

## 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

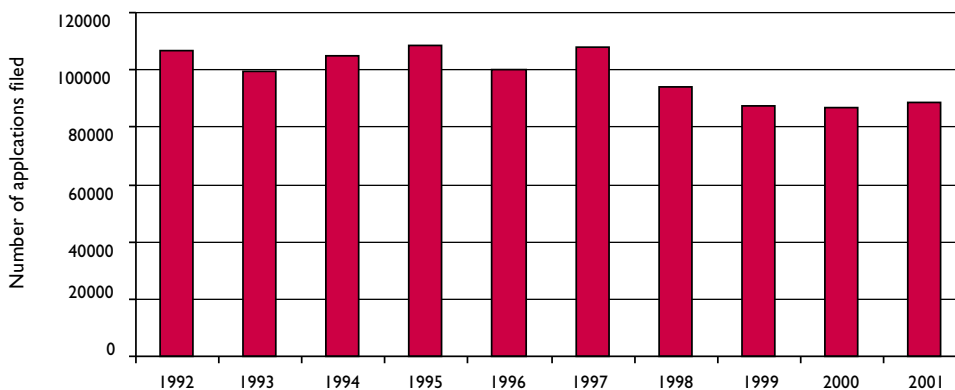
- (vi) **Support Funding** - this provides partial funding of very expensive cases which are otherwise funded privately. It is available in two forms:

**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, 1992 - 2001



## 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.

## Detailed Assessment of Costs in Civil Proceedings

The detailed assessment of costs is the process of examining and, if necessary, reducing the bill of costs of a solicitor and Litigant in Person. 'Costs' include not only the solicitor's own professional fees, but also disbursements incurred including barristers' and experts' fees. The purpose of detailed assessment is-

- (a) to determine how much costs a successful party in litigation is entitled to recover from his unsuccessful opponent
- (b) in publicly funded cases to determine the amount which a solicitor or barrister is to be paid out of public funds
- (c) under the Solicitors' Act to determine how much a client may have to pay his solicitor

The office responsible for assessing costs depends on the type of case and whether it is publicly funded. The Supreme Court Costs Office deals mainly with costs relating to all proceedings in the Chancery, Family and Queen's Bench Divisions of the High Court and the Court of Civil Appeal. It also deals with costs in matters involving the Court of Protection, various tribunals and assessments transferred from county courts and district registries. It also deals with appeals against the determination of costs in the Crown Court.

The Privy Council, House of Lords, Lands Tribunal, and, except as above, district registries and county courts are responsible for the detailed assessment of costs in their respective courts.

In 2001, the Supreme Court Costs Office completed 12,580 bills in contrast to the 12,459 completed in 2000. Although the number of completed bills only increased by 1%, the value of those bills increased from £193 million to nearly £217 million, an increase of 11%. Bills of costs were, on average, reduced by 18%.

**Table 10.1**  
*Taxation of costs: Bills taxed under headings shown, amounts brought in and allowed, and average amounts at which bills were allowed, 2001*

	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 special leave	3	29,062.98	28,158.06	9,386.02
Appeals	10	246,823.86	361,119.05	36,111.91
<b>House of Lords:</b>				
Petitions for leave	34	199,097	150,316	4,421
Petitions of appeal	32	2,404,890	1,515,323	47,353
<b>Supreme Court Costs Office<sup>1</sup>:</b>				
Administrative Court	1,886	16,091,937	..	..
Chancery Division	761	33,271,855	..	..
Court of Appeal	698	13,310,000	..	..
Court of Protection	1,541	5,576,143	..	..
Family Division	5,078	45,626,440	..	..
Queen's Bench	1,830	87,227,657	..	..
Other Tribunals	183	8,293,521	..	..
From County Courts	122	7,427,467	..	..
Appeals from Crown Court in Criminal Cases	481	-	-	-
<b>Lands Tribunal</b>	<b>6</b>	<b>988,953.89</b>	<b>38,329.33</b>	<b>6,388.22</b>

<sup>1</sup> Amounts allowed: a random sample of civil cases where detailed assessment was completed in 2001 showed that bills were reduced by an average of 18%. In Court of Protection cases the average was 11%

## Criminal Public Funding

The Criminal Defence Service (CDS) was introduced in April 2001 - it replaced the old legal aid scheme.

Advice and assistance is available to individuals who are arrested and held in custody at a police station or other premises and for individuals who are involved in criminal investigations, without reference to their financial resources. Advocacy assistance is also available without reference to a defendant's means for individuals appearing before the magistrates' court or the Crown Court.

An accused person can have publicly funded representation where the court decides that it is in the interests of justice to do so. A representation order covers all criminal proceedings; preliminary or incidental including any related bail proceedings. Where a defendant has a representation order in the magistrates' court or the Crown Court, the representation order covers obtaining advice on appeal and the preparation of any application for leave to appeal or giving notice of appeal against conviction or sentence.

Where a notice of leave to appeal has been given, an application for a further representation order can be made directly to the Court of Appeal to cover those proceedings. Once granted a representation order may provide for a solicitor and in certain cases an advocate, in the magistrates' court or Crown Court.

Where a case is heard in the magistrates' court, no details of the applicant's means are required, as there is no power to recover the cost of the applicant's representation. However, where a case is heard in the Crown Court or a higher court on appeal, the applicant must provide truthful details of his or her means to the court. At the end of the case, the judge has a new power to order the defendant to pay back some or all of the costs of his or her defence, the Recovery of Defence Costs Order, (RDCO). If necessary, the judge will order an investigation of the defendant's means before making the Order, where for example further information has come to light. Such enquiries may be undertaken by the Legal Services Commission's Special Investigations Unit, or by the court.

In 2001, 103,073 applications were made in magistrates' courts for representation in the Crown Court and of these virtually all were granted. Similarly, of the 12,093 applications to the Crown Court, nearly all were granted.

**Table 10.2**  
**Criminal public funding: Applications<sup>1</sup> filed in the magistrates' courts for representation in the Crown Court, by type of proceeding, 1995-2001**

	1995	1996	1997	1998	1999	2000	2001
<b>Trial on indictment:</b>							
Applications	103,444	94,474	100,860	87,741	81,419	79,887	81,864
Granted	103,431	94,456	100,842	87,734	81,413	79,877	81,860
Refused	13	18	18	7	6	10	4
<b>For sentence or to be dealt with:</b>							
Applications	6,170	6,226	7,706	20,328	21,982	19,110	17,562
Granted	6,169	6,225	7,705	20,324	21,982	19,110	17,562
Refused	1	1	1	4	-	-	-
<b>Appeal against magistrates' court decision:</b>							
<b>Conviction and sentence:</b>							
Applications	2,165	1,756	1,415	1,382	1,360	1,264	1,240
Granted	2,160	1,750	1,414	1,382	1,360	1,264	1,239
Refused	5	6	1	-	-	-	1
<b>Sentence only:</b>							
Applications	2,725	2,484	2,333	2,529	2,489	2,557	2,407
Granted	2,725	2,481	2,333	2,528	2,489	2,557	2,407
Refused	-	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 public funding: Applications<sup>1</sup> filed in the Crown Court, by type of proceeding, 1995-2001*

	1995	1996	1997	1998	1999	2000	2001
<b>Trial on indictment:</b>							
Applications	5,384	5,791	7,018	6,627	6,173	6,685	6,627
Granted	5,217	5,622	6,862	6,445	6,011	6,476	6,485
Refused	167	169	156	182	162	208	162
<b>For sentence or to be dealt with:</b>							
Application	1,392	1,546	1,531	2,626	2,915	3,521	2,583
Granted	1,387	1,529	1,519	2,604	2,882	3,486	2,561
Refused	5	17	12	22	33	35	22
<b>Appeal against magistrates' court decision:</b>							
Conviction and sentence:							
Applications	3,118	2,417	1,819	1,678	1,424	1,340	1,228
Granted	3,088	2,375	1,790	1,656	1,401	1,330	1,210
Refused	30	42	29	22	23	10	18
Sentence only:							
Applications	2,499	2,027	2,029	2,079	1,944	1,948	1,655
Granted	2,481	2,005	2,026	2,067	1,937	1,937	1,653
Refused	18	22	3	12	7	11	2

<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 (94% and 82% respectively in 2001).

**Table 10.4**  
*Criminal public funding: Defendants and appellants in the Crown Court, by type of proceeding and representation, 2001*

	Represented under legal aid	Privately/ not represented	Total
Trial on indictment	86,778	5,373	92,151
For sentence or to be dealt with	20,018	4,338	24,356
Appeals against magistrates' courts decisions:			
Conviction and sentence	2,436	3,504	4,940
Sentence only	4,028	2,951	6,979

98% of successful applications to the Crown Court covered payment to a solicitor and one or two barristers.

**Table 10.5**  
*Criminal public funding: Successful public funds applications to the Crown Court, by type of proceeding and extent of public funds granted, 2001*

	Solicitor only	Solicitor and counsel	Solicitor and two counsel	Counsel only	Total applications granted
Trial on indictment	121	4,612	1,717	15	6,465
For sentence or to be dealt with	46	2,459	6	50	2,561
Appeals against magistrates' courts decisions:					
Conviction and sentence	8	1,199	-	3	1,210
Sentences only	9	1,635	-	9	1,653

## 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 10.6 shows net legal aid expenditure during 2001 by category of aid granted.

In 2001 total net expenditure on legal aid was £1,750 million. This compares with £1,618 million in 2000, an increase of 8.2%.

**Table 10.6**  
**Legal aid expenditure: Payments<sup>1</sup>, 2001**

	Payments (£'000)
<b>Civil Legal Aid</b>	
Civil and Family Representation	512,498
Legal Help	236,680
<b>Criminal Legal Aid<sup>1</sup></b>	
Criminal Defence Service	534,752
Criminal legal aid in the Higher Courts	465,772
<b>Total</b>	<b>1,749,702</b>

<sup>1</sup> The Criminal Defence Service came into being in April 2001 and is administered by the Legal Services Commission. Legal Aid in the higher criminal courts currently remains the responsibility of the Lord Chancellor's Department

## 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 2001/2002.