

National Report for England and Wales - ILAG Ottawa June 2019

1. Country details:

Jurisdiction: **England and Wales**

Population: **58,744,595** (England and Wales mid-2017 estimate – Office for National Statistics)

GDP: **£2,040,651m** (UK GDP 2017 – Office for National Statistics)

Poverty line: **living in households with income below 60% of the median in that year**

% of population deemed to be living in poverty: **16%** (UK 2016/17 – House of Commons Library)

Additional background information on the court system: **All criminal court cases start in a magistrates' court, and the vast majority will finish there. A small number will be referred to a higher court, usually the Crown Court.**

Cases at magistrates' courts - Offences such as motoring offences or disorderly behaviour, are dealt with only by magistrates' courts. They are known as summary offences. The maximum punishment for a single summary offence is six months in prison, and/or a fine of up to £5,000.

The most serious offences like murder, robbery or rape can only be dealt with in the Crown Court, which is able to hand out more severe sentences. A number of crimes, including certain drug offences and serious fraud offences, can be dealt with by either magistrates' courts or the Crown Court - these are called either-way offences

Separate to criminal courts are civil and family courts.

2. Legal Aid Organisation / Authority:

Name and Status of LAO (Independent, within Government, part of the Bar Association / Law Society, Public Defenders Office etc).

Legal Aid Agency (LAA) – the LAA is an executive agency, sponsored by the Ministry of Justice. (Executive Agencies are clearly designated units of a central department, administratively distinct, but remaining legally part of it.)

The Director of Legal Aid Casework was created under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO Act"). It involves decision-making on individual legal aid applications. The Director has sole responsibility for individual cases, ensuring that decision-making in this area is independent from Government. The current Director of Legal Aid Casework is also Chief Executive of the LAA.

Delivery method (salaried, private profession, paralegals etc. Please give numbers for each sector. If mixed please give the division of labour and balance of the mix).

Legal aid services in England and Wales are delivered through solicitor firms, not-for-profit organisations, mediators and barristers who are paid by the LAA to do legal aid work. Generally those providing legal aid will need to hold a legal aid contract, administered by the LAA. Telephone services are also provided for civil legal advice, and by the defence solicitor call centre (DSCC). The LAA does not collect information on individuals, but firms and offices:

Contract	Firms/Providers	Offices
2017 Standard Crime Contract	1,194	1,799
2018 Standard Civil Contract	1,446	2,419
2018 Standard Civil Contract (mediation only)	178	180
Civil Legal Advice (telephone only)	9	10
Public Defender Service	4	4

England and Wales have a small Public Defender Service in areas where other methods were not available. It provides defence advice and representation in all types of criminal cases, and can be instructed by anyone if the client is in receipt of legal aid. PDS operates across four offices, employs six accredited police station representatives and has a headcount of 24 duty solicitors and 25 advocates, including five QCs.

What payment methods are used to recompense any private lawyers in your system (e.g. contract, fixed fee, hourly rate, part pro bono, etc)?

The legal aid schemes require various types of contract covering different types of work. They are a combination of fixed fees and hourly rates. In a small number of cases the work has been price competed (this is for some of the telephone contracts). Rates of pay for most cases are set out in Remuneration Regulations and decided by the Lord Chancellor, not the Legal Aid Agency.

3. Budget and Spend:

Please give the budget for Publicly Funded Legal Services / Legal Aid in your jurisdiction for the last two years. If possible show the actual expenditure broken down by civil, criminal, initial advice:

Financial Year	Legal aid spending (£million)			Total legal aid
	Criminal legal aid	Civil legal aid	Central Funds	
2016-17	889	675	45	1,610
2017-18	887	707	48	1,641

Please indicate the proportion of the legal aid budget that is funded by (a) central / Federal Government (b) Local or state government:

100% central government

Is your legal aid budget demand led, capped, uncapped or a mixture? (Please elaborate):

Demand led – demand for legal aid is broadly driven by demand in the justice system more widely, particularly in criminal and public family law.

4. Scope, Caseload and Eligibility:

What restrictions on scope are there for civil and criminal legal aid and for initial advice in your jurisdiction?

Legal aid is available for the following:

- **you've been accused of a crime, face prison or detention**
- **you've been arrested, charged or questioned by the police**
- **homelessness or losing your home, or if it's in serious disrepair**
- **protecting yourself or your child from abuse or harassment, for example domestic violence or forced marriage**
- **poor quality care you or a family member are getting due to age, disability or special educational needs**
- **needing advice on finances, children or divorce if you've been in an abusive relationship**
- **a child in your family being at risk of being taken into care**
- **family mediation, for example if you're separating or getting a divorce**
- **discrimination**
- **challenging the way the government has made a decision about you**
- **seeking asylum or if you've been the victim of human trafficking**
- **needing representation at a mental health tribunal or inquest**
- **appealing a decision made by the social security tribunal about your benefits on a point of law to the Upper Tribunal, Court of Appeal or Supreme Court**

Applicants may be able to get legal aid in other exceptional cases, if they can show that being refused legal aid would infringe their rights under the European Convention on Human Rights (ECHR), or their EU rights to legal representation.

Total number of applications and grants for the last two years. Please break down by civil, criminal and initial advice as well as by year.

	Case numbers					
	Civil applications	Granted	Magistrates criminal applications	Granted	Crown criminal applications	Granted
2016-17 (r)	116,540	108,800	274,805	259,703	99,860	99,272
2017-18 (r)	116,604	109,239	248,252	234,854	95,251	95,134

Proportion of the population eligible for civil legal aid and/ or initial Advice. Eligibility limits for criminal legal aid.

Given the complications in the means test, estimating eligibility across the population is difficult.

To be eligible for criminal legal aid in the magistrates' court, you must have a gross income below £22,325 per year, and disposable income below £3,398 a year.

To be eligible for criminal legal aid in the Crown Court, you must have gross income below £12,475 a year, disposable income below £37,500 a year, .]

Are means tested contributions part of your (a) civil (b) criminal (c) initial advice eligibility requirements?

Both civil and criminal legal aid involves means tests and contributions dependant on the income and capital assets of the applicant.

For civil legal aid representation, applicants are ineligible if their gross income is over £2,657 per month. If applicants' disposable monthly income exceeds £733 or their capital exceeds £8,000, they are also ineligible. Those who fall within these thresholds are eligible for legal aid but may need to contribute towards their costs if their disposable income exceeds £315 per month or their disposable capital exceeds £3,000. Anyone whose income or capital is below these amounts do not make contributions.

Where contributions are payable, these are fixed according to a sliding scale. In calculating an applicant's capital, there is an equity disregard of £100,000 applied to the applicant's interest in their main property.

Applicants in receipt of certain welfare benefits automatically pass the disposable income test but still need to be assessed in respect of their capital.

For criminal legal aid, there is no means test or contributions for advice in a police station.

There are no contributions payable for representation at the magistrate's courts – the income based means test operates as an 'in/out' scheme.

For Crown Courts, defendants are liable to income contributions if their disposable income is between £3,398-£37,500 a year. If their disposable income is above this range, applicants are ineligible for legal aid, subject to a hardship review provision.

An income contribution order comprises six payments made on a monthly basis, with the payments capped according to the category of offence charged.

If convicted at the Crown Court, the defendant may be asked to pay some or all of the legal aid costs they have incurred from capital (subject to an exemption on the first £30,000 of their capital assets).

Defendants automatically get legal aid for legal representation in court if they are in receipt of certain welfare benefits or are under 18 years.

In your jurisdiction, are legal aided litigants who lose their case liable to pay the other side's legal expenses/ costs?

Yes, the losing party may have to pay their opponent's costs. However, it is usually possible to argue that because the losing litigant was in receipt of legal aid they cannot pay their opponent's costs. The court will usually make a "Costs Order", but say that it is not to be enforced until it can be shown that the losing litigant has the money to pay.

5. Quality Assurance:

System used – Complaints to LAO, Complaints to the Bar Association/ Law Society, Client Satisfaction questionnaires / interviews, CLE, Mentoring, Peer Review, Supervisor audit, Observation or video/audio tape etc?

Complaints in relation to Legal Aid Agency staff and/or processes involved in the administration of legal aid are made directly to the LAA.

There are several appeals process that applicants can apply to if they are unsuccessful in their legal aid claim. These range from appeals to an independent review body made up of practicing solicitors and barristers for high cost cases, to an internal LAA reviewer or independent cost assessor

who will carry out a review of the original decision considering the representations made.

Complaints about a solicitor should be referred to the Solicitor's Regulation Authority or the Legal Ombudsman.

What requirements are there (if any) for lawyers and others who wish to provide legal aid, other than membership of the Bar / professional association e.g. registration, experience, special exams, interviews, upper or lower limits on number of cases undertaken annually etc?

None

6. Public Legal Education:

Initiatives in last two years to increase public awareness of the availability of PFLS/ legal aid in your jurisdiction and how to access it. (Include any particular approach for those in remote areas or those with special legal needs).

IT packages introduced to enhance access for the public. Has there been a country wide Needs Assessment study in your jurisdiction in recent years, looking at the distribution of justiciable problems and how the public respond to them?

Legal Support Action Plan

In February we launched the Legal Support Action Plan which announces a series of pilots we are running over the next two years. One of these is an awareness campaign which aims to make the public aware of what sort of issues they can get legal aid for.

Government Support

The Government has supported both the Citizenship Foundation's Magistrates' Court Mock Trial competition for 12-14 year olds since its creation in 1993 and the Bar Mock Trials competition for 15-18 year olds since its creation in 1990.

As well as financial support, HMCTS provides financial in-kind support for the Citizenship Foundation's Magistrate's Court Mock Trials (MCMT) by opening the doors of over 60 Magistrates' Courts on Saturdays.

4,700 students from 318 state secondary school teams took part took part in 63 heats across England, Wales and Northern Ireland in 2015. Over 1,450

volunteers (mostly magistrates) from the legal profession gave their time to support the MCMT competition.

HMCTS opens over 25 crown courts on Saturdays to enable 2,790 school students from 186 state secondary schools to have a first-hand positive experience of the justice system. The Bar Mock Trial competition is made possible by the huge contribution of over 200 legal professionals (mostly barristers and judges) volunteering their time to support the young people in their preparations for, and on the day of, the competition.

The Attorney General's Office

The Attorney General and Solicitor General are the Government's Pro Bono champions, and as a part of this they work to further public legal education. The Solicitor General chairs a Public Legal Education Committee, which is made up of representatives from across the legal sector, including the Bar Council, Inner Temple and the judiciary, as well as legal education providers such as Citizens Advice and Young Citizens.

The Public Legal Education Committee published a 10 year Vision for Public Legal Education, which has seven goals for Public Legal Education, was launched in October 2018. The seven goals aim to ensure that Public Legal Education will:

1. Be supported by a robust evidence base and a body of research showing where the need is and what works best
1. Be of high quality, maintained to ensure that it remains accurate, accessible and useful for the people who need it and have significant social impact.
2. Universality of PLE reach across all demographics. Prioritising reaching children, young adults and vulnerable groups in significant numbers across the UK with the support of intermediaries.
3. Be scaled up through delivery by the legal community.
4. Harness technology and be delivered through innovative methods, both on and offline.
5. Be embedded into public services and Government departments, particularly as an aspect of early intervention in health, advice and community settings.
6. Be understood as beneficial and utilised by other sectors (e.g. banks, insurance, trade unions, housing).

The Public Legal Education Committee is now focused on working together to progress these goals.

Legal needs survey 2015

This large-scale survey of over 8,000 participants provides insight into people's experiences of over 16,000 legal issues.

The research, conducted by Ipsos MORI on behalf of the Law Society and the Legal Services Board provides information on the different responses people take when faced with legal issues, the reasons why they respond in the way they do and how they subsequently feel about the choices they make. It also covers awareness of the scope of legal aid and attitudes towards advice providers.

The research comprised three components: an online survey (16+), in-depth interviews with those who had experienced legal problems and an experimental, small scale online survey of young people between the ages of 11 and 15 to identify knowledge of rights, young people's experience of legal issues and their preferences for how they might become better informed about legal rights.

Half the adults experienced one of 29 legal issues in the three year period before completing the survey.

7. Alternative Sources of legal services:

What are the other principal sources of legal help for disadvantaged citizens in your jurisdiction, and how many clients do they assist annually (e.g. legal expenses insurance, trade unions, claims companies, community law clinics, university law clinics etc).

- **Legal expenses insurance exists but the uptake is very small.**
- **University law clinics use students to give free legal advice with qualified lawyers/professors overseeing.**
- **Law centres**
- **The third sector play a large role in providing free legal advice on a variety of law including housing, debt and family. Citizen's advice is a large charity with offices all around the country and links with other organisations, both third sector and local authorities. They provide advice on benefits, work, debt, consumer, housing, family, law & courts, immigration and health.**
- **Lawyers do Pro bono work, providing free legal advice to those who may not be eligible for legal aid.**
- **Advocate is the Bar's national charity that matches members of the public who need help with barristers who are willing to donate their time and expertise in deserving cases for those who are unable to obtain legal aid and cannot afford to pay.**
- **LawWorks is the solicitor's pro bono group charity which connects people in need of legal advice with the skills and expertise of lawyers willing to meet those needs for free, by supporting a network of local independent pro bono clinics. They also support charities and not-for-profit organisations by facilitating free legal advice and providing online information.**
- **'No win, no fee' conditional fee agreement (CFA) agreements are often used in personal injury cases. CFAs are a means of funding litigation,**

usually entered into by claimants, where the lawyer agrees not to take a fee if the claim fails. If the claim is successful, the lawyer will charge an uplift (known as a ‘success fee’) in addition to his base costs.

8. Holistic legal services:

Is your jurisdiction exploring link ups between legal services providers and non-lawyer professionals e.g. health / justice partnerships, social work / justice collaboration, or other forms of “one stop shop”?

The Legal Support Action Plan announces that we will be piloting integrated Legal support hubs. These will act as a ‘one stop shop’ for third sector providers to give joined-up, holistic advice for areas around social welfare.

We are currently exploring how legal advice can be joined up with health. There are already instances of advice providers (Newham Integrated Law Centre) working with GP services to refer patients to get legal advice. This allows advice providers to reach those who may not ordinarily engage with law clinics/legal advisors before they absolutely have to ie. When they get a court summons.

9. UN SDG Standard 16.3

Please identify any steps being taken to articulate and elaborate Sustainable Development Goal 16.3 in your jurisdiction.

This year, the UK is undertaking a “Voluntary National Review” (VNR) of its progress towards meeting the SDGs. The SDGs are the UN framework for tackling the most pressing global challenges of our time and delivering transformative change. This is a process that all UN countries go through. The UK was a key player in negotiating the SDGs and the PM pledged to “drive forward the implementation of the SDGS” at the UN General Assembly in September 2016.

This VNR report will highlight the key policies and programmes across the UK that are contributing towards each of the Sustainable Development Goals. It will be presented to the UN in July 2019 and the PM is expected to discuss it at a Heads-of-Government level review at the UN General Assembly in September 2019.

The Department for International Development and the Cabinet Office lead the approach to SDGs and the VNR, and each department is expected to contribute where relevant. Like all departments, the MoJ has mapped the SDGs to the relevant objectives and milestones within our Single Departmental Plan.

We have a significant interest in the VNR from the perspective of public policy. MoJ policy teams have contributed the VNR through chapters on Goal 16 ‘Peace, Justice and Strong Institutions (led by the Home Office) and also

chapters on Goals 5 and 10. Our greatest interests in this VNR are (a) access to justice (b) race disparity (Lammy review) and (c) safety and security in prisons. From our perspective, there are no new policy announcements being made through the VNR. Annex A sets out how Ministry of Justice is contributing to the UN Sustainable Development Goals.