

NATIONAL REPORT – ENGLAND AND WALES

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Introduction

This report has been prepared by Mr Hugh Barrett of the Legal Services Commission of England and Wales for the **International Legal Aid Group (ILAG)** Conference which takes place in Helsinki, Finland from 15th to 17th of June 2011.¹

Type of legal system

England and Wales operates a common law system and is indeed the basis of common law systems used in most commonwealth countries. The essence of English common law is that it is made by judges sitting in courts, applying their common sense and knowledge of legal precedent to the facts before them. Statute is another source of the law of England and Wales. The power to make and pass law lies with the UK Parliament.

Population

England and Wales has a population of approximately 54 million.

Table 1.

Jurisdiction	Population (Approx.)
England & Wales	54,809,100

¹ For information about the ILAG conference or indeed the work of ILAG in general, please visit <http://www.ilagnet.org/>

GDP

Table 2.

Jurisdiction	GDP	Year	Source
England & Wales			
- Wales	£45.6 Billion GBP	2008	Regional, sub-regional and local gross value added 2009
- England	£1081.4 Billion GBP	2008	Regional, sub-regional and local gross value added 2009

Average Annual Salary (Full Time Work)

Table 3.

Jurisdiction	GDP	Year	Source
England & Wales	£25,543 GBP	2010	Payscale.com

Administration of legal aid

Legal aid in England and Wales was first established by the *Legal Aid and Advice Act 1949* and it is now the Legal Services Commission (LSC) that runs the legal aid scheme in **England and Wales**. The LSC was established under the Access to Justice Act 1999 and replaced the Legal Aid Board in 2000. They contract with private solicitors and various non-profit organisations to provide information, advice and legal representation to people in need.² Currently the LSC is a non-departmental public body sponsored by the Ministry of Justice.³ However, earlier this year the Ministry of Justice announced that the LSC would become an executive agency of the Ministry of Justice. The change is aimed at bringing tighter financial control over the legal aid budget.

² <http://www.legalservices.gov.uk/aboutus.asp#more>

³ http://www.legalservices.gov.uk/aboutus/how/our_organisation.asp

Different legal aid schemes

England and Wales

In **England and Wales** the Legal Services Commission delivers legal services through two schemes: The Community Legal Service (CLS), which provides advice and legal representation for people involved in civil cases, and the Criminal Defence Service (CDS), which provides advice and legal representation for people facing criminal charges.⁴

The CDS was established in 2001 and allows for solicitors' firms to offer advice, assistance, and magistrate court representation under contract. The LSC also manages the duty solicitor schemes for police stations and magistrates' courts, and funds services in the higher courts. The LSC has also developed a Public Defender Service ("PDS"), which directly employs solicitors to provide criminal defence services to the public.⁵

The CLS is a network of solicitors, barristers and advice agencies which provides and promotes civil and family legal advice and representation. The LSC also manages Community Legal Advice, which includes telephone and internet-based services, and contracts with providers to deliver face-to-face civil legal aid services across a range of categories such as debt and housing.

Throughout England and Wales there is a national network of advice agencies that are usually staffed by volunteers. Citizens Advice Bureau Service and the Law Centres Federation are perhaps the most significant advice agencies. The Citizens Advice Bureau Service is a charity⁶ primarily funded by government and local authority grants but also by various corporations and charitable trusts.

criminal, or administrative. The essential criterion for receiving *aide juridictionnelle* is financial. The system distinguishes between total and partial aid, depending on one's financial situation. In 2008, applicants with total resources under €885 per month qualify for total aid, whereas applicants with less than €1,328 per

⁴ http://www.legalservices.gov.uk/about_legal_aid.asp

⁵ <http://www.legalservices.gov.uk/criminal/pds.asp>

⁶ <http://www.trust.org/trustlaw/country-profiles/pro-bono.dot?id=b8f971f0-efd6-46b6-bcf8-132469891a07>

Approximate financial eligibility limits for each scheme and estimated percentage of the population covered by each scheme.

England & Wales

Civil legal aid is means and merits tested. To be eligible for civil legal aid the client must meet certain financial eligibility criteria, taking into account gross and disposable income and whether they are in receipt of certain state benefits. Along with the financial criteria, civil cases must also be within the scope of the civil scheme and have sufficient 'merit' in order to be funded. There are certain proceedings where funding is available to individuals without reference to a person's financial means, such as funding for parents involved in Special Children Act cases such as care proceedings.

Criminal legal aid funding is subject to means testing in the Magistrates' and Crown courts. The Crown Court Means Testing scheme (CCMT) was introduced to Crown Courts in England and Wales in phases between January and June 2010. Under CCMT a means test is undertaken before legal aid is granted and anyone who has a monthly disposable income of £283 or more and/or capital assets in excess of £30,000 will be asked to contribute towards their defence costs in the Crown Court. People with less than these amounts, who are under 18, and/or who are on state benefits, do not have to pay a contribution.

In October 2010 the Ministry of Justice issued a consultation "Proposals for the Reform of Legal Aid in England and Wales" In his introduction to the consultation the Secretary of State for Justice said, "I want to discourage people from resorting to lawyers whenever they face a problem, and instead encourage them to, wherever it is sensible to do so, to consider alternative methods of dispute resolution which may be more effective and suitable. I want to reserve taxpayer funding of legal advice and representation of serious issues which have sufficient priority to justify the use of public funds, subject to people's means and the merits of the case.

Legal aid must also play its part in fulfilling the Government's commitment to reducing the fiscal deficit and returning this country's economy to stability and growth. The proposals on which I am consulting are therefore designed with the additional aim of achieving substantial savings."

The consultation closed in February 2011 and at the time of writing, the Governments' response has not been published.

Scope legal aid schemes and areas of law included/excluded

England & Wales

Community Legal Service (CLS) provides advice and legal representation for people involved in civil cases. The following are examples of what is covered; relationship breakdown, debt, housing, domestic violence, benefits, asylum and immigration, education, employment, mental health and community care issues.

Criminal legal aid offers advice and assistance from a solicitor on criminal matters, free legal advice from a solicitor at the police station during questioning, the cost of a solicitor preparing a case and also initial representation for certain proceedings at a magistrates' or Crown Court. The CDS also offers full legal representation for defence in criminal cases at all court levels and a duty solicitor to provide free legal advice and representation at magistrates' court.

Statistics for numbers of cases falling under each scheme

England & Wales

During 2009/10 the LSC funded nearly 3 million legal aid acts of assistance⁷ overall through the Community Legal Service (CLS) and Criminal Defence Service (CDS).

Of these, there were 1.43 million CLS acts of assistance, including 1.17 million via face-to-face and telephone advice. There were an additional 98,643 demand-led immigration acts of assistance and 159,715 certificates were issued for Licensed Work⁸. Community Legal Advice, which offers free, confidential, and independent civil legal advice and assistance, provided 417,440 acts of assistance during 2009/10 either through specialist telephone advisors or by closing enquiries at the triage stage (by the operator service resolving the issue to the clients' satisfaction or referring them to a local face-to-face provider or alternative helpline).

Through CDS, the LSC provided 1.53 million acts of assistance during 2009/10.

⁷ The LSC does not record the number of people who receive legal aid. Instead it records the number of 'acts of assistance'. One individual may receive a number of separate acts of assistance, and one act of assistance can help more than one person.

⁸ Licensed Work accounts for all other types of civil work, with the exception of Very High Cost Cases, which are managed under specialist contracts.

Annual expenditure

England & Wales

£2,237 million was the total (net) legal aid expenditure for the year 2009/10.⁹

Of this amount, £1,116.4 million was spent through the Community Legal Service, and £1,120.5 million via the Criminal Defence Service.

⁹ [http://www.legalservices.gov.uk/docs/about_us_main/LSC_AnnualReport_2009-10\(final_web\).pdf](http://www.legalservices.gov.uk/docs/about_us_main/LSC_AnnualReport_2009-10(final_web).pdf)