

UK COUNTRY REPORT

2018

Country Report - UK
1 November 2018



Disclaimer:

- Not official Legal Aid Agency Report
- Uses official Ministry of Justice published data
- Law Centres do not provide legal aid services in criminal matters

A Law Centre is an independent not-for-profit law practice. Law Centres want everyone to have equal access to justice. They target their services at the poorest and most disadvantaged people in their communities. For this reason, each Law Centre's core services are free of charge. Law Centres seek to tackle the root causes of poverty and disadvantage.

We are the Law Centres Network (LCN), the national membership body for Law Centres. We support existing Law Centres to develop their services, so they can help more people in more ways. We assist Law Centres to work together, with one another and with other agencies. We are also the collective national voice of Law Centres.

Together, we use the law and advocacy to bring about social change for our communities.

We strive for a just and equal society where everyone's rights are valued and protected.

Country	Population	GDP	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers in the Country
<p>United Kingdom</p> <p>(info about legal aid below relates to the jurisdiction of England and Wales)</p>	<p>66 million (in 2017)</p>	<p>US\$2.914 trillion (nominal, in 2017)</p>	<p>22% of population in poverty, being 14 million people. The 'relative income poverty' line is 60% of median household income after housing costs, or ca. £15,000 p.a.</p>	<p>In England+Wales: 143,600 solicitors 16,400 barristers</p>

Name of Legal Aid Organization(s)	Date of Establishment	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Rejected in the Past Year
Legal Aid Agency	2013 (in its current form; previous legal aid bodies have existed since 1986)	Crime: 1,191,157 Civil: 306,889	Crime: 1,177,641 Civil: 301,427	Crime: 13,516 Civil: 5,462

Total No. of Legal Aid Lawyers (including staff and private lawyers)	Total No. of Non-Legal Professionals (e.g. social workers, counselors, community/ culture workers)	Government Budget for the Legal Aid Organisation in the Past Year	Total Legal Aid Expenses in the Past Year	Proportion of Legal Aid Budget Funded by the Government
Estimated at 10,000, operating through 3,400 offices across England+Wales	N/A (legal aid does not cover non-legal services)	£1.7bn	£1.6bn	100%

Table: new civil legal aid cases before and since LASPO, annual volumes

Year	Legal matters started	Help Certificates granted	HPCDS new matters	ECF grants	Total
2012-13	573,737	150,538	33,575	n/a	757,850
2013-14	173,583	117,573	44,860	70	336,086
2014-15	171,586	107,909	46,745	229	326,469
2015-16	158,095	111,312	38,730	668	308,805
2016-17	147,260	116,540	39,028	981	303,809
2017-18	140,091	116,601	39,712	1,419	297,823

Table: populations in disadvantage and their relative uptake of civil legal aid in 2017/18

Diversity Category	Number in poverty	Rate of legal need likelihood	Estimated number of people in legal need	Category rate among legal aid cases	Legal aid case volume	Gap between need and uptake
Children (under 18)	4.1m	32%	1,312,000	19.44%	46,070	1,265,930
Young adults (18-25)	3.118m	37%	1,153,643	13.68%	32,257	1,121,386
Aged 55-64	1.516m	31%	469,960	4.78%	11,113	458,847
Aged 65+	1.9m	14.5%	275,500	2.78%	6,437	269,063
Women	5.2m	32%	1,664,000	50.79%	120,194	1,543,806
People with disabilities	4.2m	33.5%	1,407,000	22.75%	53,810	1,353,190
BAME people	3.146m	38%	1,195,480	20.63%	48,311	1,147,169

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National Report – England and Wales

by LAW CENTRES NETWORK UK

1. Please update the following information about your country and the legal aid organisation in your country

Your Country				
Country	Population	GDP	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers in the Country
United Kingdom (info about legal aid below relates to the jurisdiction of England and Wales)	66 million (in 2017) ¹	US\$2.914 trillion (nominal, in 2017) ²	22% of population in poverty, being 14 million people. The 'relative income poverty' line is 60% of median household income after housing costs, or ca. £15,000 p.a. ³	In England & Wales: 143,600 solicitors 16,400 barristers ⁴
Your Organisation				
Name of Legal Aid Organization(s)	Date of Establishment	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Rejected in the Past Year
Legal Aid Agency	2013 (in its current form; previous legal aid bodies have existed since 1986)	Crime: 1,191,157 Civil: 306,889 ⁵	Crime: 1,177,641 Civil: 301,427	Crime: 13,516 Civil: 5,462

¹ From [UK Office of National Statistics](#).

² From [International Monetary Fund](#).

³ From [Joseph Rowntree Foundation](#), based on UK national statistics.

⁴ The term 'lawyer' has no fixed meaning in the UK. The two largest legal professions are solicitors and barristers. Figures come from the [Solicitors Regulation Authority](#) and the [Bar Standards Board](#).

⁵ Some legal aid services record only actuals and do not distinguish between applications and approvals. Figures from the [Legal Aid Agency statistics release](#) summarising the business year April 2017-March 2018.

Total No. of Legal Aid Lawyers (including staff and private lawyers)	Total No. of Non-Legal Professionals (e.g. social workers, counselors, community/culture workers)	Government Budget for the Legal Aid Organisation in the Past Year	Total Legal Aid Expenses in the Past Year	Proportion of Legal Aid Budget Funded by the Government
Estimated at 10,000, operating through 3,400 offices across England+Wales ⁶	N/A (legal aid does not cover non-legal services)	£1.7bn ⁷	£1.6bn	100%

Legal aid in England and Wales

The United Kingdom (UK) is made up of four countries: England, Wales, Scotland and Northern Ireland. Wales, Scotland and Northern Ireland each have a devolved legislature and executive and manage their justice affairs autonomously. England and Wales share a legal jurisdiction and a legal aid system, which serves the largest population by far of these jurisdictions.

Legal aid in England and Wales is provided for criminal defence and for some civil law matters. Provision is in a 'Judicare' format targeting disadvantaged people and is contingent on satisfying a means test and a positive evaluation of the merits of the case. Depending on their income and assets, some clients are required to contribute toward the cost of their legal aid through a statutory charge.

The Legal Aid Agency commissions local firms and nonprofits to deliver legal aid services by area of law in a local procurement area. Standard fees for the services are set by the Legal Aid Agency and contracts, normally three years long, are issued by lots rather than through a price competition among bidders.

The scope of English and Welsh legal aid services is specified in law and relates to legal services only. Social workers and other non-legal practitioners are not covered by the scheme although, where required, ad hoc expert witnesses are remunerated.

⁶ The legal aid professional community is not as distinct as in other jurisdictions that would have salaried lawyers working directly for the national legal aid body. As most legal aid practitioners would have a mix of legal aid work with commercial cases (in private law firms) or other contracts or grants (in Law Centres).

⁷ Legal Aid Agency [annual report and audited accounts 2017-18](#).

Law Centres Network

The Law Centres Network (LCN) was established 40 years ago to serve as the coordinating body and collective voice of Law Centres (LCs). It continues striving for a just and equal society where everyone's rights are valued and protected.

The first Law Centres in the UK were set up in 1970, and since 1978 the Law Centres Network has served as their national membership body. LCN supports 45 member Law Centres across the UK to use the law as a tool for change, and their legal expertise to defend the rights of the poorest and most vulnerable people in their communities. We represent Law Centres and their clients' experience to government and national forums. We help maximise Law Centres' potential as sustainable organisations so they can continue to initiate new services for disadvantaged and vulnerable groups.

LCN assists Law Centres to obtain and manage their legal aid contracts. We negotiate directly with the Legal Aid Agency on their behalf and we make representations to the Ministry of Justice on issues arising from legal aid casework and the legal aid system.

Law Centres

In England and Wales, a 'Law Centre' is a specific form of legal practice incorporated as a not-for-profit company that targets its services, which are normally free, at local disadvantaged and vulnerable people. Law Centres employ solicitors and other lawyers, and provide legal assistance, advocacy and representation primarily in social welfare law – housing, social security, employment, discrimination, immigration, asylum, mental health, community care, public law and other smaller areas. Law Centre solicitors are regulated by the Solicitor's Regulation Authority while the Law Centre entity is regulated by 5 other bodies including Office of the Immigration Services Commissioner. Law Centres hold the Law Society's LEXCEL legal practice quality mark. All Law Centres have civil legal aid contracts.

In addition to legal aid contracts, Law Centres obtain charitable and other grant funds to provide a wrap-around service. These services vary according to local need. Law Centres provide an integrated legal service where each style of service informs and builds on the other services – information and referrals, legal advice, casework and representation, public legal education, law reform, policy and strategic cases. The wrap-around service can also include assistance with non-legal problems that have triggered the legal problem or if left unresolved, the non-legal problem will give rise to the need for future legal assistance.

For example, some Law Centres employ a community worker who accompanies the lawyer to

the housing duty court scheme where they work together to prevent both the eviction and the issues that lead to the threat of eviction. Some Law Centres work in partnership with other charities, for example with an organisation that provides services for people with intellectual disability to both educate the charity workers to notice and deal with problems before they become serious and provide legal assistance to the charity's service user. Some Law Centres have arrangements with public authorities to feed back suggestions arising from the casework to help avoid future legal problems that result from poor decision making. There are many other examples of partnership working with legal assistance integrated into other support services including in health settings. Working in this way not only adds value to legal aid but results in a more lasting solution for the person being assisted.

Public legal education is part of this integrated service model of Law Centres. It is provided on a daily basis through provision of legal information. It is provided as a targeted service to respond to issues that have been identified through casework e.g. workshops with tenants aimed at improving their understanding of the tenancy lease, the obligations of both parties, and what they have agreed to. Projects can also be national in anticipation of legal need such as the information sessions currently being provided by Law Centres across the UK to EU citizens in relation to Brexit.

Law Centres and legal aid

Traditionally, a considerable proportion of Law Centre legal services were funded through legal aid. However, the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012 has cut much of social welfare law from legal aid scope, leading to an over 60% drop in Law Centres' aggregate legal aid income and leading 11 Law Centres to close in the immediate aftermath. Remaining Law Centres have retained through other funding valuable expertise and services no longer covered by legal aid. 34 Law Centre offices continue to help clients appeal social security decisions; 30 continue to provide employment law services; 30 continue non-asylum immigration services; and 10 offer assistance with discrimination problems.

These services matter. It is well established that social welfare problems tend to cluster, yet changes to legal aid scope have resulted in legal aid often only being available to resolve one part of a person's problem and is an ineffective use of public funds: using legal aid to prevent an eviction due to rent arrears merely delays the inevitable if it does not also involve help to claim outstanding social security, or keep the person in employment or resolve a debt. Similarly, it is counter-intuitive to limit legal aid services to problems that have already escalated (e.g. legal aid for immigration matters is only available after a person is in detention) rather than intervening early to nip problems in the bud.

The Law Centres Network has been making these points to successive governments as part of its advocacy for a more coherent, effective and cost-effective legal aid system. Over 5 years after LASPO, this year the UK government is reviewing its implementation and effect, providing a rare opportunity to influence an access to justice policy ripe for change.

The ongoing impact of LASPO

To this day, the only one of the four policy aims of LASPO that could be considered to have been achieved was a reduction in legal aid spending. In fact, on this aim it has exceeded projections, cutting well beyond the projected £350m from civil legal aid spend. However, this was enabled through a similarly excessive decline in acts of assistance: last year, there were 60.8% fewer of them than in the last year before LASPO. Importantly, since the initial drop in 2013, acts of assistance have continued to decrease, a decline of 11.4% in annual totals.

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The severity of LASPO’s impact has struck several prominent observers. Commenting in October 2016, an Amnesty International UK report saw the legal aid cuts as a retrogressive measure damaging human rights, and has blamed LASPO for creating a two-tier justice system, “increasingly closed to the poorest, most vulnerable and most in need for its protection.”⁸ The Law Society’s 2017 review of LASPO concludes that not only is legal aid no longer available to many of those who need it, but even those eligible for it find it difficult to access, both procedurally (e.g. satisfying stringent means tests) and practically (e.g. no local access point or difficulties interacting with telephone gateway).⁹

As the table above shows, the category or service cut most severely was Legal Help, which covers primarily early and more basic legal advice. This meant that problems, are left to

⁸ Amnesty International UK, [Cuts That Hurt: the Impact of Legal Aid Cuts in England on Access to Justice](#), p.3.

⁹ [Access Denied? LASPO Four Years On: A Law Society Review](#). Law Society of England and Wales, June 2017.

escalate needlessly until they are severe enough to attract legal aid – inasmuch as they remain in scope at all. In housing law, for example, this left dealing with imminent or actual homelessness in scope but removed help for much more common disrepair problems. Appeals to the social security tribunal are only aided if a point of law is engaged when appealing to the Upper Tribunal. Employment law problems are now largely out of scope, except for workplace discrimination problems. The withdrawal of help in these areas of law has also significantly weakened a measure that helped encourage better practice and so an important means of preventing problems arising in the first place. With tenants or employees no longer able to access legal aid to challenge unlawful behaviour, landlords and employers could behave badly with impunity, and documented cases at Law Centres suggest that many have.

The difficulty presented by these scope changes also includes accessibility of services: communicating assistance available to vulnerable people facing acute problems that are often. Indeed, some of the most adverse effects of LASPO were not related to scope cuts, which are easier to pinpoint, but to technical aspects of its delivery. The means threshold has not been updated to reflect inflation, which in 2017 alone rose by 2.6%, and so has amounted to an effective eligibility cut. Poor commissioning on the part of the Legal Aid Agency has led to ‘legal aid deserts’ – areas of the country where there is only one local legal aid provider or none at all.¹⁰ The choice to deliver some areas of law through a ‘mandatory telephone gateway’ has separated these problem areas, such as discrimination, from the bulk of legal aid, delivered face-to-face. This has resulted in accessibility issues, low uptake and a disjointed service for clients.

A key function in the LASPO legal aid system is its ‘safety net’ scheme, Exceptional Case Funding, intended for cases not ordinarily in scope but where not awarding legal aid would risk the breach of human rights. Original projections expected 5,000-7,000 ECF grants per year. In the first year after LASPO came into effect, only 70 grants were made. After four years ECF grants have just crawled past 1,000 per year. Practitioners believe this is down to accessibility issues. In its first two years, the ECF application form was 14 pages long and required applications in egregious circumstances to make their case for support with considerable legal knowledge, such as references to the UK’s Human Rights Act. In addition, the withdrawal of Legal Help meant that any legal aid provider helping a client make an ECF application was likely to not be granted legal aid and not be remunerated for the work.

While some legal assistance no longer in legal aid scope remains available, this is limited and through charitable or pro bono sources. While some help is better than none, it remains a

¹⁰ The Law Society of England and Wales [advice deserts campaign](#).

geographically uneven 'postcode lottery'. Worse, it shifts public perceptions of legal assistance from being a matter of rights and entitlements couched in the social contract, to being the subject of charity and contingent on availability and good will.

In a largely adversarial legal system that was designed by lawyers for lawyers, the removal of legal aid for one party raises questions about their ability to get a fair trial as Litigants in Person (LiPs), without prior advice or representation, due to the resulting inequality of arms in court. Litigants in Person are not a new phenomenon but legal aid cuts have made them much more common, and therefore much more challenging to handle: as Lord Thomas, the Lord Chief Justice, admitted in 2016, "it is a problem across the entire system... the problem is we have now far too many."¹¹ Lacking legal assistance, Litigants in Person are likely to lack knowledge about their rights and the law required to effectively manage their case; to lack the legal skills to argue it; and to lack understanding of their case merits and prospects, leading them to make bad choices, such as not settling the case when this would be advisable or pursuing it doggedly, however hopeless. The lack of legal advice or representation has left some domestic violence victims needing to manage their case and question their attackers in court.¹² In extreme cases, prosecutions have been thrown out by courts as legal aid cuts have left defendants without advocates.¹³

Understandably, many legal aid lawyers, whose remuneration was cut by 10% just before LASPO came into effect, felt they could no longer afford to carry on delivering a rump service that was no longer commercially viable. Over LASPO's five years to date, a fifth of its providers have given up legal aid work. This trend was much more acute among nonprofit providers, 60% of whom have given up legal aid work, many of them also shutting up shop entirely. In the short term this has led not just to a loss of services but also to a loss of much human expertise for delivering it, as many social welfare law positions were lost. With fewer and less well-paid jobs available, many law schools have closed their legal aid modules, so fewer young professionals consider they can take up training and junior contracts doing legal aid work. This is just as well, as there are fewer such openings anyway and much fewer social welfare specialists to train them on the job. As the older generation moves toward retirement, then, recruiting and retaining their replacement has become very difficult, especially outside of large urban centres. An ill-judged cut to a vital public service has gone too deep, thus leaving legal aid with profound sustainability concerns.

¹¹ Lord Thomas of Cwmgiedd, [Lord Chief Justice's annual press conference](#), 30 November 2016, p. 5.

¹² See the case of 'Caroline' reported in "Legal Aid Cuts: 'The Forgotten Pillar of the Welfare State' – A Special Report," [The Guardian, 25 September 2014](#).

¹³ See "Fraud Trial Collapses Over Legal Aid Cuts," [Law Society Gazette, 1 May 2014](#).

Throughout this decline of civil legal aid, the UK Ministry of Justice has remained seemingly impervious to provider concerns and made no substantial changes to the provision other than secondary ones forced upon it by the courts through legal challenges. It has stuck firmly to its commitment to review LASPO between 3-5 years after implementation and refused to discuss policy change at any point prior to it. However, now that the LASPO review is underway, it is conducted in house and largely behind closed doors, and providers and other stakeholders have little faith in the sincerity of the government's intentions for it.