

## England and Wales National Report ILAG Harvard 2023

### 1. Country details:

Name: England and Wales

Population: 59,597,048 (England and Wales 2021 Census – Office for National Statistics)

GDP: £2,230,625m (UK GDP 2022 - Office for National Statistics)

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

% of population deemed to be living in poverty: 17% (UK 2019/20 – House of Commons Library)

Number of practising lawyers in the jurisdiction: 153,282 (number of solicitors with practising certificates in England and Wales in the 12 months to 31 July 2021 – The Law Society Annual Report)

### 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 or, in the case of some advocacy services, will be instructed by a contracted provider. Telephone services are also provided for civil legal advice, and by the Defence Solicitor Call Centre. The LAA does not collect information on individuals, but firms and offices:

<b>Contract</b>	<b>Firms/Providers</b>	<b>Offices</b>
2018 Standard Civil Contract	1,287	2,077

<i>(mediation providers included above)</i>	<i>(145)</i>	<i>(146)</i>
2022 Standard Crime Contract	1,112	1,671
Civil Legal Advice (telephone only)	8	8
Public Defender Service	4	4

*\*Correct as at 4/4/23 – source Legal Aid Agency Provider History Report produced by MI Team*

England and Wales have a small Public Defender Service (PDS). It provides defence advice and representation in all types of criminal cases. Its Advocates can be instructed by provider firms on behalf of legally aided clients and its offices can be instructed by clients who qualify for legal aid. PDS operates across four offices, employs 19 solicitors, 6 accredited police station representatives and 23 advocates, including 4 KCs.

**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 LAA.

**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.**

	Legal Aid Spending (£000's)			
<b>Financial Year</b>	<b>Criminal Legal Aid</b>	<b>Civil</b>	<b>Central Funds</b>	<b>Total Legal Aid</b>
<b>2018-19</b>	900,904	708,744	49,671	<b>1,659,319</b>
<b>2019-20</b>	844,030	774,096	54,321	<b>1,672,447</b>
<b>2020-21</b>	585,178	725,225	31,946	<b>1,342,349</b>
<b>2021-22</b>	785,521	813,143	42,114	<b>1,640,778</b>

*\*Stats taken from [Legal Aid Statistics Oct-Dec 22](#). 4 Years included to account for Covid-19*

*Central Funds includes the spend on orders made to acquitted defendants who have privately funded their legal representation. This occurs when under the terms of the Prosecution of Offences Act 1985, acquitted defendants who have applied for legal aid and been found ineligible may, in limited circumstances, obtain an order from the Crown Court to recover their costs.*

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

100% UK central government.

**Is your legal aid budget demand led (uncapped) or capped 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 abuse 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).

**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	Granted	Crown criminal	Granted

			applications		applications	
2018-19	116,687	108,816	224,169	212,683	85,953	85,107
2019-20	121,904	113,917	203,288	194,067	91,970	90,977
2020-21	117,565	110,832	173,392	166,563	91,970	91,081
2021-22	114,688	107,478	158,421	152,620	81,937	80,958

*\*Stats taken from [Legal Aid Statistics Oct-Dec 22](#). 4 Years included to account for Covid-19*

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

Given the complexity of the means test, estimating eligibility across the population is difficult. At present, we estimate that approximately 20-25% of households in England and Wales have both income and capital below the existing thresholds for civil legal aid (including initial advice). However, recipients of specific means-tested benefits (including, as a temporary measure, Universal Credit<sup>1</sup>) are additionally entitled to be passported through the income element of the means test assessment for both civil and criminal legal aid; this increases the proportion of households eligible for civil legal aid but is very difficult to quantify as Universal Credit is still in the process of being rolled out.

To be eligible for criminal legal aid in the magistrates' court, a defendant 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, a defendant must have household disposable income below £37,500 a year.

Defendants aged under 18 are generally entitled to non-means tested legal representation.

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

Legal aid for representation in the civil and family courts, and the Crown Court, may require the applicant to pay monthly income contributions towards the cost of their case.

For civil legally aided representation, applicants are ineligible if their gross income exceeds £2,657 per month or their disposable income exceeds £733

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<sup>1</sup> Universal Credit is a payment that those on low incomes, are out of work or cannot work receive. As Universal Credit is being rolled out nationally those in receipt of several other benefit types will also be moved over to this payment.

per month (with allowances for additional household members). Applicants with disposable income greater than £315 per month may need to pay a monthly contribution for the duration of their case. Similarly, applicants with capital above £8,000 are ineligible for legal aid; those with capital in excess of £3,000 may need to pay a contribution. In calculating an applicant's capital, there is an equity disregard of £100,000 applied to the primary residence. However, the MoJ consulted upon changes to the legal aid means tests in March 2022 ([Legal Aid Means Test Review - GOV.UK](https://www.gov.uk/government/consultations/legal-aid-means-test-review) (www.gov.uk) and will publish its response in due course

For representation at the Crown Court, a defendant with disposable income above £3,398 per year may be required to pay a monthly income contribution for up to 6 months. Convicted defendants may additionally be required to make a contribution towards their legal costs from any capital assets above £30,000.

No contributions are payable towards initial advice and assistance for civil and family legal aid, or for representation at the magistrates' court. Non-means tested advice is also available at the police station following arrest.

In March 2022, MoJ published a detailed consultation on legal aid means-testing arrangements. The consultation proposed a broad suite of changes to the civil and criminal legal aid means test, with the aim of ensuring access to justice. The MoJ has now published its response to the consultation, which sets out its position on the final design of the new means test. This includes measures such as the removal of the means test for certain areas, an uplift in thresholds and the introduction of new disregards, to name but a few.

**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, Continuing Legal Education, Mentoring, Peer Review, Supervisor audit, Observation or video/audio tape etc?**

**Complaints:** There are several appeals processes 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. Complaints in relation to LAA staff and or processes involved in the administration of legal aid are made directly to the LAA.

**Quality Standards:** The Specialist Quality Mark (SQM) is the organisational quality standard owned by the LAA which can be obtained by any legal service provider operating a specialist legal service. Its purpose is to ensure providers of legal services are well managed, provide good levels of client care and have appropriate systems in place to ensure delivery of good quality advice. The Law Society also has an equivalent standard, Lexcel.

**Contract Management and Assurance:** The LAA's "Assurance" and "Contract Management" functions collect and analyse a broad range of management information to identify areas of potential risk. Each provider will have a "Contract Manager" who will be able to visit the organisation to carry out checks on the quality of the firm, either as part of a scheduled visit or on an ad hoc basis when required. This can lead to follow-up investigations and remedial action.

**Peer Review:** An Independent Peer Review Process is used by the LAA. Trained and experienced legal practitioners, recruited through an open procurement process, review a provider's random sample of case files. These files are then measured against an objective set of category-specific criteria. The criteria and process were developed in conjunction with the Institute of Advanced Legal Studies. Providers are chosen for Peer Review either as part of a random risk-based sample or as a targeted assessment (e.g. because concerns about their quality have been raised). The outcome of a provider's assessment is rated on a scale of 1 (excellence) to 5 (failure in performance). If the provider's work is rated at 4 or 5 then this can ultimately lead to the termination of their legal aid contract (if the rating is upheld on a second Peer Review). The results of all Peer Reviews are shared with the individual provider and, on an aggregate level, with representative bodies. This encourages providers to identify any problems with the services they deliver and improve. Through its Contract Managers the LAA can take informal action to discuss and address any issues with the provider and/or take more formal measures such as the imposition of specific contract sanctions.

**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?**

Civil and criminal legal aid may only be provided by solicitor firms that have the applicable standard civil or crime contract with the LAA. An exception to this are self-employed barristers or solicitor advocates when they advocate for

defendants or appellants in Crown Court cases or Tribunals. The self-employed barristers and solicitor advocates will be instructed by solicitor firms with the relevant standard contract, but they themselves, do not require a contract with the LAA. Self-employed barristers and solicitor advocates are not subject to any additional requirement beyond holding a practising certificate from their regulatory body, the Bar Standard Board and Solicitors Regulation Authority respectively.

A solicitor firm with a standard civil contract must have at least one full time equivalent supervisor for each category of law that they hold a Schedule Authorisation for. Supervisors can supervise no more than 4 caseworkers and must comply with Case Involvement and Supervision Standards as set out in the contract and in some cases, Schedule Authorisation.

Similarly, a solicitor firm with a standard crime contract must employ at least one supervisor that meets additional requirements beyond holding a practising certificate from their regulatory body. The supervisor must be accredited under the Law Society's Criminal Litigation Accreditation (CLAS) Scheme, undertake a minimum number of police station and court attendances per year and a minimum number of hours of criminal casework per year. Both legally qualified and non-legally qualified caseworkers may work on criminal legal aid cases, but they must be supervised by a supervisor that meets the above requirements.

The LAA operates duty solicitor rotas for police stations and magistrates' courts to ensure that a solicitor is available for individuals that do not have their own solicitor. The duty solicitors come from solicitor firms with a standard crime contract, and act for their own clients when not doing duty solicitor work. In order for a solicitor firm to put forward a solicitor as a duty solicitor, the solicitor must hold the CLAS Accreditation, and undertake a minimum number of police station and court attendances per year and a minimum number of hours of criminal casework per month.

Compliance with the SQM, or the Law Society's equivalent standard Lexcel, is a requirement for legal services providers that have, or are seeking to have, either a civil or crime contract with the LAA. However, the SQM is also currently available to legal services providers who are not contracted with the LAA

## **6. Public Legal Education:**

**Initiatives in last two years to increase public awareness of the availability of Publicly Funded Legal Services/ 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 e.g. the elderly or victims of domestic violence).**

Through a number of pilots and initiatives, the Ministry of Justice (MoJ) are committed to improving and enhancing information, guidance and signposting

across the full breadth of early legal support to ensure everyone is aware of how they can access justice in a way that best meets their needs.

Since 2015, the MoJ has invested more than £25 million in support for litigants in person and funding a broad range of free legal support services. This includes over £7m in funding from 2020-2022 which supported organisations providing specialist legal advice services following the onset of the COVID-19 pandemic. This funding enabled organisations to remain operational and recognised the impact of the pandemic on the sector. We are also currently distributing £4.8m to front line organisations through the Help Accessing Legal Support (HALS) grant, which has been awarded to 55 organisations. The HALS grant aims to strengthen the breadth of support to people accessing the justice system and draw together an even clearer picture of the legal journeys of litigants in person and the impact of early intervention.

In March, we announced a new £10.4m Improving Outcomes Through Legal Support (IOTLS) grant which will run from July 2023 until March 2025. This funding will enable organisations providing specialist legal support to continue to help people and communities beyond HALS which concludes in June 2023. The grant will build on the success of our other legal support grants, including HALS, with a greater emphasis on data and evidence collection and the provision of at-court support.

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. In this role, both Law Officers regularly offer support for public legal education initiatives, including participating in Pro Bono Week and Justice Week each year and conducting a range of visits to boost awareness and support the sector.

The Solicitor General also chairs a Public Legal Education Committee, which is made up of representatives from across the legal sector, including members of the profession (such as the Bar Council and the Law Society) and legal education providers such as Citizens Advice and Young Citizens.

In 2018, the Public Legal Education Committee published a 10 year Vision for Public Legal Education, which sets out key goals for Public Legal Education to be achieved by 2028. The Committee continues to work together to progress these goals, and as part of this work is this year considering steps that could be taken to gain support and buy-in for public legal education outside of the legal sector. In addition, the Committee is also considering the impact the pandemic has had on existing PLE services.

**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?**



We are continuing to explore the role can play in helping people identify their legal problems and understand their rights and options for resolution. We have worked closely with the Department for Levelling Up, Housing and Communities (DLUHC) to deliver a prototype of an online signposting (guided pathway) tool to help people in private rented sector accommodation resolve housing disrepair issues. The online tool provides tailored information, guidance and signposting which helps users understand their rights and responsibilities and identify an appropriate next step when trying to resolve issues before they worsen. The number of users accessing the tool every month has significantly increased from around 350-490 unique users in 2021 to about 2 000 users per month in 2023. We are pilot, we are exploring the development of future tools and other online services covering other legal jurisdictions.

## **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).**

There continue to be several alternative access points to legal help –

- 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. For example, 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 agreements (CFA) 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”?**

In England and Wales, as is the case across the UK, health justice partnerships (HJPs) are well established with over 380 partnerships linking health and legal services across the four jurisdictions. Many of these partnerships have contributed to the growing body of research that indicates that there are clear health and wellbeing benefits of legal advice and that co-locating advice in healthcare settings provides benefit for both clients and healthcare systems. However, this evidence has many limitations, making it difficult to assess the real impact that health justice partnerships can deliver. The Ministry of Justice is addressing these evidence gaps through robust evaluation of pilots.

MoJ work on health justice partnerships and co-located advice hubs is part of the effort to develop understanding of what works in legal support services as originally set out in the 2019 [Legal Support Action Plan](#). At present we are focusing our efforts on co-location in health care settings though we are also exploring other appropriate environments for co-location. The MoJ are also exploring whether system level barriers can create challenges for the successful delivery of health justice partnerships and hope through work in this area they can lead discussion and challenge any such barriers where they are found. The MoJ are undertaking two projects to support this work. The first is in partnership with Citizens Advice Wirral, the MoJ is part funding a co-located hub named Flourish Wellbeing Hub (FWH) which launched in November 2023. This project will run until March 2025. MoJ will fund a hub facilitator, a data management tool, and an independent evaluation of the hub. In addition to this, the MoJ have commissioned an external evaluation of existing health legal advice hubs co-located in healthcare settings (HJPS) across England and Wales. This project will run until June 2024.

The MoJ has also invested in understanding how we work more closely with local community groups and networks who are often the first place people turn when facing a legal problem. These 'trusted intermediaries' are ideally placed to play a key role in supporting individuals to recognise they have a legal problem and get the right advice sooner and before they reach crisis point. The MoJ provided £22k to Law for Life to fund a training programme for trusted intermediaries. This has enabled them to deliver their housing rights courses to 50 trusted intermediaries from 30 different community organisations supporting women with housing and homelessness issues in South West and North West England. Funding this training provides an opportunity to improve our understanding of the benefits of training trusted intermediaries and help determine how the role they can play in getting the right legal support to the right people at the right time can be developed.

## **9. UN SDG Standard 16.3**

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

Despite the challenges the Covid-19 pandemic brought, the LAA has continued to promote and safeguard access to justice. Contingencies have been put into place to maintain access to justice for those that still required and sought it throughout the response period. In addition, help has been offered to providers to ensure that provision will remain in place and available for the most vulnerable in the future.

### **Most promising development and biggest challenge**

The impact of Covid-19 was one of our biggest challenges, but the response to it continues to be one of our most promising developments. The contingencies put in place have allowed us to explore new ways of working that have helped with efficiency and effectiveness, with consideration continuing to be given to how we might maintain and develop these changes within the existing, and future, contractual and regulatory framework.

Means Test Review (MTR) proposals, if implemented, would see an increase to thresholds and an increase to the percentage of the population in England and Wales financially eligible for legal aid. However, implementation will be complex from a digital systems perspective and the LAA (and its contracted providers) will need to plan/prepare appropriately to adjust to any increases in legal aid demand as a result of the MTR proposals.

We are preparing for the launch of the Housing Loss Prevention Advice Service (HLPAS) from 1 August 2023. HLPAS will expand the scope of legal aid beyond the current provision of representation at court to include early legal advice on housing, debt and welfare benefits issues. Advice will be available from the moment an individual receives notice that possession is being sought. Assistance will be non-means tested. It is hoped that this will enable individuals to resolve matters before possession proceedings are required, reducing homelessness and pressure on the courts and social services.

The Criminal Legal Aid Independent Review (CLAIR) is an opportunity to help the justice system recover from the disruption caused by the pandemic, and to move forward stronger, as we work to drive down the Crown Court backlog.

On 30 November 2022, we published our substantive response to the Criminal Legal Aid Independent Review, following an interim response published in July 2022. Taken together, they set out ambitious reforms that put us on the road to a better functioning, more efficient and improved criminal justice system.

The first phase of our reforms sought to address the immediate and severe funding challenges faced by the criminal legal aid profession. Our initial package injected £115 million a year into the system. This amounts to a 15 percent pay increase for most fee schemes and is the biggest uplift the sector has seen in over a decade. This funding began to come into effect from the end of September 2022, and we subsequently agreed to extend it to the majority of cases already being worked on in the Crown Court.

Phase two of our plans focuses on longer term systemic reform. Central to this is the establishment of the Criminal Legal Aid Advisory Board, which will enable better dialogue between government and the legal professions in future.

We want to make sure that criminal defence solicitors are fairly paid for all the work they do. We are proposing a £21 million funding boost, including £5 million specifically for work in the youth court. As CLAIR recommended, we will restructure complex fees for police station work, investing an additional £16 million a year. This is anticipated to increase spend by up to £141m a year - taking expected criminal legal aid spend to £1.2 billion per year.

The Ministry of Justice is undertaking a review of civil legal aid which will consider the civil legal aid system in its entirety - how services are procured, how well the current system works for users and how civil legal aid impacts the wider justice system.

The purpose of the review is to identify evidence-based options for moving to a more effective, efficient and sustainable system for legal aid providers and the people who rely on legal aid. The Review will seek to develop proposals and draw conclusions from an evaluation of a wide array of sources. Whilst the review is taking place, we are continuing to make improvements across the sector to ensure legal aid is available to those who need it.