

Chapter 10

Publicly Funded Legal Services and Taxation of Costs

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 public funding below the Crown Court.

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. 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.

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 or 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 (SCCO) 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 2002, the SCCO assessed 14,477 bills as against 12,580 in 2001. The increase is mainly accounted for by a higher number of county court bills being transferred to the SCCO. In addition to the number of county court cases shown in these figures, costs officers from the SCCO sitting at county courts assessed a further 774 bills of costs. Although the number of bills assessed increased by 15%, the value of the assessed bills only increased by 3% from £217 million in 2001 to £224 million in 2002. This reflects the smaller value of the county court bills, which accounted for most of the numerical increase. Inter partes bills of costs were, on average, reduced by 22%.

Table 10.1
Taxation of costs: Bills taxed under headings shown, amounts brought in and allowed, and average amounts at which bills were allowed, 2002

	Number of bills taxed	Brought in at (£)	Allowed at (£)	Average amount at which bills were allowed (£)
Judicial Committee of the Privy Council:				
Petitions for special leave	2	23,308	13,896	6,948
Appeals	17	598,179	505,019	29,707
House of Lords:				
Petitions for leave	33	218,045	138,581	4,199
Petitions of appeal	42	2,736,286	1,947,009	46,357
Supreme Court Costs Office¹:				
Administrative Court	1,613	25,551,393	..	..
Chancery Division	620	25,523,002	..	..
Court of Appeal	592	11,941,601	..	..
Court of Protection	1,650	7,764,900	..	..
Family Division	5,148	34,315,033	..	..
Queen's Bench	1,948	81,983,698	..	..
Other Tribunals	182	4,845,887	..	..
From County Courts	2,365	32,067,155	..	..
Appeals from Crown Court in Criminal Cases	359	-	-	-
Lands Tribunal	7	136,262	127,588	18,227

¹ Amounts allowed: a random sample of civil cases where detailed assessment was completed in 2002 showed that bills were reduced by an average of 22%. In Court of Protection cases the average was 10%

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 a 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 a 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 a magistrates' court or Crown Court.

Where a case is heard in a 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. 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 2002, 112,999 applications were made in magistrates' courts for representation in the Crown Court and of these virtually all were granted. Similarly, of the 11,080 applications to the Crown Court, nearly all were granted.

Table 10.2
Criminal public funding: Applications¹ filed in the magistrates' courts for representation in the Crown Court, by type of proceeding, 1996-2002

	1996	1997	1998	1999	2000	2001	2002
Trial on indictment:							
Applications	94,474	100,860	87,741	81,419	79,887	81,864	89,501
Granted	94,456	100,842	87,734	81,413	79,877	81,860	89,501
Refused	18	18	7	6	10	4	-
For sentence or to be dealt with:							
Applications	6,226	7,706	20,328	21,982	19,110	17,562	19,639
Granted	6,225	7,705	20,324	21,982	19,110	17,562	19,638
Refused	1	1	4	-	-	-	1
Appeal against magistrates' court decision:							
Conviction and sentence:							
Applications	1,756	1,415	1,382	1,360	1,264	1,240	1,347
Granted	1,750	1,414	1,382	1,360	1,264	1,239	1,347
Refused	6	1	-	-	-	1	-
Sentence only:							
Applications	2,484	2,333	2,529	2,489	2,557	2,407	2,512
Granted	2,481	2,333	2,528	2,489	2,557	2,407	2,512
Refused	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 public funding: Applications¹ filed in the Crown Court, by type of proceeding, 1996-2002

	1996	1997	1998	1999	2000	2001	2002
Trial on indictment:							
Applications	5,791	7,018	6,627	6,173	6,685	6,627	5,310
Granted	5,622	6,862	6,445	6,011	6,476	6,485	5,152
Refused	169	156	182	162	208	162	158
For sentence or to be dealt with:							
Application	1,546	1,531	2,626	2,915	3,521	2,583	2,907
Granted	1,529	1,519	2,604	2,882	3,486	2,561	2,897
Refused	17	12	22	33	35	22	10
Appeal against magistrates' court decision:							
Conviction and sentence:							
Applications	2,417	1,819	1,678	1,424	1,340	1,228	1,273
Granted	2,375	1,790	1,656	1,401	1,330	1,210	1,256
Refused	42	29	22	23	10	18	17
Sentence only:							
Applications	2,027	2,029	2,079	1,944	1,948	1,655	1,590
Granted	2,005	2,026	2,067	1,937	1,937	1,653	1,585
Refused	22	3	12	7	11	2	5

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 criminal public funding, the grant rate and thus the percentage represented under criminal public funding varies considerably according to the type of proceeding. A higher percentage of defendants are publicly funded 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 publicly funded (95% and 84% respectively in 2002).

Table 10.4
Criminal public funding: Defendants and appellants in the Crown Court, by type of proceeding and representation, 2002

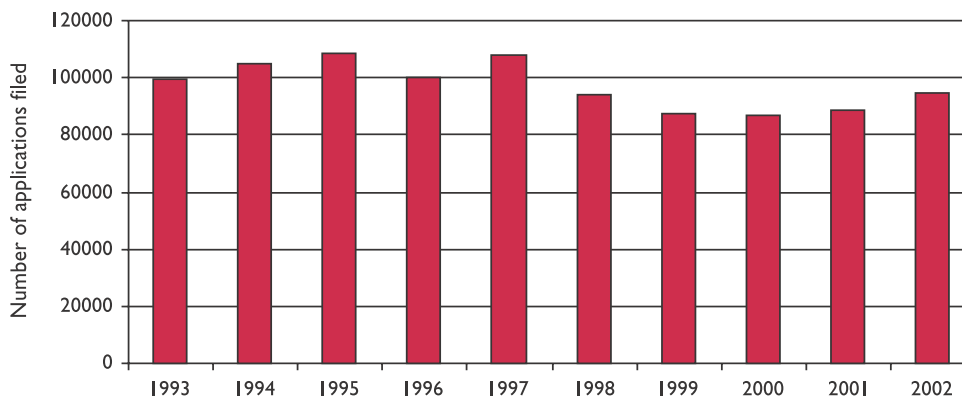
	Represented under criminal public funding	Privately/ not represented	Total
Trial on indictment	93,018	4,602	97,620
For sentence or to be dealt with	22,364	4,423	26,787
Appeals against magistrates' courts decisions:			
Conviction and sentence	2,582	2,052	4,634
Sentence only	4,074	2,437	6,511

99% 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, 2002

	Solicitor only	Solicitor and counsel	Solicitor and two counsel	Counsel only	Total applications granted
Trial on indictment	24	3,317	1,800	11	5,152
For sentence or to be dealt with	14	2,837	1	45	2,897
Appeals against magistrates' courts decisions:					
Conviction and sentence	3	1,251	1	1	1,256
Sentences only	2	1,574	-	9	1,585

Criminal Public Funding (Indictable Offences):
Applications filed for representation in the Crown Court, 1993 - 2002



Publicly Funded Legal Services Expenditure

The Department for Constitutional Affairs provides a grant to the Legal Services Commission to cover the net cost of the publicly funded legal services it provides. Expenditure on criminal public funding in the Crown Court and above is met directly by the Department.

Table 10.6 shows net publicly funded legal services expenditure during 2002 by category of funding granted.

In 2002 total net expenditure on publicly funded legal services was £1,829 million. This compares with £1,750 million in 2001, an increase of 4.3%.

Table 10.6
Publicly funded legal services expenditure

	Net Payments (£000s)
Civil funding	
Civil and Family Representation	472,131
Legal Help	311,153
Criminal public funding¹	
Criminal Defence Service	508,555
Criminal public funding in the higher courts	536,747
Total	1,828,586

¹ The Criminal Defence Service came into being in April 2001 and is administered by the Legal Services Commission. Publicly funded legal services in the higher criminal courts currently remains the responsibility of the Department for Constitutional Affairs

Other Publicly Funded Legal Services Statistics

Detailed statistics on the Legal Services Commission's administration of publicly funded legal services are included in the Commission's annual report for 2002/2003.