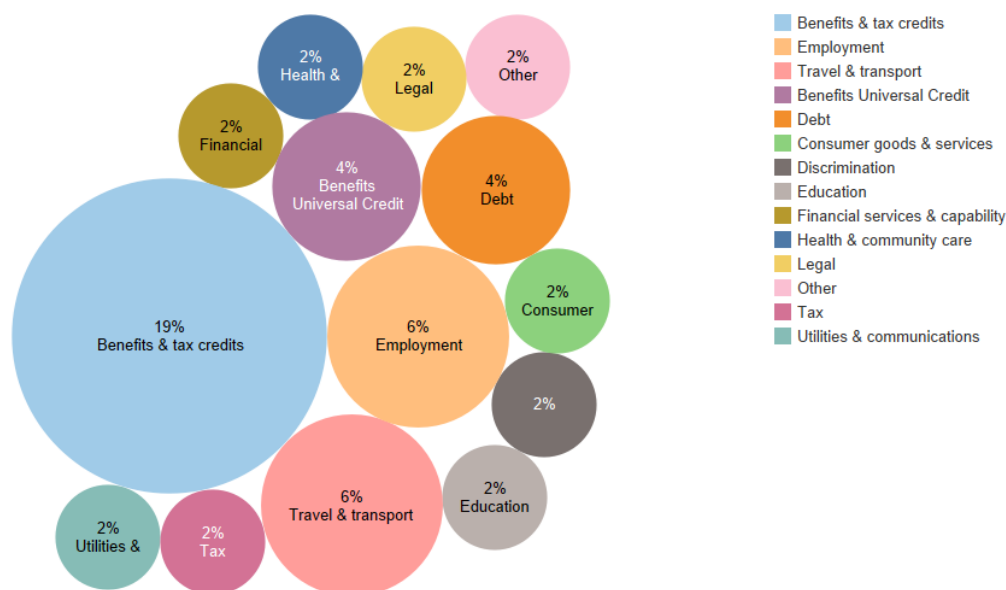


So while clients with Housing issues only represent 4.7% of clients during 2017 – 18 as a whole 2 in 3 (67%) brought other issues.

Similarly as shown below more than half the clients bringing immigration problems brought other issues. And 58% of clients with Relationship and Family problems brought additional issues.

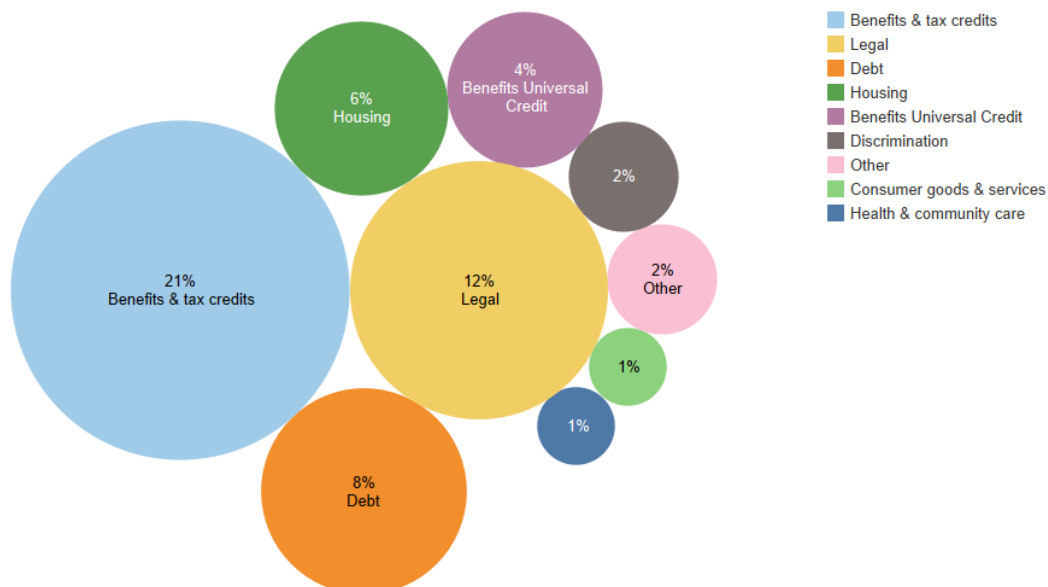
Cluster report - Immigration & asylum part 1 issues

citizens
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Cluster report - Relationships & family part 1 issues

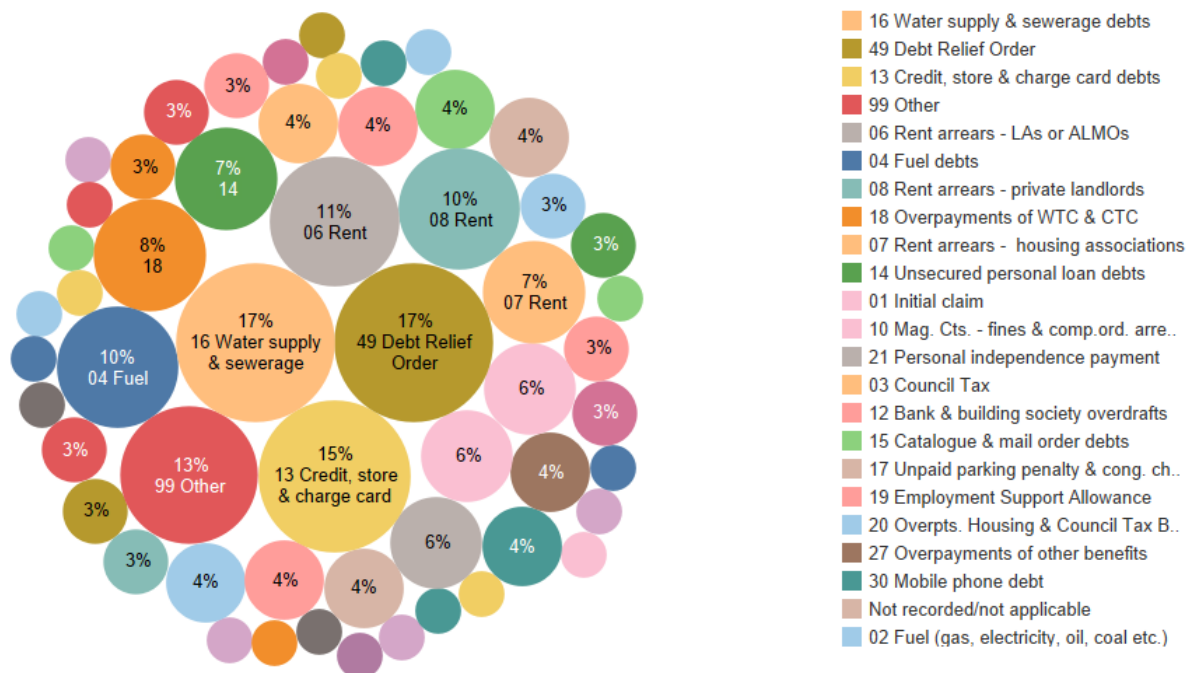
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advice



Being able to demonstrate the data in respect to clusters has been helpful to us to demonstrate to local authorities for example in respect to collection of council tax arrears that a policy involving more punitive treatment e.g. use of Enforcement Agents will impact on clients who also face rent arrears and utility arrears and therefore would be counterproductive if a client faced eviction. During 2017 – 18 as shown below 27% of people with Council Tax Arrears also had rent arrears problems (depicted in three separate boxes for the different tenures – local authority rent arrears 11%; Private sector rented 10%; and 7% housing association rent

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arrears). But, also that 17% of people were considering Debt Relief Orders which would in effect write off the council tax arrears.



This data which all LCA should be able to provide would be useful for impact assessments in terms of the justice system and add to Welsh Government's scrutiny of collection methods open to local authorities collecting debt but also in providing some information as to what services and social welfare advice would be ideally co-located or coordinated.

Conclusion

We have attempted to provide a flavour of the demand for advice in the City and County of Swansea and Neath Port Talbot County Borough Council 'region' as experienced by Citizens Advice Swansea Neath Port Talbot since the changes to Legal Aid in social welfare law since the Legal Aid, Sentencing Act became law in April 2013. We have demonstrated the impact on our organisation specifically but also as other significant changes have taken place in the local demography of clients and in conjunction with the various Welfare Reforms.

Appendix – Consultation Questions

1. What is working well in the justice system in Wales? What is not working well? Are there examples of innovation and good practice, both in and beyond Wales, which should be adopted and shared? On the specific point of legal aid, do you feel that the current position is working, if not why not, and what could be considered as an alternative?

Partnership working appears to be most effective in the field of Domestic Abuse, Homelessness and Welfare Reform in our opinion – in both Neath Port Talbot local authority area and in Swansea there is regular engagement in respect to strategy and operational matters so that individuals get the right support at the right time. In Neath Port Talbot particularly joint working with the local authority, other agencies and the Department of Work and Pensions has helped herald the introduction of Universal Credit full service.

2. Do you think that LASPO has had a particular effect in Wales?

The data above has provided an example of the impact in our area following LASPO and is particularly an organisational impact viewpoint. However, in our area there is no plethora of other free advice agencies as there is potentially in Cardiff for example. Prior to LASPO there were more organisations and solicitors involved in the provision of pro-bono and legal aided support.

3. What are the “quick-wins” in terms of cost and time in improving access to justice in Wales?

To overcome the geographical dispersal of populations throughout Wales perhaps there could be greater ‘tie up’ between mobile libraries and advice services both leading to access to services and to promoting services in the event that individuals in communities know who they can call on in times of need.

4. Do people care about access to justice? Is there work which supports the answer?

The numbers of people using the Consumer Helpline in Wales and then those who want to follow up the advice they have with attending a local advice service for help in preparing court documents as mentioned above does appear to indicate people are ready to make civil claims but that there are perhaps not the services to support this.

5. What are the economic, social, geographical, technological, constitutional and other barriers to improvement and how could these be overcome?

Data Protection has been a big problem in some local authority areas in working with organisations who could assist the same group of people – in particular the people that are ‘frequent flyers’ of a number of services. In other areas we are aware that this has not proved a barrier so we would suggest perhaps there are ‘cultural’ barriers to some individuals in some authorities wanting to work with ‘outside organisations’ and in particular those from the third sector who they may see as people who ‘criticise’ them.

Economically the changes in services and threshold for access to services through ‘austerity’ measures as local authorities and others aim to manage their budgets has had an impact.

When delivering services in local communities, or even centrally, transport is often raised by clients as a barrier to engagement so some geographical areas do miss out. This is particularly the case in some of our Valley and more rural areas as public transport is not regular and is reducing in regularity.

6. Does the justice system in Wales currently provide access to all who require its services, including advice? How would you improve access to justice in Wales?

An Advice Services Strategy in each local authority area ‘owned’ by the Public Service Board and based on needs data would improve access to justice given that the evidence we have set out above indicates demand areas and the lack of capacity within available services to meet changing demands for the changing demographics of our region.

7. Could local authority services in relation to justice and the local provision of legal advice be better organised and co-ordinated with policing, prosecution, courts, prisons and probation?

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In Swansea the local authority has a Welfare Rights Team which is a second tier organisation and in Neath Port Talbot they only operate in some areas even though they are publicly accessible. The local advice provision was much better coordinated under the old Community Legal Service Partnerships. We held and updated the local Referral Directory for instance for Swansea and coordinated the Advice Forum which we attempted to wide to include Neath Port Talbot but interest waned after a while.

We understand for instance that for Swansea Prison St Giles Trust is responsible for prisoners support but that the 'at the gate' service is subcontracted to another organisation (Pobl/Gwalia) and prisoners should be supported with any housing or debt or other related issues. We are aware that this support from fully qualified accredited debt advisers is non-existent. We would welcome (and have been having conversations with personnel at the prison) involvement in this area and partnering with prisons and probation.

We gain a lot of clients signposted by the Police Service. If we were able to gain better access to Police personnel to improve signposting and options for people who we cannot support we think there would be mileage in better coordination and organisation. This could be related to specific areas such as Domestic Violence or Hate Crime or more generalised 'liaison' meetings. Perhaps this is a role for the Police and Crime Commissioner's office rather than the local authority?

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May 2018