

Assessment of litigation costs, and publicly funded legal services

Key findings

- The number of “between parties” costs bills that were subject to detailed assessment by the Supreme Courts Cost Office fell by 10 per cent in 2007, compared to 2006.
- Gross expenditure on legal aid during the 2007/08 financial year was £2,242 million, an increase of 1.3 per cent in cash terms compared to 2006/07.
- Around 91% of defendants in Crown Court trials receive publicly-funded legal representation.

Chapter 10: Assessment of litigation costs, and publicly funded legal services

This chapter deals with the funding of litigation work, whether through an award of costs to a successful litigant on the completion of court proceedings, or through public Legal Aid schemes.

- The detailed **assessment of litigation costs** is the process of examining, and if necessary reducing, the bill of costs of a Solicitor or Litigant-in-Person upon the conclusion of litigation proceedings. Costs include not only the solicitor's own professional fees, but also disbursements incurred including barristers' and experts' fees. The purpose of detailed assessment is to determine:
 - a) how much costs a successful party in litigation is entitled to recover from his unsuccessful opponent
 - b) the amount which a solicitor or barrister is to be paid out of public funds (in publicly funded cases)
 - c) how much a client should have to pay his solicitor (under the Solicitors Act).
- The **Supreme Court Costs Office** is responsible for the detailed assessment of costs in many civil jurisdictions, including the Court of Appeal (Civil), all three Divisions of the High Court, a number of Tribunals, the Court of Protection, and London-based county courts. It also deals with appeals against determinations of costs in the Crown Court.
- **Publicly-funded legal services** in England and Wales are administered by the **Legal Services Commission**. Access to legal assistance is provided predominantly through two well-established Legal Aid schemes.
 - a) The **Community Legal Service (CLS)** which provides civil and family legal services
 - b) The **Criminal Defence Service (CDS)** which provides legal services to those arrested, charged or prosecuted in connection with a criminal offence

Assessment of litigation costs

The office responsible for assessing litigation costs depends on the type of case, and whether or not the litigation was publicly funded. The Supreme Court Costs Office (SCCO) deals with costs assessments in the more complex and significant areas of civil litigation. It is responsible for cost assessments relating to all proceedings in the Chancery, Family and Queen's Bench Divisions of the High Court, the Court of Appeal (Civil Division) and the London county court Group. It also deals with costs in matters involving the Court of Protection, various tribunals and assessments transferred from other county courts and district registries. It also deals with appeals against the determination of costs in the Crown Court.

However, the Judicial Committee of the Privy Council, the House of Lords, the Lands Tribunal, and (except as above) county courts are responsible for the detailed assessment of costs in their respective courts.

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- b) the amount which a solicitor or barrister is to be paid out of public funds (in publicly funded cases)
- c) how much a client should have to pay his solicitor (under the Solicitors Act).

In 2007, the SCCO assessed 13,017 costs bills, 2 per cent fewer than the 13,222 it assessed in 2006. The number of "between parties" assessments of bills of costs in civil cases dropped 10 per cent from the level for 2006.

A random sample over five years (2002-2006) of completed "between parties" assessments shows that the process led to an average reduction of 23.3% in the value of these costs bills.

Summary caseload statistics on the work of the Supreme Court Costs Office is shown in [Tables 10.1 and 10.2](#).

Separate statistics on costs assessments carried out by the Judicial Committee of the Privy Council and the House of Lords are shown in [Table 10.3](#).

Publicly-funded legal services

The Legal Services Commission (LSC) operates the two Legal Aid schemes in England and Wales, through which nearly all publicly-funded legal services are commissioned from independent suppliers. These schemes are described below.

The Community Legal Service (CLS) provides civil and family legal services. Work commissioned via the CLS is divided into two types:

- Legal advice and assistance (known as “Legal Help”), help at Court, and legal representation in front of the Asylum and Immigration or Mental Health Review Tribunals. This is known as “Controlled work” for contracting purposes.
- Legal representation by solicitors and barristers in civil or family cases which could go to court (other than in Very High Cost Cases which are managed individually under separate contracts). This is known as “Licensed work” for contracting purposes.

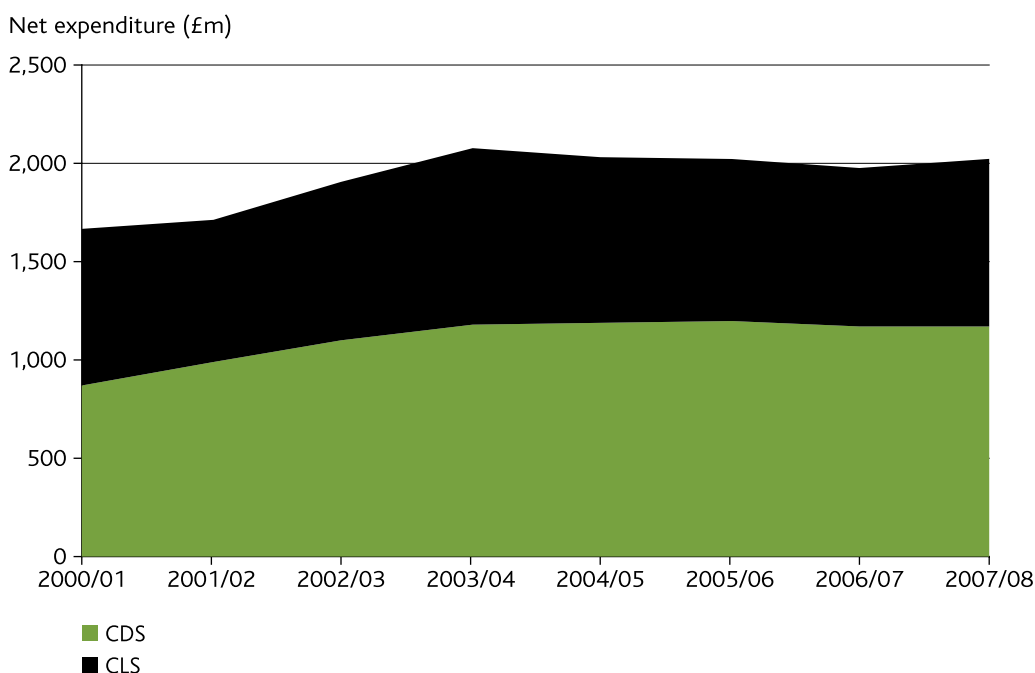
The Criminal Defence Service (CDS) which provides legal services to those arrested, charged or prosecuted in connection with a criminal offence. Work commissioned via the CDS is similarly divided into two broad types:

- Advice and / or representation in Police stations and magistrates’ courts
- Representation in the Crown Court and higher courts

Gross annual legal aid expenditure during the 2007/08 financial year was £1,062 million in the CLS, and £1,180 million in the CDS. The corresponding net figures were £844 million (CLS) and £1,179 million (CDS). It should be noted that the scope, design and operation of both legal aid schemes are subject to periodic changes. More detail on these issues is available from the website of Legal Services Commission at: www.legalservices.gov.uk.

Summary statistics on the monies spent and work commissioned by the CLS and CDS are shown in Table 10.4. Trends in the total net expenditure of the two schemes from 2000/01 to 2007/08 are shown in the graph below.

Net annual expenditure of the Community Legal Service (CLS) and Criminal Defence Service (CDS): 2000/01-2007/08



Under the Access to Justice Act 1999, legal representation is available to anyone facing criminal proceedings before any Court where it is in the interests of justice that public funding be granted. The "Interests of Justice test" is set out in Schedule 5 of the Act, and guidance on its application is available from the Legal Services Commission website.

An accused person can be granted publicly funded representation (by means of a Representation Order) where the court decides that it is in the interests of justice to do so. In making this decision, the court will take into account, among other factors, whether the charge is so serious that the defendant may be imprisoned or lose his job if convicted, or suffer serious damage to his reputation.

A Representation Order covers all criminal proceedings, including preliminary or incidental hearings and any related bail proceedings. Where a defendant has a Representation Order in a magistrates' court or the Crown Court, the representation order covers obtaining advice on appeal and the preparation of any application for leave to appeal or giving notice of appeal against conviction or sentence. However, it does not cover the costs of an appeal itself, although an application for a further representation order can be made directly to the Court of Appeal to cover those proceedings.

Since 2 October 2006, defendants appearing before the magistrates' court have been required to pass an additional test of financial eligibility to qualify for publicly funded representation. This 'means test' takes account of a defendant's personal circumstances (e.g. size of family) as well as their basic income. As of 2 April 2007, applicants can therefore have a gross annual income of up to £21,487 and still qualify for legal aid. During the first twelve months of this scheme, just over 90% of all 'means test' applications were granted.

In 2007, around 100,000 applications were made in magistrates' courts for representation in the Crown Court (either for trial on indictment or sentencing proceedings) – [Table 10.7](#), and of these, 8 were refused. It is very rare for an application of this sort to be turned down – the previous time such cases were refused was in 2001.

Overall, around 91 per cent of Crown Court defendants facing trial on indictment were in receipt of publicly-funded legal representation, with the remainder either receiving privately-funded representation or going unrepresented. The corresponding figure for defendants committed to the Crown Court for sentence after a summary trial was 69 per cent, and for those appealing against the decisions of magistrates' courts, 53 per cent.

Statistics on the funding of Crown Court representation are given in [Tables 10.5 to 10.7](#).

Table 10.1**Supreme Court Costs Office**

Number of costs bills assessed, by type of case giving rise to the bill: 2004-2007

Type of case	Number of bills			
	2004	2005	2006	2007
"Between parties" assessments	3,320	3,062	2,459	2,205
Civil legal aid assessments	6,400	5,939	6,315	5,756
Receivers' costs in the Court of Protection	3,247	4,438	4,082	4,528
Appeals against determination of costs in the Crown Court	430	333	366	528
Total assessments	13,397	13,772	13,222	13,017

Source:

Supreme Court Costs Office

Table 10.2
Supreme Court Costs Office
Number of costs bills assessed and their estimated total and average values, by jurisdiction of original case: 2003-2007

Original case jurisdiction	2003			2004			2005			2006			2007		
	Cost bills assessed	Estimated total value ²	Estimated average value	Cost bills assessed	Estimated total value ²	Estimated average value	Cost bills assessed	Estimated total value ²	Estimated average value	Cost bills assessed	Estimated total value ²	Estimated average value	Cost bills assessed	Estimated total value ²	Estimated average value
Court of Appeal (Civil)	480	£11,113,779	£23,154	475	£12,419,364	£26,146	458	£8,198,200	£17,900	522	£11,751,850	£22,513	537	£16,791,556	£31,269
High Court															
Queen's Bench Division	2,249	£103,071,632	£45,830	1,625	£78,737,533	£48,454	1,430	£98,670,000	£69,000	1,550	£81,637,483	£52,669	1,394	£69,882,968	£50,131
Chancery Division	540	£36,406,672	£67,420	408	£25,857,912	£63,377	349	£19,195,000	£55,000	237	£25,454,000	£107,401	203	£17,117,986	£84,325
Family Division	4,500	£38,657,954	£8,591	4,144	£47,719,328	£11,515	3,870	£46,440,000	£12,000	4,150	£60,735,123	£14,635	4,248	£73,217,952	£17,236
Administrative Court	1,037	£8,661,144	£8,352	607	£8,103,393	£13,350	390	£8,580,000	£22,000	325	£5,414,200	£16,659	332	£3,910,931	£11,780
Court of Protection	2,340	£10,530,000	£4,500	3,247	£15,423,250	£4,750	4,438	£21,746,200	£4,900	4,082	£20,410,000	£5,000	4,528	£26,906,688	£5,942
Tribunals	162	£4,107,336	£25,354	174	£6,379,927	£36,666	114	£5,415,000	£47,500	135	£4,996,764	£37,013	62	£2,105,645	£33,962
County Courts ¹	1,514	£30,869,449	£20,389	2,287	£55,701,676	£24,356	2,390	£59,750,000	£25,000	1,855	£60,803,875	£32,778	1,185	£30,494,538	£25,734
Crown Court (Appeals against initial cost determinations)	373	-	-	430	-	-	333	-	-	366	-	-	528	-	-
Total	13,195			13,397			13,772			13,222			13,017		

Source:
Supreme Court Costs Office

Notes:

- 1 County Court figures include assessments of bills in 60 bankruptcy cases for 2006, and 21 cases for 2007
- 2 Estimated values are for "brought-in" bills (i.e. before the process of detailed assessment). A random sample over five years (2003-2006) of completed "between parties" assessments shows that this process led to an average reduction of 23.3% in the value of these bills

Table 10.3
Judicial Committee of the Privy Council and House of Lords
Number of costs bills assessed and their total and average allowed values: 2003-2007

	2003			2004			2005			2006			2007		
	Cost bills assessed	Estimated total value	Estimated average value	Cost bills assessed	Estimated total value	Estimated average value	Cost bills assessed	Estimated total value	Estimated average value	Cost bills assessed	Estimated total value	Estimated average value	Cost bills assessed	Estimated total value	Estimated average value
<u>Judicial Committee of the Privy Council</u>															
Petitions for special leave to appeal	5	£28,714	-	2	£8,255	-	5	£33,237	-	0	-	-	4	£18,006	-
Appeals	25	£664,726	£26,589	19	£774,240	-	10	£342,526	-	10	£737,033	-	8	£442,428	-
<u>House of Lords</u>															
Petitions for leave to appeal	32	£109,684	£3,428	32	£110,000	£3,438	25	£108,263	£4,331	25	£108,497	£4,339	30	£95,374	£3,179
Appeals	29	£2,244,629	£77,401	33	£1,668,752	£50,568	24	£1,235,405	£51,475	14	£1,433,752	£102,410	24	£1,652,138	£68,839

Source:

Judicial Committee of the Privy Council and Judicial Office, House of Lords

Note

Averages are not shown where there are fewer than 20 cases in a given year

Table 10.4
Publicly-funded legal services
 Summary statistics on activity and expenditure, 2000/01 – 2007/08

	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
Community Legal Service (CLS)								
<u>Civil and Family: Representation</u>								
Cash payments (£m)	£957.2	£871.2	£820.4	£811.2	£763.6	£806.8	£774.2	£801.9
Acts of Assistance (thousands)	275.5	225.4	204.5	215.3	201.9	194.8	179.5	165.8
<u>Civil and Family: Advice and Assistance ("Legal help")</u>								
Cash payments (£m)	£231.7	£258.3	£329.5	£383.8	£355.6	£284.1	£261.4	£260.4
Acts of Assistance (thousands)	862.0	779.6	812.9	709.8	654.3	801.4	884.6	834.6
CLS total								
Total cash payments (£m)	£1,188.9	£1,129.5	£1,149.9	£1,195.0	£1,119.2	£1,090.9	£1,035.6	£1,062.3
Operating receipts (£m)	£397.0	£395.0	£337.1	£297.1	£273.3	£259.8	£226.7	£218.2
Total net expenditure (£m)	£791.9	£734.5	£812.8	£897.9	£845.9	£831.1	£808.9	£844.1
Total Acts of Assistance (thousands)	1,137.5	1,005.0	1,017.4	925.1	856.2	996.2	1,064.1	1000.4
Criminal Defence Service (CDS)								
<u>Criminal: Police stations and magistrates' courts</u>								
Cash payments (£m)	£453.6	£509.1	£526.7	£534.2	£510.9	£501.9	£529.4	£486.7
Acts of Assistance (thousands)	2,172.5	1,697.2	1,516.7	1,583.8	1,463.7	1,488.9	1,473.8	1378.5
<u>Criminal: Crown Court and higher courts</u>								
Cash payments (£m)	£422.0	£474.1	£569.3	£645.0	£682.4	£695.5	£647.9	£693.4
Acts of Assistance (thousands)	116.0	115.0	123.7	124.0	115.6	121.5	120.7	123.5
CDS total								
Total cash payments (£m)	£875.6	£983.2	£1,096.0	£1,179.2	£1,193.3	£1,197.4	£1,177.3	£1,180.1
Operating receipts (£m) ¹	£3.2	£0.8	£0.3	£0.7	£1.2	£0.6	£5.9	£1.1
Total net expenditure (£m)	£872.4	£982.4	£1,095.7	£1,178.5	£1,192.1	£1,196.8	£1,171.4	£1,179.0
Total Acts of Assistance (thousands)	2,288.5	1,812.2	1,640.4	1,707.8	1,579.3	1,610.4	1,594.5	1502.0
All publicly funded legal services²								
Total cash payments (£m)	£2,064.5	£2,112.7	£2,245.9	£2,374.2	£2,312.5	£2,288.3	£2,212.9	£2,242.4
Operating receipts (£m)	£400.2	£395.8	£337.4	£297.8	£274.5	£260.4	£232.6	£219.3
Total net expenditure (£m)	£1,664.3	£1,716.9	£1,908.5	£2,076.4	£2,038.0	£2,027.9	£1,980.3	£2,023.1
Total Acts of Assistance (thousands)	3,426.0	2,817.2	2,657.8	2,632.9	2,435.5	2,606.6	2,658.6	2502.4

Source:

Legal Services Commission's Annual Reports for years shown

Notes:

- 1 All "cash payments" figures represent gross expenditure, except for Criminal Higher payments up to 2004/05, which represent net expenditure. This is because Criminal Higher legal aid was funded directly, rather than via the Legal Services Commission, prior to April 2005. CDS operating receipts up to 2004/05 therefore exclude any income relating to Criminal Higher work
- 2 The scope of legal work covered by both the CDS and the CLS has changed during the period covered by this table. For details of these scope changes, please see the Legal Services Commission's annual reports and other related documents

Table 10.5**Funding of Crown Court representation**Applications¹ for public funding filed in the Crown Court, by type of proceeding and result, 2000-2007

Type of proceeding	Number of applications							
	2000	2001	2002	2003	2004	2005	2006	2007
<u>Trial on indictment</u>								
Applications	6,685	6,627	5,310	4,809	4,838	4,768	4,279	6,082
Granted	6,476	6,485	5,152	4,644	4,670	4,582	4,127	5,905
Refused	208	162	158	165	168	186	152	177
<u>For sentence or to be dealt with</u>								
Applications	3,521	2,583	2,907	3,767	4,554	4,868	6,805	10,175
Granted	3,486	2,561	2,897	3,740	4,532	4,841	6,761	10,142
Refused	35	22	10	27	22	27	44	33
<u>Appeals against Magistrates court decision</u>								
Convictions and sentence:								
Applications	1,340	1,228	1,273	1,267	1,328	1,380	1,439	2,034
Granted	1,330	1,210	1,256	1,245	1,307	1,359	1,427	2,017
Refused	10	18	17	22	21	21	12	17
Sentence only:								
Applications	1,948	1,655	1,590	1,662	1,656	1,623	1,780	2,684
Granted	1,937	..	..	1,656	..	..	1,772	2,677
Refused ²	11	..	..	6	..	..	8	7

Source:

CREST system, HM Courts Service

Notes:

1 Applications granted include a small number granted in the magistrates' court and extended by the Crown Court

2 Numbers marked with ".." are withheld to protect the confidentiality of individuals

Table 10.6**Funding of Crown Court representation**

Defendants and appellants in the Crown Court, by type of proceeding and type of representation, 2007

Type of proceeding	Defendants		
	Represented under criminal public funding	Privately / not represented	Total
Trial on indictment	87,370	8,245	95,615
For sentence or to be dealt with	26,059	11,622	37,681
Appeals against magistrates' court decisions:			
Conviction and sentence	2,869	2,980	5,849
Sentence only	3,781	2,901	6,682

Source:

CREST system, HM Courts Service

Table 10.7**Funding of Crown Court representation**Number of applications¹ filed in the magistrates' courts for representation in the Crown Court, by type of proceeding, 2000-2007

Type of proceeding	Number of applications							
	2000	2001	2002	2003	2004	2005	2006	2007
Trial on indictment	79,887	81,864	89,501	89,718	88,277	83,223	83,019	83,200
For sentence or to be dealt with	19,110	17,562	19,639	19,511	18,986	20,407	20,117	16,646
Appeals against Magistrates court decision								
Convictions and sentence	1,264	1,240	1,347	1,357	1,397	1,525	1,668	873
Sentence only	2,557	2,407	2,512	2,484	2,541	2,509	2,431	1,116

Source:

CREST system, HM Courts Service