

## Chapter 10

# Legal Aid and Taxation of Costs

## Introduction

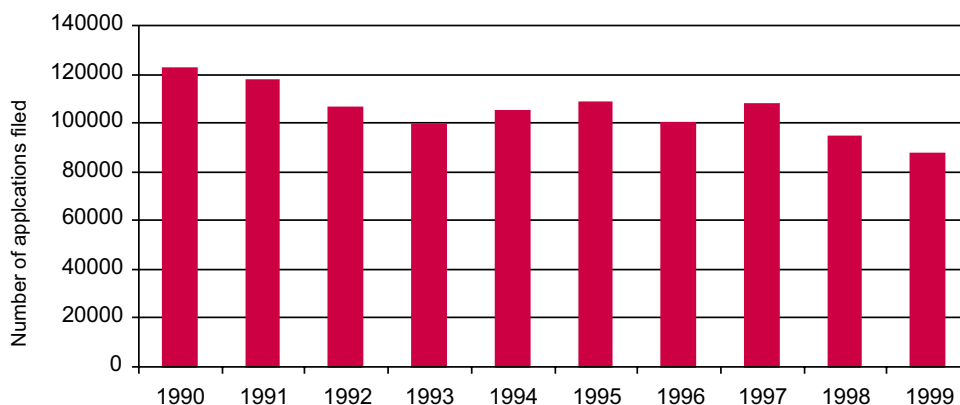
The Legal Aid scheme in England and Wales aims to provide legal advice, assistance and representation to those of small or moderate means. There are three main forms of legal aid-

- (i) **Legal Advice and Assistance (the Green Form scheme)** - allows a solicitor to give advice and assistance to an extendable financial limit and, through Assistance by Way of Representation (ABWOR), to provide representation principally for civil proceedings in the magistrates' courts
- (ii) **Civil Legal Aid** - provides for representation by a solicitor or barrister in most proceedings in the civil courts for those who have reasonable grounds for taking, defending, or being a party, to proceedings
- (iii) **Criminal Legal Aid** - the courts have power to grant criminal legal aid to those who require assistance in meeting the costs of their defence where the court considers it to be in the interests of justice that such assistance should be provided

In addition there are two duty solicitor schemes. The first makes advice and representation available for certain criminal matters in the magistrates' courts, including a first application for bail. The second, known as the 24 hour duty solicitor scheme, makes legal advice and assistance available to those in a police station who have been arrested or are helping with enquiries.

Legal aid will normally be granted to those who qualify on financial grounds ('the means test') and who can satisfy the appropriate authority that legal aid should be made available in the particular circumstances of the case ('the merit test'). A person who is eligible for legal aid may be called upon to make a contribution towards the cost of the case depending on their financial circumstances. Different merit tests are applied depending upon the type of legal aid which is being sought. There are no such tests for help given under the duty solicitor schemes.

**Criminal Legal Aid (Indictable Offences):**  
Applications filed for representation in the Crown Court, 1990 - 1999



## The Administration of Legal Aid

The Legal Aid Board is responsible to the Lord Chancellor for the administration of that part of the scheme relating to legal advice and assistance (including ABWOR) and civil legal aid, and for assessing and paying criminal legal aid bills for magistrates' court proceedings. It is also responsible for administering the two duty solicitors schemes.

## Taxation of Costs in Civil Proceedings

The taxation of costs is the process of examining and, if necessary, reducing the bill of costs of a solicitor. 'Costs' include not only the solicitor's own professional fees, but also disbursements incurred by him. The purpose of taxation is-

- (a) to determine how much costs a successful party in litigation is entitled to recover from his unsuccessful opponent
- (b) in legally aided cases to determine the amount which a solicitor or barrister is to be paid out of the legal aid fund
- (c) in certain circumstances, a solicitor's bill to his own client may be taxed

The office responsible for taxing costs depends on the type of case and whether it is legally aided. The Supreme Court Taxing Office deals mainly with costs relating to all proceedings in the Chancery and Queen's Bench Divisions of the High Court, including companies winding-up, bankruptcy, the Court of Protection and certain tribunals, taxation of a solicitor's bill to his own client, irrespective of the court or nature of the work carried out and most proceedings in the Court of Appeal. It also deals with appeals against the determination (taxation) of costs in the Crown Court. The Principal Registry of the Family Division, Privy Council, House of Lords, district registries and county courts are responsible for the taxation of costs of proceedings in their respective courts. The Legal Aid Board assesses magistrates' courts' costs and, in the High Court and county courts, bills up to £500. Solicitors can also opt for assessments by the Board rather than taxation, for bills between £500 and £1,000.

In 1999, the Supreme Court Taxing Office completed 10,207 bills in contrast to the 11,880 completed in 1998. Through the reduction in numbers, the total brought in figure was almost £28 million less than last year. Major movements in the volume of bills measured against 1998 are: Chancery (actions and matters) -26%, Chancery (Bankruptcy) -54%, Queen's Bench (Crown Office) -13%, Chancery and Queen's Bench (Solicitor's Acts) +512% and from the Principal Registry of the Family Division (solicitors) -12%.

**Table 10.1**  
**Taxation of costs: Bills taxed under headings shown, amounts brought in and allowed, and average amounts at which bills were allowed, 1999**

	Number of bills taxed	Brought in at (£)	Allowed at (£)	Average amount at which bills were allowed (£)
<b>Judicial Committee of the Privy Council:</b>				
Petitions for leave	3	28,028	20,441	6,813
Petitions of appeal	2	67,054	46,957	23,478
<b>House of Lords:</b>				
Petitions for leave	34	300,270	265,124	11,046
Petitions of appeal	35	2,037,482	1,650,678	53,247
<b>Supreme Court Taxing Office:</b>				
<b>Chancery Division:</b>				
In actions and matters	1,026	26,771,904	17,388,320	16,948
In companies winding-up	299	4,966,953	3,028,033	10,127
In bankruptcy proceedings	556	1,269,132	911,749	1,640
<b>Queen's Bench Division:</b>				
In actions and matters	2,579	77,225,730	41,956,911	16,269
In Crown Office proceedings	1,766	10,587,836	7,241,566	4,101
Election petitions	-	-	-	-
Sitting master's cases	12	10,419	10,102	842
Court of Protection	2,159	5,815,389	5,018,053	2,324
Litigants in person	47	-	-	-
Tribunals	114	593,880	484,731	4,252
<b>Chancery and Queen's Bench:</b>				
Under the Solicitors Acts	251	1,871,325	903,278	3,599
Court of Appeal	732	9,197,001	5,546,661	7,577
Appeals from the Crown Court on criminal costs	666	-	-	-
<b>Family Division:</b>				
<b>Principal Registry</b>				
<b>(Taxing Officer's bills):</b>				
Solicitors	5,233	-	-	-
Litigants in person	-	-	-	-
Lands Tribunal	27	1,945,258	282,839	14,886

## Criminal Legal Aid

The Lord Chancellor's Department is directly responsible, through the courts, for administering criminal legal aid in the Crown Court and higher courts. While the Legal Aid Board assesses and pays criminal legal aid bills in respect of proceedings before the magistrates' courts, the power to grant and refuse criminal legal aid orders lies with the magistrates' courts themselves in the first instance.

Criminal legal aid covers the cost of a solicitor to prepare a case and the cost of representation by a solicitor or barrister in court. It also covers advice on appeal against a conviction or sentence of a magistrates' court, the Crown Court or the Court of Appeal and, if appropriate, preparing the appeal itself. It also covers incidental matters such as bail applications. It is not available to those bringing private prosecutions.

A person requiring criminal legal aid normally applies to the court. Where the court decides that financial assistance is required in meeting the costs of a case and, subject to the court determining what, if any, contribution should be made towards the eventual costs, an order will be granted if the court decides that it is in the interests of justice that the person should be legally represented. Criminal legal aid will normally be granted, for example, when a conviction would lead to a prison sentence or to the loss of the defendant's job, where there are substantial questions of law to be argued, or where the defendant does not speak English well or is mentally ill. If a court refuses to make an order it will give reasons and in certain circumstances the applicant may apply to an Area Committee of the Legal Aid Board for a review of the refusal.

In 1999, 107,250 applications were made in magistrates' courts for representation in the Crown Court and of these virtually all were granted. Similarly, of the 12,456 applications to the Crown Court, nearly all were granted.

**Table 10.2**  
**Criminal legal aid: Applications<sup>1</sup> filed in the magistrates' courts for representation in the Crown Court, by type of proceeding, 1993-1999**

	1993	1994	1995	1996	1997	1998	1999
<b>Trial on indictment:</b>							
Applications	96,930	100,517	103,444	94,474	100,860	87,741	81,419
Granted	96,751	100,496	103,431	94,456	100,842	87,734	81,413
Refused	179	21	13	18	18	7	6
<b>For sentence or to be dealt with:</b>							
Applications	6,477	6,211	6,170	6,226	7,706	20,328	21,982
Granted	6,459	6,207	6,169	6,225	7,705	20,324	21,982
Refused	18	4	1	1	1	4	-
<b>Appeal against magistrates' court decision:</b>							
<b>Conviction and sentence:</b>							
Applications	2,569	2,311	2,165	1,756	1,415	1,382	1,360
Granted	2,445	2,294	2,160	1,750	1,414	1,382	1,360
Refused	124	17	5	6	1	-	-
<b>Sentence only:</b>							
Applications	2,522	2,814	2,725	2,484	2,333	2,529	2,489
Granted	2,457	2,808	2,725	2,481	2,333	2,528	2,489
Refused	65	6	-	3	-	1	-

<sup>1</sup> Applications granted include a small number of applications granted in the magistrates' courts and extended by the Crown Court. Applications refused include a small number of applications refused in the magistrates' court and later granted by the Crown Court

**Table 10.3**  
**Criminal legal aid: Applications<sup>1</sup> filed in the Crown Court, by type of proceeding, 1993-1999**

	1993	1994	1995	1996	1997	1998	1999
<b>Trial on indictment:</b>							
Applications	2,796	4,354	5,384	5,791	7,018	6,627	6,173
Granted	2,702	4,220	5,217	5,622	6,862	6,445	6,011
Refused	94	134	167	169	156	182	162
<b>For sentence or to be dealt with:</b>							
Application	1,045	1,277	1,392	1,546	1,531	2,626	2,915
Granted	1,041	1,270	1,387	1,529	1,519	2,604	2,882
Refused	4	7	5	17	12	22	33
<b>Appeal against magistrates' court decision:</b>							
<b>Conviction and sentence:</b>							
Applications	2,841	3,067	3,118	2,417	1,819	1,678	1,424
Granted	2,777	3,030	3,088	2,375	1,790	1,656	1,401
Refused	64	37	30	42	29	22	23
<b>Sentence only:</b>							
Applications	1,861	2,499	2,499	2,027	2,029	2,079	1,944
Granted	1,827	2,482	2,481	2,005	2,026	2,067	1,937
Refused	34	17	18	22	3	12	7

<sup>1</sup> Applications granted include a small number granted in the magistrates' court and extended by the Crown Court

The percentage of defendants and appellants applying for legal aid, the grant rate and thus the percentage represented under legal aid varies considerably according to the type of proceeding. A higher percentage of defendants are legally aided for proceedings in the Crown Court than in magistrates' courts. The majority of defendants appearing at the Crown Court for trial or for sentence are legally aided (95% and 85% respectively in 1999).

**Table 10.4**  
**Criminal legal aid: Defendants and appellants in the Crown Court, by type of proceeding and representation, 1999**

	Represented under legal aid	Privately/ not represented	Total
Trial on indictment	85,773	4,960	90,733
For sentence or to be dealt with	24,683	4,334	29,017
<b>Appeals against magistrates' courts decisions:</b>			
Conviction and sentence	2,742	3,571	6,313
Sentence only	4,400	3,656	8,056

99% of successful applications to the Crown Court covered payment to a solicitor and one or two barristers.

**Table 10.5**  
**Criminal legal aid: Successful legal aid applications to the Crown Court, by type of proceeding and extent of legal aid granted, 1999**

	Solicitor only	Solicitor and counsel	Solicitor and two counsel	Counsel only	Total applications granted
Trial on indictment	7	4,233	1,751	20	6,011
For sentence or to be dealt with	9	2,796	6	71	2,882
Appeals against magistrates' courts decisions:					
Conviction and sentence	2	1,395	-	4	1,401
Sentences only	5	1,924	1	7	1,937

In 1999 there were 38,890 applications to the Legal Aid Board Area Committees under the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989. 1,735 were for review of a refusal by the magistrates' court to grant legal aid, of which 696 (40%) were successful. 36,878 were by solicitors seeking prior authority to incur certain items of expenditure in the course of the proper conduct of the criminal proceedings. Of these, 31,254 (85%) were successful. Overall, 82% of applications to Legal Aid Board Area Committees were granted.

**Table 10.6**  
**Criminal legal aid: Applications made to legal aid board area committees under the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989, 1999**

	For Counsel in magistrates' courts	To amend legal aid order	To revoke legal aid order	For prior authority for expenditure	For review of refusal of legal aid by magistrates' courts
Granted	42	20	-	31,254	696
Refused	183	32	-	5,624	1,039
<b>Total</b>	<b>225</b>	<b>52</b>	<b>-</b>	<b>36,878</b>	<b>1,735</b>

## Legal Aid Expenditure

The Lord Chancellor's Department provides a grant to the Legal Aid Fund to cover the net cost of the services it provides in respect of legal aid. Expenditure on criminal legal aid in the Crown Court and above is met directly by the Lord Chancellor's Department.

Table 10.7 shows legal aid receipts and payments during 1999 by category of aid granted. By subtracting the amount received from that paid it is possible to determine the net payment for each type of legal aid.

In 1999 total net expenditure on legal aid was £1,568 million. This compares with £1,604 million in 1998, a decrease of 2.2%.

**Table 10.7**

**Legal aid expenditure: Receipts and payments<sup>1</sup>, 1999**

	Receipts (£'000)	Payments (£'000)
Legal advice and assistance (including ABWOR)	251	220,049
Civil legal aid <sup>2</sup>	465,887	1,074,023
Criminal legal aid in magistrates' courts	4,484	248,428
Criminal legal aid in higher courts	2,733	373,296
Duty solicitor scheme:		
Magistrates' courts	..	18,714
Police stations	..	106,965
<b>Total</b>	<b>473,355</b>	<b>2,041,476</b>

<sup>1</sup> All figures have been rounded to the nearest £'000 and may not add up due to this

<sup>2</sup> Civil legal aid receipts and payments are both net of contributions and damages refunded to assisted persons but include pre-certificate costs recovered and paid to solicitors

## Other Legal Aid Statistics

Detailed statistics on the Legal Aid Board's administration of legal aid are included in the Board's annual report for 1999/2000.