

National Report for England and Wales

1. Providers of Legal Aid

▪ Who are the providers of legal aid services in your country?

Civil legal aid services are delivered face-to-face and via the telephone and Internet by legal firms (2,253) but also organisations or agencies that are not typical legal firms, such as charities (350). Criminal legal advice services are delivered through solicitors (deal with legal proceedings apart from advocacy) at the police station and lower level (Magistrate's) courts. We also fund barristers (only instructed by a solicitor and has advocacy rights) and some solicitors (who have advocacy rights) in the higher court (Crown and Appeal Courts). Although most providers are in private practice, we also employ a small Public Defender Service to provide criminal defence services directly to the public.

▪ Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

Legal aid resources are authorised only by the Legal Services Commission ("LSC"), however we do aim to coordinate the services we fund with other services provided by central government, local government and the voluntary/charity sector.

2. Organisation

▪ How does your organisation organise its human resources?

The Legal Services Commission is an organisation of approximately 1600 employees currently located across 15 offices in England and Wales. The LSC is divided into three directorates, Commissioning, Business Support and Corporate Services, each of which is managed by an Executive Director. The Executive Directors, report to our Chief Executive, Carolyn Regan. The LSC has a Senior Management team of 17 who all report to the three Executive Directors.

▪ Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organised on a centralized or regional level? If the legal aid scheme in your country is organised by the government, how does it maintain independence from the government?

The Government funds the legal aid scheme in England and Wales through the LSC, which is sponsored by the government department, the Ministry of Justice (MoJ). The LSC is responsible for legal aid across England and Wales but the majority of decisions about the scheme are made centrally in London.

The Minister is accountable to Parliament for the LSC's activities and performance. Ministers set priorities for legal aid, in accordance with wider Government policy objectives, and are also responsible for determining the resources to be made available to fund legal aid and the LSC. The LSC has the primary statutory duty to maintain and develop the operation of the two schemes and will contribute to the effective development of the overall legal aid strategy and policy for which Ministers are ultimately responsible. Ministers should determine (in general rather than individual terms) who will receive legal aid and in what areas of law it is available, and the LSC will determine how it can be delivered.

3. Financial Affairs

- **What are the sources of legal aid funding in your country?**

The LSC's sponsoring department the Ministry of Justice funds legal aid. The Ministry of Justice is funded by the government.

- **Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?**

In most cases recipients of legal aid do not have to repay their costs. However in criminal cases some clients who are convicted can be ordered to repay their legal aid costs but only where this is reasonable in relation to their earnings. In civil cases clients who successfully recover or preserve property with the help of legal aid will have to repay their legal aid costs out of the property recovered, unless those costs have already been repaid by the other party to the proceedings.

- **Are court fees/filing fees and security for costs covered by legal aid?**

Yes.

- **If provided, does this assistance increase the burden on the *government's budget*?**

Yes.

4. Supervision

- **Does another authority supervise the operation of your organisation?**
- **How does it supervise your organisation?**
- **What are the difficulties involved in dealing with the organisations supervising authority?**

The MoJ sponsors the LSC and it therefore monitors the LSC's performance against financial budgets and strategic objectives. Strategic control is maintained through a Framework Document, which sets out the legislative, policy, procedural and resources framework in which the LSC will operate.

The key issues in this relationship are around roles and responsibilities, defining the boundaries in the relationship and duplication of work between the two organisations.

The National Audit Office (NAO) scrutinises public spending on behalf of Parliament. It is totally independent of Government. The NAO undertakes an annual audit of the LSC accounts and occasionally, the NAO investigates a certain area of LSC work. The LSC is also held to account by the government and may appear before parliamentary committees that are investigating areas of legal aid work.

5. Procedures and Criteria for Granting Legal Aid

Different rules apply to civil and criminal cases. Below highlights the process for granting legal aid in criminal cases (600,000 cases per annum) in the Magistrates Court (we will be introducing it into the Crown Court in 2010, in 124,000 cases per annum) and an example of how civil legal aid is granted.

Criminal Legal Aid in the Magistrates Court

(a) Please briefly describe your organisation's criteria for granting legal aid

- Legal aid is granted to defendants who have been charged with a criminal offence.
- Applications must meet both an “Interests of Justice” criteria and the financial eligibility criteria.
- The Interests of Justice criteria include:
 - The risk of a custodial sentence.
 - The risk of loss of livelihood.
 - The risk of serious damage to reputation.
 - A substantial question of law may be involved.
 - The defendant is unable to understand the court proceedings or present their own case.
 - Witnesses need to be traced or interviewed.
 - The proceedings may involve expert cross-examination of a prosecution witness.
 - It is in the interests of another person that the defendant is represented.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means testing is not required?

Yes applicants are means-tested and the means test in the Magistrates’ court establishes whether an applicant is financially eligible for legal aid.

How the means test works:

- It only considers income and expenses - capital is not included.
- Passported applicants are those individuals who are in receipt of certain qualifying benefits which exempt them from the means test. These applicants will still need to pass the Interests of Justice test to qualify for legal aid.
- The means test assesses the applicant’s “household” income and any income from a partner is combined.
- Income is weighted to give allowances for any dependants and children.
- Applicants with a weighted income below \$20,000 USD p.a. will be granted funding.
- Applicants with a weighted income above \$36,450 USD p.a. will be refused funding.
- Applicants whose weighted income falls between the two thresholds will undergo a disposable income test which takes into account their disposable income after deducting actual income tax, national insurance contributions, housing, childcare, and maintenance costs and the annual living allowance which covers general living expenses such as food, power and fuel. If the resultant income is less than £6,500 USD per annum, the applicant will be granted funding.
- An applicant can apply for a Hardship Reviews if they can show they are genuinely unable to fund their own representation.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

The thresholds are increased every year in line with increase made to welfare benefits (generally increased by Retail Price Index). However, we did not increase the threshold last year.

The availability of a hardship review means that additional items of expenditure can be allowed in cases where the applicant is genuinely unable to pay for their own legal costs.

(d) Who assess legal aid applications? How are these personnel recruited?

- Her Majesty's Court Service (HMCS) staff applies the test once they receive a correctly completed application form.
- Staff are recruited by HMCS through their normal recruitment procedures.

(e) For court cases, is the prospect of success a consideration for deciding applications?

In criminal cases the case must meet the Interests of Justice test (detailed above).

(f) Is there a requirement that an application must be made by the applicant personally?

Yes, the applicant must complete and sign an application form.

Civil legal aid

(a) Please briefly describe your organisation's criteria for granting legal aid

There is the Standard Criteria which applies to all applications for legal aid which include:

- The proceedings must relate to the laws of England and Wales.
- Any application in relation to proceedings excluded from scope by the Access to Justice Act 1999 will be refused.
- The application must be submitted on behalf of a client who is an individual.
- The application must be submitted by an appropriate supplier, who is contracted with the Commission to provide legal services.
- The application must comply with the Funding Code Procedures.
- The client must satisfy the financial eligibility criteria.

The criteria include:

- Legal aid will not be granted if the prospects of success in the case are poor.
- Legal aid will not be granted if there is an alternative method of dispute resolution available and which has not been attempted (in Family cases, this would include consideration of the availability of mediation).
- Legal Aid will not be granted if there is an alternative source of funding available to the client.

Applications for legal aid are also subject to costs-benefit tests:

Quantifiable Claims – If the case simply relates to a proven claim for money or damages, a strict cost-benefit ratio applies, which is linked to the likely prospects of success.

Unquantifiable claims – if the case is not simply in relation to a money claim, then legal aid will be granted if it can be shown that the likely costs of pursuing the case are proportionate to the benefit to be obtained.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means testing is not required?

Yes, most applications are means-tested. Exceptions to this rule are Special Children Act proceedings (Care, Supervision, Emergency Protection and Secure Accommodation orders) where the child subject to the proceedings, the parents of that child or anyone with parental responsibility of that child qualifies for funding without a means test.

Non-means tested funding is also available for “deprivation of liberty” in Mental health and child abduction (recovery of a child brought to England and Wales) cases.

How the means test works

The means test considers both income and capital.

Income

- Passported applicants are those individuals who are in receipt of certain qualifying benefits which exempt them from the means test.
- The means test assesses the applicant’s “household” income and any income from a partner is aggregated.
- If the client’s Gross Income (before any deductions are made) is over £\$4400 USD per month, the client does not qualify for legal aid (see Domestic Violence waiver below).
- If the client’s Gross Income is below \$4,400 per month we carry out a Disposable Income test which takes into account allowable deductions such as actual income tax, national insurance contributions, housing, childcare, and maintenance costs and the annual living allowance which covers general living expenses such as food, power and fuel. In addition, Dependants Allowances are made for any children or partner.
- If the client’s Disposable Income is over \$1200 USD per month, again the client does not qualify for legal aid (see Domestic Violence waiver).
- If the client’s Disposable Income is between \$515 USD and \$1,200 USD, the client qualifies for legal aid, but will have a monthly contribution to pay towards their legal costs. The contribution payable is on a sliding scale, depending on where, between those 2 figures, their disposable income falls.
- If the client’s Disposable Income is less than \$515 USD per month, the client qualifies for legal aid without a contribution to pay.

Capital

- The Capital assessment includes all capital of whatever source – savings, investments, shares, equity in property – subject to certain disregards.
- If the client has capital of more than \$13,000 USD, the client does not qualify for legal aid (See Domestic Violence waiver).
- If the client has capital of between \$4,800 USD and \$13,000 USD, they qualify for legal aid, but must make a one-off capital contribution of the amount over \$4,800. If the client’s capital is less than \$4,800 USD, the client qualifies with no contribution.

Domestic Violence Waiver

If the client is the victim of Domestic Violence, the Commission waives the financial limits, which means that even if the client's circumstances would ordinarily have disqualified them for legal aid, an offer of funding will still be made – however, the client will still be liable to pay a contribution towards their legal costs.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

We would like to extend eligibility to cover as many people as we can but this is seldom possible because of the high cost of the scheme and the financial pressures on legal aid as for all other areas of government spending.

(d) Who assess legal aid applications? How are these personnel recruited?

Applications are considered by caseworkers employed by the Legal Services Commission, who are recruited using normal recruitment procedures. Once employed they are given comprehensive training, and regular quality control of their work is carried out as are consistency exercises to promote consistency of decision making across regions.

(e) For court cases, is the prospect of success a consideration for deciding applications?

Yes, with certain exceptions, legal aid will not be granted if the prospects of success in the case are considered to be poor (less than 50%). One example of an exception to that rule would be in Public Law Family cases (e.g. Care proceedings issued by the local authority to remove a child from his/her family home) legal aid will be granted to the parents, even if prospects appear poor.

(f) Is there a requirement that an application must be made by the applicant personally?

Yes, the application must be made on behalf of a client who is an individual. Applications for civil legal aid, including the means assessment are signed and dated by the applicant.

There can, however, be situations where the applicant is not able to act in their own right (for example a young child or someone under a disability) and a "Litigation Friend" will provide instructions in relation to the litigation to the acting solicitor, on their behalf, but the applicant will still be the person named on any Legal Aid certificate.

6. Models of Service Delivery

▪ **How are legal aid cases assigned to lawyers?**

In general the LSC does not assign cases to lawyers. Clients approach lawyers directly and the lawyer can provide advice services directly and if appropriate will assist the client if making any further legal aid application.

▪ **Are legal aid services provided by salaried lawyers, contracted lawyers or by lawyers or law firms in other ways?**

Almost all legal aid is provided by law firms and other agencies in private practice that are operating under contract from the LSC. Only law firms with contracts can provide services, but they can instruct other lawyers to assist where necessary, such as barristers providing specialist advocacy services. The LSC also directly

employs a small Public Defender Service, which provides criminal services directly to the public.

7. Legal Aid fees

- **Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.**

Legal aid fees are paid at rates which are usually significantly lower than the rates usually charged to private clients. There is usually no shortage of lawyers prepared to act in legal aid cases. In civil cases where costs are recovered from the other party, the legal aid lawyer is entitled to retain the costs recovered which will usually be at higher rates than legal aid rates.

8. Legal Aid for specific communities

- **Does your organisation tailor and provide legal aid services to specific communities (for example, foreign workers, plaintiffs in environmental litigation)**

Yes – our civil legal aid scheme requires the LSC to assess need at the local level and ensure that contracts are met to meet that need.

9. Scope and Types of Services

- (a) Is legal aid available for the following matters:**

- i. Litigation in civil law, criminal law, administrative law and claims for national compensation**

Yes.

- ii Alternative dispute resolution?**

Yes. The civil scheme covers mediation and all other forms of ADR. The LSC has a range of contracts with family mediators. The statutory framework for legal aid encourages disputes to be resolved outside court where possible.

- (b) Does legal aid provide the following services?**

- i. Face to face or telephone legal consultation?**

We provide the following services (and volumes in financial year 2008/2009):

Face-to-face (crime): 1,524,439

Telephone (crime): 134,141

Face-to-face (civil): 981, 243

Telephone (civil): 336, 798

- ii. What are the procedures of providing these services?**

Face-to-face through legal firms such as those mentioned under 1a. In criminal legal aid, a client arriving at the police station is entitled to free legal advice. The lawyer in this case can either be one that they already know, or a “duty” solicitor (a solicitor on a rota that is assigned to a case). All requests for publicly-funded representation at police stations, whether a duty or own solicitor, must be routed via the Defence Solicitor Call Centre (DSCC). The call centre is open 24 hours a day, 365 days a year. If the offence is a less serious offence, e.g. non-imprisonable offences or drink driving offences, advice will be offered to the client over the telephone.

In Civil legal aid, a client will access face-to-face advice by choosing a local high street solicitor or advice agency and making an appointment. For advice over the telephone, a client calls the Community Legal Advice Telephone Helpline where an operator will assess their needs and transfer them to a

contracted legal firm who will continue their case over the telephone. The telephone only offers advice in 6 categories of civil law.

iii. **Are the applicant's means tested?** Yes.

iv. **How are applicant's finances assessed?** See Question 5.

v. **Assistance during interviews at police stations?** Yes.

(c) **Is legal aid available for foreign nationals?**

Yes, provided the case concerns UK law and is taking place in this jurisdiction.

10. Innovative Legal Aid Initiatives

(a) **What are the unique features of the legal aid practices in your country?**

We are proud of our scheme, which is one of the most comprehensive legal aid schemes in the world. Established in 1949 we are now celebrating the 60th anniversary of the founding of the scheme. The hallmark of our scheme compared to most other systems around the world is that instead of only covering representation in court, we aim to cover the full range of client needs including early legal advice and help at the police station in criminal investigations.

Community Legal Advice is a free government-funded confidential advice service paid for by Legal Aid that provides legal advice and information in England and Wales via the Telephone, Web and digital TV and Leaflets.

The service can also provide a three way translation service in 170 languages. For British Sign Language (BSL) users we are piloting a service where they can watch information videos and get legal advice via web cam.

Community Legal Advice Centres and networks (CLACs and CLANs) combine the LSC's funding and knowledge with that of Local Government and other funders to jointly buy services. They will provide access to face-to-face legal advice from basic legal advice to representation. The advice is in the following categories of law:

- Community care
- Debt
- Employment
- Housing
- Welfare benefits.

Criminal Defence Service Direct is a telephone helpline that provides advice direct to members of the public suspected of more minor criminal offences and detained by the police

(b) **What are your organisations innovative legal aid initiatives in recent years?**

See above for innovative legal aid initiatives.

11. Access to Legal Aid

(a) **How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?**

Our Community Legal Advice service provides a series of free leaflets that outline legal rights in 31 key areas of law. The Community Legal Advice website is also

a source of information for clients who wish to know more about what legal aid services are available and whether they are eligible for legal aid.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

If an area is identified as an area of need, we take steps to provide potential clients in those areas with access to the advice they need. This may be through letting additional cases to lawyers firms to cover the additional work, to allowing firms to undertake outreach services. These areas are identified through local knowledge and through monitoring the level of demand. In some categories of law, we have our Telephone Advice Service, which can provide applicants access to legal advice.

(c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

Our providers do undertake outreach services but we currently don't have a mechanism to report on the performance of these programs.

12. Legal Aid Lawyers

(a) What are the sources of recruiting legal aid lawyers?

The Legal Services Commission runs a scheme to encourage new trainee solicitors to work in legal aid. Since the Scheme started in 2002 the LSC training Contract Grant has supported 700 legal aid solicitors. Each grant represents a commitment to support a student/trainee and a solicitor organisation for up to four years. The LSC attends careers events and law fairs in universities across England and Wales to raise the profile of working in legal aid as an attractive career choice and the Training Contract Grant Scheme.

(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers work more convenient?

In England and Wales, all legal aid lawyers are in private practice. Criminal defence is predominately provided through legal aid. There are a very few firms that offer just private criminal legal aid work. Good working relationships with the police, prosecution and the courts exist and these have improved in recent years as defence solicitors have engaged in the implementation of various new initiatives. Other agencies have recognised that by working with defence lawyers they can create more efficient and effective systems and that services can be improved. Both the police and courts see the importance of private interview facilities for lawyers and take the view that justice is served more effectively and expeditiously when a lawyer is present.

13. Quality Assurance

(a) How does your organisation ensure the quality of legal aid lawyers' work?

The LSC uses a range of quality tools to monitor different aspects of provider quality.

The LSC developed a quality accreditation called the Specialist Quality Mark (SQM). Lawyers' firms apply for the SQM in a particular category of law, which has encouraged specialisation within legal aid, ensuring that when firms take on cases, the work is at least managed and checked by people with the experience and expertise necessary to achieve a high standard of advice.

The Specialist Quality Mark (SQM) is an organisational standard, designed to ensure legal advice providers are well run and provide good client care. The SQM is owned by the LSC. It comprises a set of standards designed to ensure that a service is well run and has its own quality assurance mechanisms that assure the quality of information or advice the service providers. Currently all legal aid providers are required to hold and maintain the SQM.

All legal aid supervisors are required to meet specific supervisor standards that incorporate the relevant accreditation scheme, where one exists. In certain categories of law where there has been evidence of poor service we require all practitioners to be accredited, for example in immigration.

We have developed a system of independent peer review, where lawyers who have already proved themselves to be of a good standard review the files of other lawyers. Peer Review is a direct, independent assessment of quality of advice and legal work. It is a retrospective assessment, looking at closed cases. Peer Reviewers assess a random sample of case files using a standard criteria and ratings system to determine the quality of advice and legal work provided to clients in a particular category of law.

Contract management audits are used to ensure providers deliver the services specified within their contract. Intervention is triggered when performance indicators show a provider performance falls below the requirements of the contract. The contract manager will discuss performance with the provider and help plan for improvement, and ultimately (where performance does not improve) applying contract sanctions.

Quality Profiles form part of the current supplier management process, as one of a range of tools to assess the quality of advice provided by a supplier. Quality Profiles work by using a series of category specific indicators that are drawn from case information that suppliers report to us at the conclusion of every case.

14. Participation in Reforms

- **Does your organisation participate in campaigns for social reforms or law reforms with a view to reduce legal disputes?**

The LSC involves itself in responding to consultations by other government departments. As a general rule, we respond to anything that has an element of legal services, i.e. that may affect our providers, clients or quality of work etc. The other type of consultations, which the LSC usually would respond to, is when we think there might be an impact and/or pressure on the legal aid fund. Sometimes, if the agenda is quite important but no direct link to the LSC, we might also respond to a consultation. In addition, there are also consultations that would impact on the LSC as an employer or how we can contract with providers. The LSC is very keen to make sure that we are involved in and take the initiative to work with other government departments to raise our reputation, to be proactive in getting involved when there might be an impact on us, and to contribute to the wider justice system.

15. Challenges

- **What are the difficulties and challenges facing your organisation in promoting legal services?**

A reduction in funding and increases in eligibility (due in part to the current recession) means we have to be as efficient and effective as possible in promoting legal services.