

Chapter 10

Publicly Funded Legal Services and Taxation of Costs

Introduction

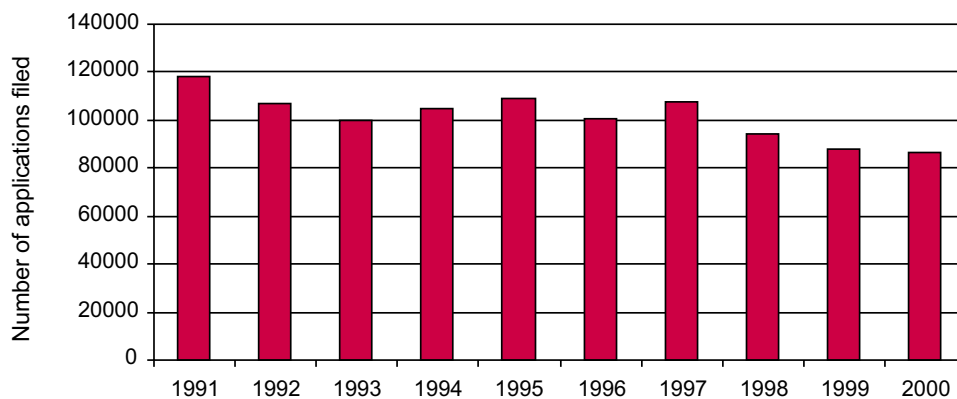
Civil Funding

Access to publicly funded civil and family legal services in England and Wales is provided through the Community Legal Service, administered by the Legal Services Commission (which replaced the Legal Aid Board in April 2000). The different levels of service provided are-

- (i) **Legal Help** - this provides initial advice and assistance with legal problems and covers work previously carried out under the 'green form' scheme
- (ii) **Help at Court** - this allows for somebody (a solicitor or adviser) to speak on behalf of a person at certain court hearings, without formally acting for that person in the whole proceedings
- (iii) **Approved Family Help** - this provides help in relation to a family dispute, including assistance in resolving that dispute through negotiation or otherwise. This includes the services covered by Legal Help, but also includes issuing proceedings and representation where necessary to obtain disclosure of information from another party, or to obtain a consent order following an agreement of matters in dispute. It is available in two forms:
 - Help with Mediation:** legal advice and assistance if a person is attending family mediation
 - General Family Help:** legal advice and assistance on family matters where a person is not attending family mediation
- (iv) **Family Mediation** - this level of service covers mediation for a family dispute, including finding out whether mediation appears suitable or not
- (v) **Legal Representation** - this level of service provides legal representation so that a person can be represented in court if taking or defending proceedings. This is the same level of service previously called civil legal aid. It is available in two forms:
 - Investigative Help:** funding is limited to investigation of the strength of a claim
 - Full Representation:** funding is provided to represent people in legal proceedings
- (vi) **Support Funding** - this provides partial funding of very expensive cases which are otherwise funded privately. It is available in two forms:
 - Investigative Support:** funding is limited to investigation of the strength of a claim with a view to a conditional fee agreement
 - Litigation Support:** provides partial funding of high cost proceedings under a conditional fee agreement

The availability of funding will normally be restricted to those who qualify on financial grounds ('the means test') and who can satisfy the Legal Services Commission that funding should be made available in the particular circumstances of the case. The Commission's 'Funding Code' describes the various circumstances. A person who is entitled to funding may be called upon to make a contribution towards the cost of a case depending on their financial circumstances.

Criminal Legal Aid (Indictable Offences):
Applications filed for representation in the Crown Court, 1991 - 2000



The Administration of Publicly Funded Legal Services

The Legal Services Commission (which replaced the Legal Aid Board in April 2000) is responsible to the Lord Chancellor for the administration of civil and family publicly funded legal services and all criminal legal aid below the Crown Court.

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 public funds
- (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 Costs 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 Service Commission assesses magistrates' courts' costs and, in the High Court and county courts, bills up to £500. Solicitors can also opt for assessments by the Commission rather than taxation, for bills between £500 and £1,000.

In 2000, the Supreme Court Costs Office completed 12,459 bills in contrast to the 10,207 completed in 1999. This was mainly due to the inclusion of the Family Division. Through the increases in numbers, the total brought in figure is £57 million more than last year. Major movements in the volume of bills measured against 1999 are: Chancery Division (in companies winding up and bankruptcy proceedings) -77% and -82%, Chancery and Queen's Bench (Solicitor's Act) +28% and Queen's Bench Division (Litigants in person) -47%.

Table 10.1
Taxation of costs: Bills taxed under headings shown, amounts brought in and allowed, and average amounts at which bills were allowed, 2000

	Number of bills taxed	Brought in at (£)	Allowed at (£)	Average amount at which bills were allowed (£)
Judicial Committee of the Privy Council:				
Petitions for leave	3	68,650	43,600	14,534
Petitions of appeal	18	768,300	502,355	27,909
House of Lords:				
Petitions for leave	21	142,804	70,955	3,378
Petitions of appeal	31	1,419,213	1,109,441	35,788
Supreme Court Taxing Office:				
Chancery Division:				
In actions and matters	700	33,061,105	17,712,312	25,303
In companies winding-up	69	271,367	2,161,569	31,327
In bankruptcy proceedings	99	996,789	370,832	3,746
Queen's Bench Division:				
In actions and matters	2,050	87,422,392	44,198,033	21,560
In Crown Office proceedings	1,525	10,710,240	7,753,028	5,084
Election petitions	-	-	-	-
Sitting master's cases	-	-	-	-
Court of Protection	1,772	5,576,143	4,947,079	2,792
Litigants in person	22	-	-	-
Tribunals	93	2,275,076	1,011,489	10,876
Chancery and Queen's Bench:				
Under the Solicitors Acts	889	9,283,160	3,587,695	4,036
Court of Appeal	681	14,364,055	8,532,055	12,529
Appeals from the Crown Court on criminal costs	547	-	-	-
Family Division:				
Principal Registry (Taxing Officer's bills):				
Solicitors	4,048	29,312,500	23,772,965	5,872
Litigants in person	-	-	-	-
Lands Tribunal	7	832,480	806,354	115,193

Criminal Legal Aid

The courts have the 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.

Means testing for criminal legal aid is to be abolished in April 2001 and all defendants who satisfy the 'interests of justice' criterion will receive funding. However, alongside the withdrawal of the means test, Recovery of Defence Costs Orders will be introduced. These allow judges to order that the costs of the defence be recovered from the defendant in all courts other than in the magistrates' court.

In 2000, 102,818 applications were made in magistrates' courts for representation in the Crown Court and of these virtually all were granted. Similarly, of the 13,494 applications to the Crown Court, nearly all were granted.

Table 10.2
Criminal legal aid: Applications¹ filed in the magistrates' courts for representation in the Crown Court, by type of proceeding, 1994-2000

	1994	1995	1996	1997	1998	1999	2000
Trial on indictment:							
Applications	100,517	103,444	94,474	100,860	87,741	81,419	79,887
Granted	100,496	103,431	94,456	100,842	87,734	81,413	79,877
Refused	21	13	18	18	7	6	10
For sentence or to be dealt with:							
Applications	6,211	6,170	6,226	7,706	20,328	21,982	19,110
Granted	6,207	6,169	6,225	7,705	20,324	21,982	19,110
Refused	4	1	1	1	4	-	-
Appeal against magistrates' court decision:							
Conviction and sentence:							
Applications	2,311	2,165	1,756	1,415	1,382	1,360	1,264
Granted	2,294	2,160	1,750	1,414	1,382	1,360	1,264
Refused	17	5	6	1	-	-	-
Sentence only:							
Applications	2,814	2,725	2,484	2,333	2,529	2,489	2,557
Granted	2,808	2,725	2,481	2,333	2,528	2,489	2,557
Refused	6	-	3	-	1	-	-

¹ 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: Applications¹ filed in the Crown Court, by type of proceeding, 1994-2000

	1994	1995	1996	1997	1998	1999	2000
Trial on indictment:							
Applications	4,354	5,384	5,791	7,018	6,627	6,173	6,685
Granted	4,220	5,217	5,622	6,862	6,445	6,011	6,476
Refused	134	167	169	156	182	162	208
For sentence or to be dealt with:							
Application	1,277	1,392	1,546	1,531	2,626	2,915	3,521
Granted	1,270	1,387	1,529	1,519	2,604	2,882	3,486
Refused	7	5	17	12	22	33	35
Appeal against magistrates' court decision:							
Conviction and sentence:							
Applications	3,067	3,118	2,417	1,819	1,678	1,424	1,340
Granted	3,030	3,088	2,375	1,790	1,656	1,401	1,330
Refused	37	30	42	29	22	23	10
Sentence only:							
Applications	2,499	2,499	2,027	2,029	2,079	1,944	1,948
Granted	2,482	2,481	2,005	2,026	2,067	1,937	1,937
Refused	17	18	22	3	12	7	11

¹ 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 (94% and 83% respectively in 2000).

Table 10.4
Criminal legal aid: Defendants and appellants in the Crown Court, by type of proceeding and representation, 2000

	Represented under legal aid	Privately/ not represented	Total
Trial on indictment	84,755	5,117	89,872
For sentence or to be dealt with	22,478	4,541	27,019
Appeals against magistrates' courts decisions:			
Conviction and sentence	2,567	3,040	5,607
Sentence only	4,463	3,361	7,824

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, 2000

	Solicitor only	Solicitor and counsel	Solicitor and two counsel	Counsel only	Total applications granted
Trial on indictment	15	4,693	1,750	18	6,476
For sentence or to be dealt with	6	3,377	5	98	3,486
Appeals against magistrates' courts decisions:					
Conviction and sentence	4	1,324	1	7	1,330
Sentences only	11	1,911	1	14	1,937

In 2000 there were 36,299 applications to the Legal Aid Board Area Committees under the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989. 712 were for review of a refusal by the magistrates' court to grant legal aid, of which 340 (48%) were successful. 35,382 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, 31,697 (90%) were successful. Overall, 88% 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, 2000

	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	39	16	-	31,697	340
Refused	113	37	-	3,685	372
Total	152	53	-	35,382	712

Legal Aid Expenditure

The Lord Chancellor's Department provides a grant to the Legal Services Commission to cover the net cost of the publicly funded legal services it provides. 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 2000 by category of assistance granted. By subtracting the amount received from that paid it is possible to determine the net payment for each type of legal aid.

In 2000 total net expenditure on legal aid was £1,618 million. This compares with £1,568 million in 1999, an increase of 3.2%.

Table 10.7
Legal aid expenditure: Receipts and payments¹, 2000

	Receipts (£'000)	Payments (£'000)
Civil Legal Aid		
Civil and Family Representation	436,111	979,008
Legal Help ²	418	255,996
Criminal Legal Aid		
Criminal Legal Aid in the Higher Courts	2,185	405,407
Criminal Legal Aid in the Magistrates' Courts	3,767	218,483
Criminal Advice and Assistance ²	..	24,314
Duty solicitor scheme:		
Magistrates' courts ²	..	52,232
Police stations ²	..	124,592
Total	442,481	2,060,033

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

² These figures are estimates in the absence of detailed information on the civil and criminal contract pilots. The total of the figures combined, is however, accurate

Other Legal Aid Statistics

Detailed statistics on the Legal Services Commission's administration of publicly funded legal services are included in the Commission's annual report for 2000/2001.