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International comparison of publicly funded legal services and justice systems

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University of York

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University of York**

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Summary of key findings

The data in this report covered the period 2000/01 to 2006/07. Making comparisons of international justice systems was complex due to significant differences in the methodology and reporting of data associated with justice systems. Therefore all comparisons in this report should be treated with care as to their interpretation. Additional analysis of data collection methodologies might have revealed alternative explanations for some of the differences found. However, this additional work was beyond the study remit.

Legal aid spending in England & Wales 2000/01 to 2006/07

Spending on both the criminal and non-criminal components of legal aid in England & Wales (E&W) had declined slightly in real terms since 2003/04.

Spending on the non-criminal component had fallen relative to the criminal.

By international standards spending in per capita terms was high.

Legal aid spending per head tended to be higher in richer countries.

It tended also to be disproportionately higher relative to GDP per capita in richer countries.

The CEJEP Report (2006) found spending in E&W high relative to EU levels.

The present study found spending in E&W to be unusually high relative also to non-EU countries including the ANZAC countries.

Composition of legal aid spending

The number of cases supported per capita in E&W was higher than for any of the other countries in respect of both criminal and non-criminal legal aid.

Spending per case supported was higher in E&W than all other study countries for both types of work with the sole exception of criminal cases in the Netherlands.

The combined effect of higher case volumes and higher average cost per case appeared to mark expenditure per head much higher in E&W than elsewhere.

Criminal legal aid spending

The high volume of crime (per capita) recorded by the police in E&W could explain part of its relatively high legal aid spending per capita.

This could be compounded by a higher proportion of suspects being brought to court for criminal offences and by a higher fraction of this group receiving legal aid.

Income ceilings on eligibility for criminal legal aid were high in E&W. They were not significantly out of line with those of other high income EU countries (except France) but were much higher than levels in non-EU countries.

Spending on running the courts in E&W was much lower than in comparable countries. This might to some degree offsetting higher levels of legal aid spending.

Non-criminal legal aid

The number of non-criminal cases per head and the average cost per case were both higher in E&W, with average cost the stronger influence.

The share of family work in non-criminal spending had increased sharply as cost rises had more than compensated for a small fall in volume.

The slight decline in family case volume since 2003 had mirrored a slight fall in the number of petitions for divorce filed over the same period.

Other influences

Comparison of spending levels between EU and Commonwealth countries failed to show any evidence of an 'Anglo-Saxon' or 'common law' effect producing higher spending per capita on legal aid.

There was some evidence that criminal cases were handled differently in EU countries other than E&W. This might give rise to fewer court hearings and lower demand for legal aid per case in criminal matters.

Evaluation of public defender pilots in E&W and New Zealand might provide evidence as to whether this form of provision influenced the conduct of cases and the costs of delivering criminal defence services.

Findings from the Scottish experiment with fixed fees suggested that there might be further scope for improving the efficiency of legal services provision.

Conclusions

The high level of legal aid spending in E&W appeared to have multiple causes. This makes it difficult to produce 'quick fixes'.

A number of suggestions were made about possible developments including the use of the Australian experience with public defenders, more effective triage of 'legal' issues, further procedural reform and more case-level analysis of legal aid spending.

1. Introduction

1.1 Objectives

International data pointed to spending on legal aid in England & Wales being comparatively high. The broad objective of the research reported here was to explore the evidence in relation to hypotheses developed to account for the differences in public spending on providing access to justice, taking account of spending on the justice systems as a whole¹. These hypotheses included differences in income levels and income distribution, in the organisation of the legal services market, in the rules of legal procedure, in the provision of alternatives such as legal expenses insurance and in other factors such as offending propensities, crime reporting and recording practices and social attitudes to divorce.

In order to explore the role and strength of these various influences the project investigated legal aid as it operated in Australia, Canada, France, Germany, Netherlands, New Zealand and Sweden as well as England and Wales. This did not set out to be a detailed study of how legal aid operates in practice in England and Wales or in the other countries. Neither did it set out to be a full-scale comparative study.

There were two key barriers to making such comparisons. First, particularly in the federal systems such as Australia and Canada, there was sufficient variation even within single countries, at provincial level, to preclude this from being feasible within the time and space limits. Secondly, as regards the EU countries surveyed, the sources of comparative data were regarded as insufficiently robust to support much in the way of inferences.

Within these limitations the study sought, in particular, to review possible explanations for public spending on legal aid in E&W being substantially higher than elsewhere.

1.2 Methodology

In order to support this wide ranging, rather than intensive, study a variety of research methods were employed. Where appropriate further details were set out in the appendices to the report. In summary, there were three strands to the research.

¹ The terms of reference, in summary were as follows "Ministry of Justice wishes to commission a small size project to develop evidence based hypotheses to understand differences in the cost of publicly funded legal services (legal aid) and justice systems in the following countries: Australia, Canada, France, Germany, Netherlands, New Zealand, Sweden and England and Wales."

Review of literature

There was substantial literature on legal aid, contributed to by a range of disciplines (including law, philosophy, criminology, social policy and economics). It involved a range of policy issues from the legal basis of provision to means testing and the areas of law covered. Our strategy was to establish the scope of this material by means of the standard methodology used in systematic reviews, as described more fully in appendix A.

We have not presented the results as a systematic review because that task alone would require more space than was available for the whole report. The length of the list of references went some way to reflecting the depth of the survey conducted but we were highly selective in referring to the findings in the main part of the text.

Data compilation

The second strand of the research strategy was to compile a set of secondary data on the countries covered by the study. These data referred to both the operation of legal aid and to the economic and social characteristics of the countries in question. Where possible data were also presented on aspects of the legal context, including the volume of cases being heard and the type of legal system in operation. The data were drawn from a wide variety of sources including reports and accounts of legal aid organisations, national statistical sources and more specialist reports including European and other international surveys of legal institutions.

Data Analysis

A third strand of the research involved using the data to explore some of the simpler hypotheses, particularly the relationship between spending per capita on legal aid and the level of national income per capita. The principal limitation on this work was that the number of countries studied was not large enough to support serious statistical analysis of a model of the level of legal aid spending per capita. We were able to compile sufficient data to explore the link between income and legal aid spending for a group of around 30 countries. But to have extended such a study to other possible determinants of spending would have required a major data collection effort lying beyond the terms of reference for the study.

Limitations and caveats

The study reported here was produced over a period of three months in 2008. The data in this report covered the period 2000/01 to 2006/07.

Its findings were intended to be suggestive and provocative rather than definitive. A wide range of sources were consulted but it was not possible to do full justice to them all. The study did not seek to offer judgements about the quality of legal work delivered or about the appropriateness of spending levels.

Making comparisons of international justice systems was complex due to significant differences in the methodology and reporting of data associated with justice systems. A review of the detail of the data sources used uncovered a range of methodological issues that should be born in mind. For example, table 7.1 shown in this report quotes figures quoted from the European Sourcebook of Crime and Criminal Justice Systems (ESB, 2006). England and Wales data was for individuals cautioned, those prosecuted for summary offences, trials either way or indictable offences. This was considered the closest proxy for the 'suspects' data collected by other European countries. But it was not exactly the same. Similarly when reviewing the number of cases brought to the criminal courts relative to the crime rate in this table, there were methodological issues associated with the nature of the cases covered, particularly associated with the disposal of traffic offences. A third example related to the differing role of prosecutors and use of cautions, which differed in England and Wales compared to other countries.

These three examples illustrated the potential limitations of international comparison in these areas. Therefore all comparisons in this report should be treated with care as to their interpretation. Additional analysis of data collection methodologies might have revealed alternative explanations for some of the differences found. However, this additional work was beyond the study remit.

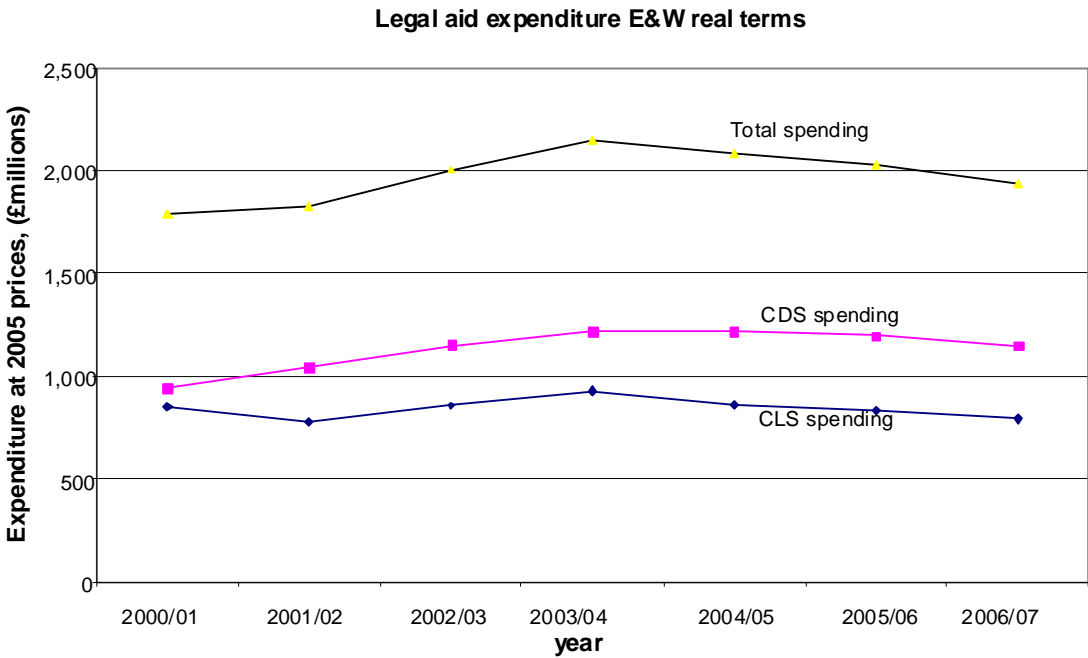
Insofar as views were expressed, they were those of the authors alone and do not represent government policy.

2. Context

Legal aid spending represents a significant component of the cost of running the justice system in England and Wales (E&W). It had been of the order of £2 billion per annum since 2002/03. Spending in cash terms had been fairly stable over the past five years². This resulted in a slight decline when expenditure was expressed in real terms, as was evident from the total schedule in figure 2.1.

In E&W expenditure on the Criminal Defence Service (CDS) exceeds spending on the Community Legal Service (CLS), which covers both civil and family matters along with immigration and asylum. Expenditure on CDS has increased relative to spending on CLS over the seven years documented in figure 2.1.

Figure 2.1 Legal aid expenditure, 2000/01 to 2006/07 at 2005 prices



By international standards, the spending level in E&W remained very high. In per capita terms it was higher than for any other country in this review, probably the world. It was also many times greater than would be expected on the basis of the country's level of GDP per capita. The Council of Europe report on European Judicial Systems (CEPEJ, 2006) drew attention to

² Table C1 in Appendix C gives the data in both current price terms and at constant 2005 prices. The data on current price expenditure were taken from MOJ Legal Factsheet. The current price spending was deflated by the Consumer Price Index (ref TZ854869439 from ONS) to get spending at 2005 prices.

per capita spending on legal aid in England and Wales being considerably higher than for other EU countries. Data reported below³ indicated that per capita legal aid spending in E&W was also very high in relation to non-EU countries such as Australia, New Zealand and Canada, which had legal systems that had more in common with that of England and Wales.

The purpose of this paper was to explore some of the possible explanations for this position. It looks at the characteristics of schemes in France, Germany, Netherlands, Sweden, Australia, Canada and New Zealand as well as E&W. These countries differed in terms of their legal background (some being common law, others civil law jurisdictions), their religious and political influences, their approach to provision of public services and so on. They also had similarities: all were high income countries, all were thriving democracies and all had active legal aid schemes.

The structure of the paper is as follows. Section 3 looks at the background, reviewing some of the principal models of legal aid and arguments about its role and format. Section 4 surveys in summary fashion the provision of legal aid across the study countries. Section 5 looks at the relationship between legal aid spending and GDP. Section 6 takes a more disaggregated approach by splitting legal aid expenditure into its principal components, namely criminal and non-criminal work. Section 7 looks at the principal cost drivers for the criminal component and section 8 at the drivers for the non-criminal part. Section 9 explores evidence on some of the other hypotheses on legal aid. Section 10 concludes.

³ See figure 5.2

3. Model of legal aid

The provision of legal services in a community, and particularly the role played by the public sector in both the funding and delivery of services, could be a contentious matter. Individuals differ in the scale of 'legal need' they experience and the least-advantaged in society may be least well equipped to deal with conflict or the threat of conviction and penal sanctions (Mulherin & Coumarelos, 2007). In most countries, there was some degree of collective support for provision at least to those who were less well off and could not otherwise afford to pay for advice or representation.

The legal aid practice evident in the countries examined in this study was ample illustration of the wide variation in solutions that had evolved to improve access to legal services. As with other areas of public policy, such as health and education, there was great scope for variation in both the underlying philosophy of provision and in the resulting mixture of methods used both to fund and to deliver legal services.

A full-blown social insurance approach meant all citizens had access to legal services at zero user cost, since the rationale was that you contribute to costs when you were able and received services when you needed them. The excess demand and high public spending this would induce had resulted in practice in the adoption of 'means' and 'merits' tests. The result was partial provision, rather than universal provision.

As in other areas of social policy the purpose of public intervention may be to correct a market failure. A 'free market' approach could not readily deliver a 'fair' solution to service provision, so some form of collective action was indicated. Even in countries such as the US, which relied heavily on market solutions for the provision of health and legal services to the better off, there was taxpayer support for the provision of legal services to the indigent population.

A third model was a rights-based approach. This was based on the proposition, at least in the criminal sphere, that if the state had the right to impose significant sanctions on individuals (particularly loss of life or liberty) then there was a responsibility to ensure that those charged with offences had access to legal services of a quality comparable with those used by public prosecutors.

Whichever model was used as the foundation for the provision of legal aid there remained wide scope for variation in the detailed design of legal aid schemes and for the provision of legal services.

The 'judicare' model of legal aid that developed in the UK after the Second World War delivered legal services (purchased normally from the private sector⁴) free at the point of delivery. It was a model that raised many of the issues encountered in the National Health Service. Legal problems and the demand for legal services to deal with them increased more quickly than anticipated, not least because setting a zero user price gave service users little incentive to consider seriously the costs of provision which was incurred by the taxpayer at large. But it was also because other changes, such as increasing divorce rates, had given rise to more triggers of 'legal need'.

In contrast, the development of a 'public defender' or 'public counsel' model in countries such as Australia and Sweden produced something more like the NHS, with public delivery as well as public funding. Those delivering services were employed directly by the public sector. Fluctuations in demand levels were mediated through variations in waiting time and/or contact time. Private sector lawyer associations were generally hostile to these developments⁵.

Another response had been the move to conditional fee systems for certain kinds of money claims, as for example in the personal injury field. This changed the basis of contributions to the insurance pool from universal contributions to risk-related contributions. The costs of meeting claims and, more importantly for present purposes, the legal costs of handling them were internalised to the group at risk of causing injury, such as motorists in relation to road accidents, rather than to the taxpayer at large⁶. Further, higher risk groups, such as young motorists, would normally have to pay higher rates for their (compulsory) insurance.

Other jurisdictions had developed a tradition of private sector lawyers providing some of their services on a 'pro bono' basis. This might take the form of a 'requirement' on lawyers to do a minimum number of hours per annum at reduced or zero fees, or be part of legal training requirements. In some countries, including England & Wales, large law firms provided some services free on a voluntary basis. From an economic perspective neither the required nor the voluntary services were 'free': they had a cost which had to be met by some kind of cross-

⁴ But in some cases from the Voluntary or Charitable Sectors, as with Citizens Advice Bureaux.

⁵ This was evident in discussions in Canada of proposals to extend such schemes.
http://findarticles.com/p/articles/mi_m0LVZ/is_3_18/ai_93454400/ (accessed 27 May 2009)

⁶ One incidental effect of this had been a marked effort by the (private) insurers in these markets to tighten the legal costs of handling plaintiff claims as well as insurers' defence costs.

subsidy from other classes of legal work. The full social costs of providing legal services to the less well off might thus get hidden in 'implicit subsidies' paid by other users of legal services.

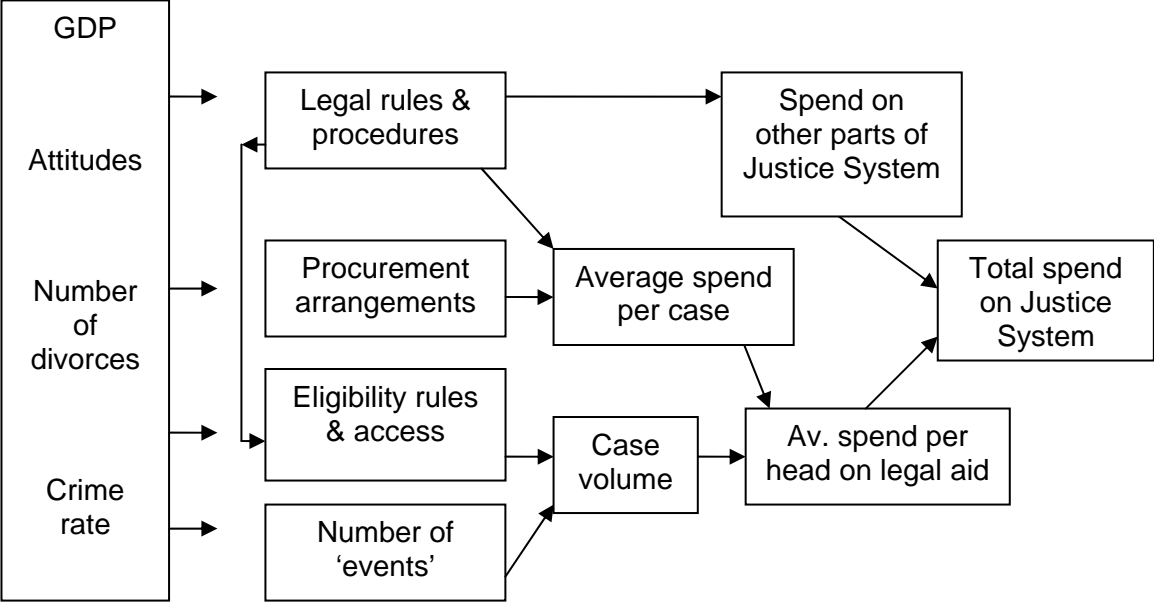
In addition to variation in the funding of legal service provision there had been substantial development in the delivery mechanisms through which legal services were commissioned. This was evident in the move in many countries, including England and Wales, to make the administration of legal aid the responsibility of an independent agency rather than a professional body. It was evident also in the move away from a 'fee for service' kind of approach to a 'fixed fee' or 'contracting' approach. The 'supplier-induced demand' analysis that emerged in the 1990s as governments grappled with rapidly-escalating legal aid budgets, relied on a micro-analysis of the incentive-structure of legal aid provision arrangements (Bevan 1996, Gray *et al* 1996). The result had been a move to contracting on a sounder basis⁷.

The evolution of legal aid schemes had differed across countries. In countries such as Italy legal aid continued to play a tiny role. In countries such as Sweden and the Netherlands, which might have been predicted to develop substantial schemes, other means had been found to contain the expansion of legal aid spending. The same kinds of tension between relieving pressure on public expenditure and providing access to legal services to poorer groups underpinned most schemes. It was in the solutions adopted where the differences were marked.

In order to narrow down the source of variation across countries our analysis was organised around the schema set out in figure 3.1 which identified the key influences on legal aid spending. Total spending on legal aid could be decomposed into the product of expenditure per case and case volume. These two components were driven in turn by the legal and policy environment (legal rules and procedures, structure of legal aid) and by the broader environment (economic, social and cultural conditions). The same kind of structure held for both criminal and non-criminal kinds of legal work. The two were distinguished for purposes of comparison however, because the influences at work in each case might be somewhat different. For example, the effects of variation across countries in the crime rate or the volume of divorces would be mediated in different ways by legal rules and procedures and by legal aid arrangements.

⁷ This relied on the use of 'high powered incentive contracts' engineered to minimise the scope for opportunistic behaviour by service providers.

Figure 3.1 Influences on legal aid expenditure



4. Survey of study countries

Variations in legal aid systems across countries were a reflection of the many influences on them. Reviewing these variations could help identify areas where adjustments or reform might be worth considering. This study compared the operation of the legal aid system in England and Wales with counterparts in four EU countries (France, Germany, Sweden and the Netherlands) and also with three non-EU countries. The latter, at least in some measure, had similarities in terms of their legal and administrative systems.

Appendix B contains a set of tables documenting the principal characteristics of access to justice across each of the eight countries on which the study was based. We summarise some of the main points country-by-country in the following paragraphs.

4.1 England & Wales (E&W)

The legal aid scheme in E&W was well-known to involve a high volume of support, comparatively high spending levels per case and thus high spending per head.

Reform of the scope of the scheme, eligibility criteria and procurement arrangements had together stemmed the rapid rate of increase in spending that had continued over an extended period. Changes to the eligibility rules for civil legal aid had resulted in a sharp drop over later years in the proportion of the population eligible for civil representation. The proportion fell (Hansard, 2008) from 52% in 1998 to 46% in 2001 and then to 29% in 2007 (Griffith, 2008; Buck & Stark, 2003).

Under the E&W model, a broad range of individuals were eligible for legal aid. This included all those suspects interviewed at police stations under the Police Station Duty Solicitor Scheme⁸. In addition, subject to a test of whether it was in the “Interest of Justice”⁹, for criminal cases¹⁰, and through the independent Legal Services Commission for civil and family cases¹¹. There was a choice of legal representatives available.

⁸ See http://www.legalservices.gov.uk/criminal/police_stations.asp#advice (accessed 27 May 2009).

⁹ The test of “Interest of Justice” explored the seriousness of the crime and its potential consequences to assess whether the person should be provided with legal aid funded representation. For further detail see http://www.legalservices.gov.uk/criminal/getting_legal_aid/interests_of_justice_test.asp (accessed 27 May 2009).

¹⁰ See http://www.legalservices.gov.uk/criminal/criminal_legal_aid_eligibility.asp for eligibility rules on criminal cases (accessed 21 May 2009).

¹¹ See http://www.legalservices.gov.uk/civil/civil_legal_aid_eligibility.asp for eligibility rules on civil and family cases (accessed 21 May 2009).

The scheme had traditionally been intended to cover middle income groups as well as low income groups¹² and had not encouraged the development of self-representation or highly-selective coverage found in countries such as the US.

High divorce rates, a relatively high crime rate and increases in the number of offenders being brought to justice had been, and remained, some of the potent sources of upward pressure on demand. There was evidence that the high costs of legal aid were offset to some degree by costs elsewhere in the justice system, particularly the costs of running courts, being lower than elsewhere¹³.

There had been criticism that lawyers working on family law legal aid cases had been reluctant to encourage clients to consider alternatives to court or solicitor-negotiation approaches such as mediation.

There were signs of innovation in some areas such as the development of Community Legal Advice Centres and Networks¹⁴ and the web-based Community Legal Service Direct information and advice service (Flood & Whyte, 2006). There was a small *pro bono* sector supported by some of the large law firms but it was marginal (Boon & Abbey, 1997).

In other areas of legal aid, it had been suggested (more forcibly in E&W than elsewhere) that lawyers had acted opportunistically to induce demand for their services.

It had been suggested by some that the legal aid issue had been considered too much in isolation. This had impeded the development of outcome-oriented solutions, for example through greater collaboration with other agencies or efforts to reduce the proportion of matters ending up in court¹⁵.

¹² The social insurance roots of the scheme made universal access the natural starting basis as in the original blueprint produced by the 1945 Rushcliffe Committee: Goriely, T. (2002).

¹³ This point was explored in chapter 7 below.

¹⁴ These organisations, jointly funded by the Legal Services Commission and local authorities, provided information via web and digital TV, telephone and leaflets: see further: http://www.legalservices.gov.uk/civil/community_legal_advice_centres_and_networks.asp (accessed 27 May 2009).

¹⁵ 'Justiciable problems' extended much more widely than the set of issues which, de facto, were tackled by means of legal services: Genn, H. (1999).

4.2 France

The French legal aid system had rather different properties. Case volumes were comparatively low and spending per case was very low¹⁶ and not well documented. Spending per head of population was a small fraction of the level in E&W.

Access to legal aid was less straightforward than in E&W. Applications had to be made through a Court Office.

The income ceiling on entitlement was much lower than in many other countries, and a little over half the level in E&W. In 2005 the ceiling for partial legal aid was €15,180 per annum and the ceiling for full legal aid was €10,128¹⁷. There was no assets test to complement the income criterion.

More of the beneficiaries were granted aid for non-criminal work¹⁸. Amongst the beneficiaries of legal aid only a comparatively small number (less than 20%) got 'partial' aid as compared with 'full aid'. This confirmed that the scheme did not really penetrate middle income groups.

Most rapid growth in the numbers receiving aid over the period 2001 to 2005 was for immigration matters. The increase here was 73%, although this group still represented fewer than 5% of all beneficiaries.

Mediation facilities were available for divorcing couples.

4.3 Netherlands

The spending level per capita on legal aid in the Netherlands was the next highest among EU Member States or other countries outside the United Kingdom (CEPEJ, 2006).

The system was the closest of the EU civil code jurisdictions to the English legal aid model.

Legal aid was readily accessible although eligibility criteria were stricter than in E&W: Wrb-entitled persons¹⁹ could appeal to subsidised assignment of a lawyer. The number of

¹⁶ In the standard international sources, such as CEPEJ, it was not well documented. It was not known, for example, how spending levels vary between criminal and non-criminal cases.

¹⁷ *Annuaire statistique de la Justice*, Edition 2007, Parwas notes 16 & 17 at p. 296.

¹⁸ For the raw data was in table C3 in Appendix C.

cases per head supported was much lower than in E&W, especially in relation to criminal work. Here the rate was 79 per 10,000 inhabitants compared with 298 in E&W.

The Dutch inquisitorial criminal justice system reduced the need for costly, court-based adversarial proceedings. Dutch legal culture had been characterized as 'pragmatic', and aimed at filtering out disputes, for example by mediation (Blankenburg, 1999).

Legal aid funds supported both a judicare model of private sector lawyers providing advice and representation and a system of Buros, free at the point of delivery, through which advice and referrals could be sought.

Studies of the users of legal aid showed the proportions of groups such as the non-active and migrants to be over-represented²⁰.

4.4 Germany

Legal aid in Germany consumed far fewer resources per head than in E&W (CEPEJ, 2006). The legal aid system was much more fragmented than in E&W, being based on a series of regional schemes.

Legal Expenses Insurance (LEI) was very well-developed and expenditure on these stand-alone private sector policies offset much of the legal aid saving (Kilian, 2003).

In the criminal sphere, where LEI was not really an option because of adverse selection issues, eligibility rules for legal aid were extremely restrictive.

The number of cases in which legal aid was granted was much lower than in E&W. Fewer than half the million plus civil cases funded in E&W received support. As in some Canadian provinces legal aid might come in the form of a repayable loan (Van Zeeland & Barendrecht, 2003).

¹⁹ The rules for granting subsidised legal assistance to those with a lesser ability to pay were codified in the Law on legal assistance (Wrb).

²⁰ 47% were of foreign origin or migrants: 41% were active: Maas, G. C. (2007). Users of subsidised legal aid: Insights into characteristics, problems and income position. Den Haag, Netherlands, WODC. 4a.

4.5 Sweden

Sweden had the highest recorded crime rate amongst the study countries²¹, but the number of cases coming before the criminal courts was comparatively low.

The number of divorces was at the lower end of the range²².

Spending per capita on legal aid was very low by comparison with E&W despite the income ceiling for eligibility²³ being comparatively high.

Sweden relied heavily on Legal Expenses Insurance for various civil matters, normally as part of household, motor or boat policies. Not having insurance cover was not sufficient to establish a right to legal aid. You were expected to exhaust cover available under the policy before applying for aid.

Prior to application to the legal aid authority there was a compulsory consultation. Everyone was entitled to free advice under the Legal Aid Act.

Defendants in criminal cases represented by public defence counsel were not eligible. Court costs could be awarded against defendants found guilty in criminal trials. It was the legal aid organisation that was responsible for enforcing payment of these costs.

The tenor of the legal aid web site was that legal aid represents social protection for individuals who could get support in any other way²⁴. There was an expectation that a recipient will contribute towards the cost. There was an upper limit of 100 hours on the amount of lawyer time that would be covered except in exceptional circumstances.

For family matters, which (like criminal cases) were normally excluded from such policies, there was no legal aid. But mediation was provided as a free alternative to separating couples.

²¹ For offence types such as theft, incidence appeared high in Sweden. The high rate did not seem to be attributable to a high number of police per capita: Sweden's rate of 182 police staff per 100,000 population was nearly the lowest of EU countries surveyed in the European Sourcebook of Crime and Criminal Justice Statistics. However it was quite possible that differences in the propensity of victims to report incidents or in police recording practice were playing a role here.

²² See data on divorces per 10,000 inhabitants in the country survey of appendix B.

²³ The ceiling was gross income of SEK 260,000 per year, equivalent to around £22k, www.domstol.se

²⁴ http://www.domstol.se/templates/DV_InfoPage____741.aspx was the Swedish language version web-site with this information (accessed 27 May 2009). An English version of the web site was available at: www.dom.se/templates/DV_InfoPage_3755.aspx in 2008. It was no longer available in 2009.

It had been reported that 90% of parents settled disputes over custody and access either on their own or through mediation or counselling (National Audit Office, 2007).

4.6 Australia

Australia had developed a 'mixed' system. Funding bodies also acted as service providers and introduced innovations such as provision to groups, self-help packs and greater use of IT to improve information flows without the need for lawyers (Hunter *et al*, 2008). Particularly since 1997 a 'solution-oriented' approach was intended to widen access and reduce unit costs.

A well-regarded duty lawyer scheme had provided (since the 1970s) representation in court (not just advice in police stations) for criminal offences for which legal aid funding would not be available.

In family law cases, this duty lawyer approach prompted conflicts of interest, since they could not act for more than a single party and this often resulted in one of the other parties referring to a private solicitor. In family law cases, there was quite widespread use of non-legal dispute resolution methods.

There were a number of Diversion Courts operating in magistrates' courts²⁵.

Spending caps (\$10,000 under federal family law funding) resulted in some individuals becoming self-representing prior to the completion of cases.

The spending level on legal aid was less than one quarter of the level per capita as in E&W. Eligibility rules were much tighter with low income ceilings and criminal legal aid only available for serious cases²⁶. In addition, there was a tight 'legal merits' test applied in civil matters based on the prospects of success and whether a prudent litigant (with money) would spend their own resources on pursuing the matter.

Australia had the best-developed public defender scheme amongst study countries, with over 50% of criminal cases handled by PDS²⁷.

²⁵ For example in South Australia there was a Drug Court, a Mental Health Court and a Domestic Violence Court: http://www.lsc.sa.gov.au/cb_pages/criminal_law.php (accessed 27 May 2009).

²⁶ For example, in Queensland it was available in Magistrates' Court Committal Hearings only where the maximum penalty exceeded 14 years: <http://www.legalaid.qld.gov.au/> (accessed 27 May 2009).

²⁷ From the data in table C4 in Appendix C it can be seen that the in-house share of criminal legal aid work was 54%.

There was comparatively wide variation across states in the way legal aid worked and its average cost per case. In per capita terms support for non-criminal cases was particularly low. The Legal Aid Commission in each State got its funding from a variety of sources, primarily from central government and its local State Government.

A network of around 200 Community Legal Centres provided free referral, advice and assistance services to around 350,000 clients per annum. About 20% were entirely voluntary while the remainder were funded by a variety of government and charitable organisations²⁸.

4.7 New Zealand

New Zealand had a comparatively low crime rate but shared with E&W the characteristic that a large number of cases per head were brought to the criminal courts.

There were 27 Community Law Centres nationwide²⁹ providing a mix of legal services including: free legal advice, representation to people with insufficient means to pay, law-related education and information, law reform submissions and other special services needed by particular communities. There had been efforts to improve co-ordination between welfare services and legal aid.

There were suggestions that lawyers had been withdrawing from the legal aid market because remuneration rates had not been increased for 12 years. A recent 10% increase in rates was argued by the NZ Law Society to be inadequate³⁰.

Spending per head on legal aid, as in other non-EU countries, was very low compared with E&W. Spending per case ran at around 60% of levels in E&W, probably in part because of lower per capita income levels in NZ.

²⁸ See the website of the National Association of Community Legal Centres: <http://www.naclc.org.au/> (accessed 27 May 2009).

²⁹ The centres were listed at: <http://www.communitylaw.org.nz> (accessed 27 May 2009).

³⁰ See 'Legal Aid Rates up but not enough', on the web site of the NZ Law Society: http://www.lawsociety.org.nz/publications_and_submissions/lawtalk/2008_articles/2_june/legal_aid_rates_up_but_not_enough (accessed 27 May 2009).

4.8 Canada

The crime rate was lower and the number of cases brought to the criminal courts was correspondingly lower than in E&W.

The average costs per case were lower for both criminal and civil cases as compared with E&W.

The rate of cases supported was much lower than in E&W, partly at least because of the much lower ceiling on income levels at which individuals were eligible for legal aid. In British Columbia, for example, net monthly income must fall below \$1,400 for a one-person household to qualify³¹. There were also quite complex limits on the value of household assets. Dalhousie (Nova Scotia) had a community-based legal aid clinic which provided free legal services to individuals with incomes below the national poverty line.

As with Australia, there was more of a tradition of innovation in the provision of services, including the provision of on-line information (for example the Family Law in British Columbia site³²), the use of call centres and the provision of advice and representation through independent Community Legal Clinics. In Manitoba, lawyers offered 'Collaborative law' as an alternative to courts³³. Nova Scotia (LISNS) had a legal information line, a Lawyer Referral Service, a speakers' bureau, pamphlets and booklets, Dial-a-law and a community outreach program³⁴.

Services were administered at provincial level, with substantial variation across provinces in what was provided. In Alberta, for example, some services were free but any requiring full representation by a lawyer were not. In Ontario legal aid was available to low income individuals for criminal matters, family disputes, immigration and refugee hearings and poverty law issues, although there appeared to be discretion as to who received it.

³¹ http://www.lss.bc.ca/legal_aid/dolQualifyRepresentation.asp (accessed 27 May 2009).

³² <http://www.familylaw.lss.bc.ca/> (Accessed 27 May 2009).

³³ <http://www.legalaid.mb.ca/> (accessed 27 May 2009).

³⁴ http://www.courts.ns.ca/self_rep/legal_info_DoJ_sept02.pdf (accessed 27 May 2009).

5. Legal aid spending and GDP

Variation across countries in per capita income levels might be expected to be a reason for variation in spending per capita on legal aid. Greater generosity on the part of richer countries might be expected in their support for legal aid expenditure³⁵, perhaps in the form of allowing higher income ceilings on eligibility.

The hypothesis was that spending per capita on legal aid would be higher in countries with greater GDP per capita. Figure 3 provides evidence consistent with this conjecture for the 36 EU countries covered by the CEPEJ report³⁶.

Further analysis of the data suggested that legal aid spending per capita tended to be disproportionately higher in countries with higher GDP per capita³⁷. While E&W, as a high income country, could be expected to have a comparatively high level of spending, Figure 5.1 identified its spending level (along with Northern Ireland and Scotland) as an outlier relative to EU countries as a whole. E&W exhibited the highest level of spending per capita and a level that was significantly higher than for all other richer EU countries, as already established in the CEPEJ Report (2006). The three UK observations were remote from the clear underlying trend that characterised other EU countries. This prompted the question of whether the British data had been collected in a way that differs in some critical respect from the way data were assembled for other countries. A further analysis of the technicalities of the data collection methodology might be revealing but would take us beyond the study remit.

Spending per capita on legal aid in countries outside the EU covered by this study followed a similar pattern to that of countries inside the EU. Figure 5.2, based on data for the eight countries covered in this study, showed that legal aid spending per capita was similar across the three non-EU countries Australia (AUS), New Zealand (NZ) and Canada (CAN) at just over 10 Euros per head compared with England and Wales (E&W) where it was around five times that level.

³⁵ Since the provision of legal services was a labour-intensive activity its costs would likely increase more quickly than the cost of living as lawyer incomes rise in real terms.

³⁶ In Table C2 (in appendix C) we list the full set of 36 (broadly European) countries for which data were available and from which figure 5.1 was produced. The table refers to the data source (CEPEJ, 2006) and also reported on a regression analysis of the relationship.

³⁷ This finding came out more clearly from the logarithmic version of the regression model as reported in figure C1 in appendix C. The 'income elasticity' of legal aid spending per capita significantly exceeded one with the implication that, other things equal, a rise in GDP of 1% would add more than 1% to the level of legal aid expenditure per head.

Figure 5.1 EU legal spending and GDP

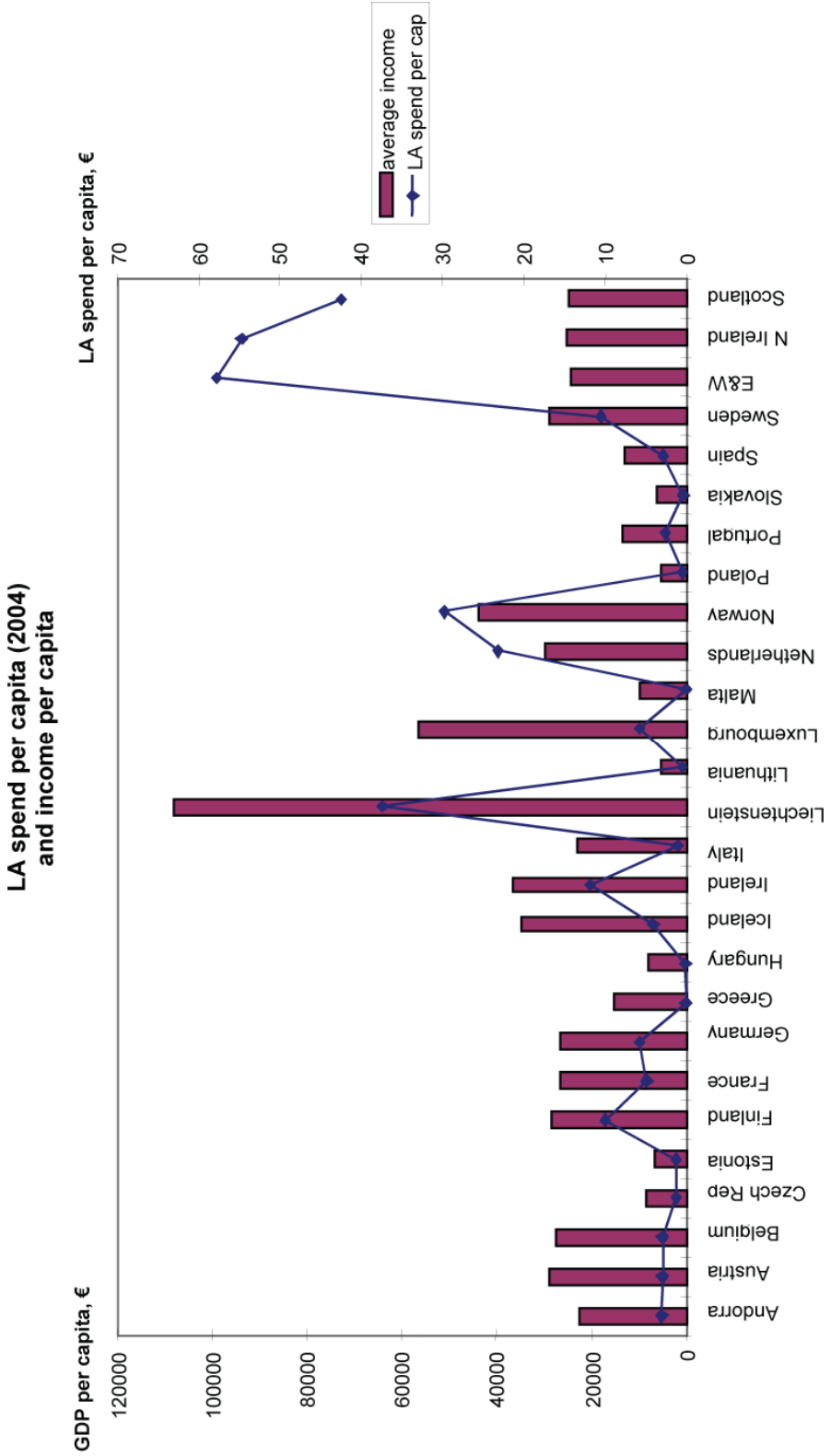
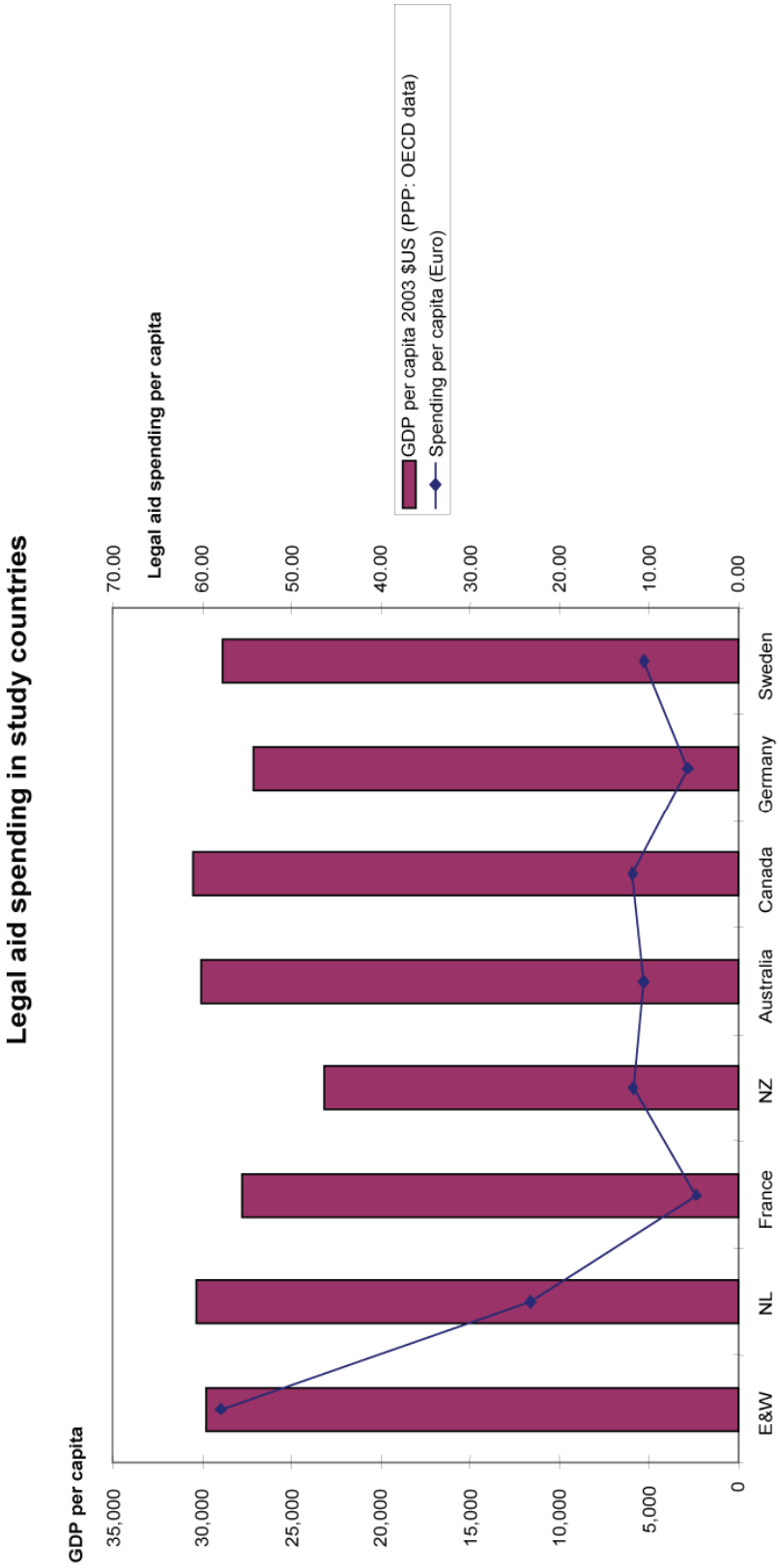


Figure 5.2 Legal aid spending and GDP in study countries



6. Composition of legal aid spending

Spending on legal aid could be broken down in various ways. For present purposes the focus was primarily on spending levels, and so a natural decomposition was to split total spending into volume and cost per unit components, distinguishing also between into criminal and non-criminal components. Closer inspection of the data generated in this way helped narrow down the range of possible explanations for variation.

Table 6.1 uses data from the CEPEJ (2006) report to split the spending, where possible, into its criminal and non-criminal parts and to distinguish the volume of actions being supported and the average expenditure per case. A similar analysis has been extended to the non-EU countries covered by this study. The purpose was to focus attention on the key underlying sources of variation in spending per capita on legal aid.

Table C7 in appendix C checks for consistency between the data used in CEPEJ (2006) and data on legal aid in E&W supplied for project purposes by MoJ. This was useful if only to demonstrate that the CEPEJ exercise was credible as far as data on E&W were concerned.

In the criminal sphere the number of cases being supported per head was higher in E&W than elsewhere. The same position applied in relation to non-criminal cases.

Spending per criminal case was slightly higher in the Netherlands (NL) than in E&W. It was lower elsewhere. Section 7 pursues this variation in greater depth.

In the non-criminal sphere the variation was less pronounced but still large. The average cost per case was slightly lower in E&W and NL for non-criminal cases and again significantly lower for France. The higher case volumes and higher spending per case together resulted in spending per capita on legal aid in E&W being substantially higher than elsewhere.

Table 6.1 Legal aid volumes, costs and spending in study countries

	E&W	NL	FR	NZ	AUS	CAN	GERM	SWED
Criminal cases supported per 10,000 population	298	79	57	102	51	79	n.a.	n.a.
Spending per case supported, €	1,108	1,118	350	613	n.a.	776	n.a.	n.a.
Spending per capita, €	33.5	8.8		6.3	n.a.	6.2	n.a.	n.a.
Non-criminal cases supported per 10,000 population	161	131	77	48	26	n.a.	70	n.a.
Spending per case supported, €	1,542	1,092	350	1,169	n.a.	794	657	n.a.
Spending per capita, €	23.8	14.3	2.7	6.0	n.a.	5.7	4.6	n.a.

Source: CEPEJ Report (2006), tables 4 & 9

7. Drivers of criminal legal aid expenditure

The criminal part of legal aid spending could be split into volume and cost components. An analysis of this split was useful in helping to narrow down the causes of high spending.

7.1 Volume of criminal legal aid cases

The most important single factor in driving the high cost per capita of legal aid in E&W was the comparatively high number of legally-aided criminal cases. Referring to the upper half of table 6.1 above, the per capita rate was nearly four times as high as in Netherlands and five times as high as in France. We looked into this variation in more detail below since it could, in turn, be driven by various factors such as higher crime rates or prosecution rates and/or more generous rules of entitlement to legal aid.

7.2 Average cost per case

The average amount spent per case was also higher in E&W. Criminal cases in NL were slightly more costly than in E&W. The French data did not distinguish costs by criminal and non-criminal cases, but the mean figure for France (€350) was substantially below the mean for either type of case in both the Netherlands and E&W.

There were a number of possible explanations for the higher spending per case. It could be a product of the 'moral hazard' arguments used by some authors (Dnes & Rickman, 1998; Gray *et al*, 1996; Stephen & Tata, 2006) to suggest that lawyers might, unless procurement contracts were incentive-compatible, manipulate legal aid rules to maximise their income per case. It could be a product of the rules of criminal procedure governing the conduct of cases. Or it could be a product of remuneration rules that might simply put an upper bound on the amount that could be spent per case.

7.3 Total spending

With a higher volume of criminal cases being granted legal aid in E&W, and average costs per case higher (at least for most categories of work) it was inevitable that overall spending per capita was higher for E&W. The combined effects were such that the total spend in E&W (€33.5) was more than three times that in the Netherlands (€8.8) and more than ten times as high as in France (€2.0).

7.4 Accounting for the high volume of criminal legal work

There were, on the face of it, two likely explanations for the high volume of criminal legal aid work. The first was that the volume of individuals being charged with criminal offences was higher in E&W than in other comparable jurisdictions. The second was that the entitlement rules might be more liberal in E&W than elsewhere. We examined the evidence on each hypothesis in turn.

Volume of prosecutions

Were more individuals brought to justice for crimes in E&W than elsewhere? The number of individuals passing through the Criminal Justice System would be a driver of the demand for legal services in general and for the volume of legal aid in particular. Without producing a full-scale model of the CJS it was nevertheless possible to identify key indicators of system volumes. Table 7.1 combines data on legal aid from CEPEJ (2006) and data on the number of suspects from ESB (2006) to summarise the flow of cases. We acknowledge that variations in procedure make such comparisons hazardous. For example, the notion of a ‘suspect’ played a very different role in some countries.

Table 7.1 Criminal case volumes

	France	Germany	NL	Sweden	E&W
Crimes per 100,000 inhabitants (ESB, table 1.2.1.1)	6,605	7,976	8,530	13,995	11,241
Offenders (suspects) per 100,000 (ESB, table 1.2.2.1)	1,589	2,858	2,138	1,102	4,221
Criminal cases brought to court per 100,000 (CEPEJ, table 40)	1,549	1,104	n.a.	759	3,813
Persons convicted per 100,000 (ESB, table 3.2.1.1)	848	1,067	787	1,268	2,806
Criminal legal aid cases per 100,000 (CEPEJ, table 9)	57	n.a.	79	n.a.	298
Criminal legal aid cases per offender (calculated from above)	0.036	n.a.	0.037	n.a.	0.071

Notes:

1. ESB refers to European Sourcebook of Crime and Criminal Justice Statistics – 2006,
2. CEPEJ refers to European Judicial Systems Edition 2006, European Commission for the Efficiency of Justice.
3. Data refer to year 2003 (ESB) and 2004 (CEPEJ).
4. Please note the caveats in Limitations and Caveats section.

Table 7.1 shows that the much higher number of legal aid cases per 100,000 population (298 compared with the next highest 79 in the Netherlands) could be traced back to several factors including:

- The crime rate was considerably higher in E&W than in other countries with the exception of Sweden.
- A higher proportion of cases in which there was a suspect brought to court in E&W.
- The proportion of suspects receiving legal aid was nearly twice as high as in France or the Netherlands.

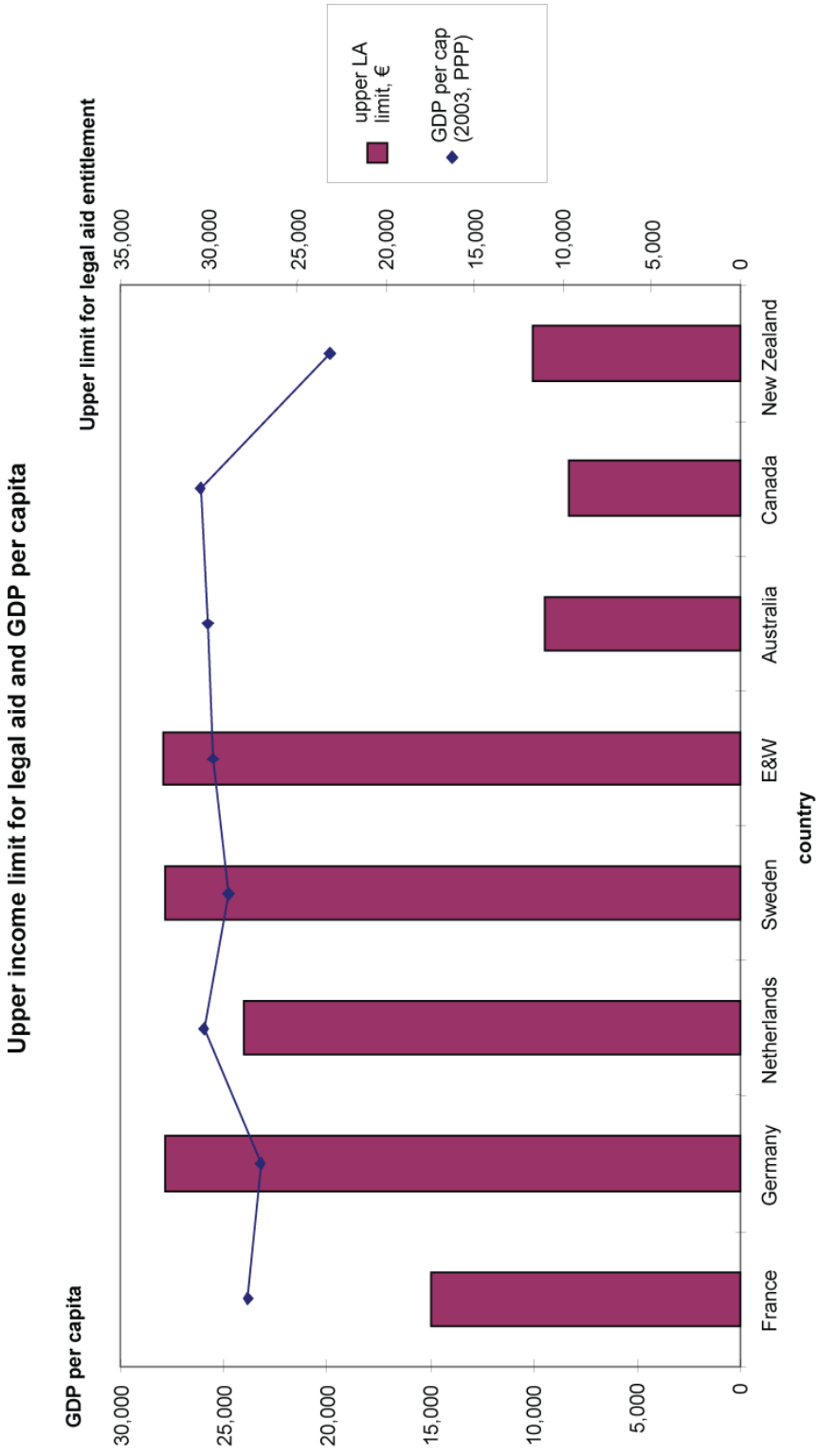
The implication was that the high volume of crime in E&W explained part, but not all, of its relatively high criminal legal aid spending per capita. This was compounded by a higher proportion of the population being brought to court for criminal offences and by a higher fraction of this group receiving legal aid.

Criminal legal aid entitlements

A possible driver of the high volume of legally aided criminal cases was the structure of legal aid eligibility rules. Countries with higher income ceilings in means tests for legal aid could expect higher spending levels per capita since a higher proportion of the population would qualify. Of course the distribution of income as well as the level of mean per capita income would have an influence on entitlements. A longer right hand on the tail of the distribution might drag up mean income without changing the proportion falling below some particular threshold level.

Comparisons across countries of threshold levels were impeded by variation in what was included in the definition of income (gross or net, allowance made for social security benefits, allowance for mortgage costs etc.), in how partners and children were treated and so on. There might also be variations in the rate of contribution to legal costs over an intermediate income band and so on.

Figure 7.1 Legal aid eligibility and GDP per capita



The implication was that eligibility in E&W was in line with the more generous countries and thus unlikely of itself to be a major source of variation in legal aid spending per capita. To estimate the scale of the saving that might be achieved from a tightening of criteria would require a more detailed analysis using the kind of approach used when analysing the effect of changes in taxes and benefits. We understand that the DWP’s Tax Benefit Model was used to explore the implications of changing legal aid eligibility criteria³⁸.

7.5 Legal aid and the provision of courts

Data from the CEPEJ comparative data on EU member states revealed that, to quite a considerable degree, the relatively high criminal legal aid cost in E&W appeared to be offset by lower court budgets and public prosecution costs. Summing the three categories of spending on the provision of a courts system (as in table 7.2) created a total spend per capita with smaller variation across countries than applied to the legal aid spending component in isolation.

Table 7.2 Comparison of court-related spending in EU countries

	Legal aid spend per capita (LA)	Spend on courts per capita (C)	Public prosecution costs per capita (PP)	Sum of court-related spend per capita (LA+C+PP)	GDP per capita (Euros)
France	4.68	36.32	10.40	51.40	26,511
Germany	5.68	n.a.	n.a.	n.a.	26,754
Netherlands	23.2	46.81	20.58	90.61	29,993
Sweden	10.57	51.32	9.85	71.74	28,832
England & Wales	57.87	8.09	14.52	80.48	24,579

One possible explanation for this smaller variation might be that services classified for E&W as 'Legal Aid' might be classified differently in other countries. For example, they could be part of the 'courts' component for other countries in table 7.2 such as the Netherlands. The wording of the questionnaire (including the explanatory notes) used by the Council of Europe to collect the data left open the possibility that there was a classification problem. For example a duty solicitor representing defendants in court could be directly employed by the courts and thus

³⁸ The 2007 edition of the DWP Tax Benefit Model Tables, illustrating how calculations were done for the impact of various benefits can be found at: http://www.dwp.gov.uk/asd/asd1/TBMT_2007.pdf (accessed 27 May 2009).

count as 'court' spending. We cannot, however, find solid evidence in support of this possibility.

The CEPEJ report referred to the anomaly of the low figure for spending on courts in E&W as explicable by 'the small number of professional judges and the use of magistrates, citizen volunteers...'. Given the high relative costs of judges in England & Wales this explanation seemed unappealing at first glance. However from table 30 of CEPEJ it could be seen that E&W not only had an unusually small number of professional full-time judges but also a very high number of lay judges. This structural abnormality might well be the reason for low spending on courts in E&W.

8. Drivers of non-criminal legal aid expenditure

Like the criminal part of legal aid, non-criminal legal aid spending could be split into volume and cost components. An analysis of this split was useful in helping to narrow down the causes of high spending.

8.1 Volume of non-criminal legal aid cases

Although the number of legally aided non-criminal actions per capita in E&W was higher than in the Netherlands or France, the differential was much smaller than in the case of criminal legal aid (23% higher than in the Netherlands and somewhat more than twice the rate in France).

Table 8.1 Non-criminal legal aid spending

	Cases supported per 10,000 population	Average spending per case (€)	Spend per capita (€)
England & Wales	161	1,542	23.77
Netherlands	131	1,092	14.31
France	77	350	2.69
New Zealand	48	1,169	5.59
Australia	26		
Canada		794	5.69
Germany	70	657	4.60

Source: Table 9 European Judicial Systems Edition 2006, European Commission for the Efficiency of Justice (CEPEJ).

8.2 Average cost per case

The average spending per case was more than 30% higher in E&W than in any of the other five countries for which data were available. This might be a result of various factors including procurement arrangements and the composition of the caseload.

8.3 Family cases

The non-criminal area was likely to be more heterogeneous than the criminal caseload. It might include family matters, personal injury actions, immigration and so on. Within the non-criminal area in E&W, there had been considerable change in the composition of expenditure since 2000-01.

Family matters accounted for less than half of spending on civil representation in 2000-01 (£421m of a total of £948m.). But by 2006-07 the share had grown to over two thirds (£522m of a total of £754m). Adjusting for inflation, gross spending on family cases grew by 13% between 2000-01 and 2006-07. A fall in the volume of cases was more than offset by a 44% increase in the average (real terms) cost per case.

8.4 Number of divorces

The drivers of the volume and cost of family cases included the number of divorces, the legislation applying to procedure and the eligibility rules applied. The role of the number of divorces was explored in table 8.2. With the exception of the observation for 2000-01, the data seemed consistent with there being a close, positive link between the volume of cases being supported through legal aid and the number of petitions for divorce being filed.

8.5 Non-family matters

Non-family matters saw a 60% fall in real gross spending. This was the product of a very sharp fall in the volume of cases (> 70%) accompanied by a 40% increase in the average (real terms) cost per case. The increase in cost per case was attributable, at least in part, to the fact that as the pool of personal injury cases supported by legal aid contracted the average cost of the remaining cases tended to increase.

Table 8.2 Number of divorces and volume of legal aid in family cases

	Petitions filed for divorce	Family cases supported through legal aid
2000	157,809	164,746
2001	172,341	140,906
2002	177,223	141,600
2003	173,240	146,438
2004	167,193	141,334
2005	151,654	139,375

Sources: Her Majesty's Courts Service; Ministry of Justice

8.6 Total spending

In international terms, the overall effect was substantially higher spending per capita in E&W on non-criminal legal aid than elsewhere, as can be seen from table 8.1. As with criminal legal aid, spending in the ANZAC countries was lower per capita than for most EU countries.

The higher number of divorces per 10,000 population in E&W might be part of the explanation of the higher spending per capita on legal aid in E&W relative to other countries for family cases. Using UN data on the number of divorces for 2003, it could be seen (from figure C4 in Appendix C) that E&W (31 divorces per 10,000 population) had a higher rate than Australia, New Zealand and Germany (all 26), Canada and Sweden (both 23), France (20) and Netherlands (19). There appeared (from Figure C4 in Appendix C) to be a weak positive trend linking non-criminal legal aid and the divorce rate. However, the Netherlands, in particular, seemed to be something of an exception.

9. Other hypotheses

9.1 Influence of the origins of a country's legal system

Anglo-Saxon and Continental legal systems differed in a number of respects, both procedural and substantive. This was sometimes posited as a possible influence on the costs of supporting access to justice. Such direct comparison as we were able to make of legal aid costs in England & Wales and those in Australia, Canada & New Zealand failed to reveal a 'Commonwealth effect'.

There was however one indicator that suggested an important difference between the two groups of countries, namely in the number of cases being brought to the criminal courts relative to the crime rate. This ratio depended on many things including the detection rate, the pattern of offences and the rules of criminal legal procedure. Broadly speaking, the higher this ratio, the higher would be the demand for legal defence services and thus for criminal legal aid.

The Seventh UNODC Survey of Crime Trends and Operations of Criminal Justice Systems provided data (covering seven of the eight study countries) on the crime rate and the number of cases brought to the criminal courts (per capita). These rates, documented in table 9.1, indicated that the list of countries bringing high numbers of cases to the criminal courts (UK, New Zealand and Canada) excluded the country (Sweden) with the highest crime rate³⁹. The ratio of the two rates confirmed that UK, New Zealand and Canada were bringing more cases to court per offence committed than was the case for continental EU countries. This had the implication that criminal cases were handled differently between the two groups of countries. A higher proportion of cases in continental countries were resolved without resort to a court hearing.

It was not, however, clear that this comparative advantage of the inquisitorial system had helpful corollaries. A major overhaul of criminal law in England & Wales, including changes in the role of judges and legal representatives, would be needed before a reduction in the number of court cases (per offence committed or suspect charged) might be anticipated. The investment costs of such reform would be huge.

³⁹ We reiterate here the earlier caution about interpretation of the figure for Sweden.

At a more modest level in the field of procedural overhaul, innovations were being piloted in E&W which might reduce the overall costs of operating the Criminal Justice System even if they did not have much direct impact on the cost of running the legal aid part of the system⁴⁰.

Table 9.1 Crime rates and the number of cases brought to court

	Crime rate per 10,000 population (8 th survey)	Cases brought to criminal court per 10,000 population (8 th survey)	Ratio of cases brought to crimes recorded
UK (incl. E&W)	1,040	325	0.31
France	n.a.	n.a.	n.a.
Netherlands	846	67	0.08
Germany	773	80	0.10
Sweden	1,337	67	0.05
Australia	n.a.	91	n.a.
New Zealand	717 (previous survey)	337	0.47
Canada	805	173	0.21

Source: UNODC (Eighth) Survey of crime trends and operations of criminal justice systems (2001-02)

Although legal aid costs in E&W were high, the costs of other elements of the Criminal Justice System were lower.⁴¹ The implication was that there might be a degree of substitutability between legal aid support and spending on courts. In the absence of professional judges, it might be that there was pressure for greater access to legal support for defendants.

9.2 Role of public defenders and public counsel

A natural test of the ‘supplier-induced demand’ hypothesis would be to test whether countries with well-developed public defender schemes experience lower average costs per case. In cases handled by public defenders there would not be an incentive to spend more time or

⁴⁰ One example of such innovation was the piloting in England of postal charging which streamlined the procedure by which offenders were brought to court. This change was recommended in the 2001 Auld Review and later enacted by the Criminal Justice Act 2003 (sections 29 and 30). This enabled the police (and other designated public prosecutors) to issue a written charge and send a requisition by post, requiring the defendant to attend court on a specific date to answer charge.

⁴¹ See table 7.2.

resources on cases for income maximisation purposes. This should have the effect of preventing more time being spent on a case than was strictly justified by the marginal returns in terms of better outcomes.

The difficulty with testing this hypothesis was that it was only Australia and Sweden amongst the study countries that had such a system, although some parts of Canada were covered and pilots were under way in both E&W and New Zealand. An evaluation of the public defenders pilot in England and Wales (Bridges *et al*, 2007) suggested that cases handled by public defenders typically exhibited higher costs than comparable cases handled via private practitioners. This cast doubt on whether public defenders generally represented a cost-effective alternative to the standard legal aid model.

9.3 Role of fixed fees

In similar vein it could be asked whether there was any evidence that a move from the traditional 'time and line' approach to legal aid to a 'fixed fee' basis had the impact predicted by the economic model. Specifically, lawyers being more reluctant to take cases that 'looked difficult' and inducing more guilty pleas since there was no longer an incentive to extend cases unnecessarily.

Good quality empirical studies addressing these issues directly were rare, given limitations of data. In studies of cases in E&W there was some evidence that the structure of incentives within the legal aid system had resulted in excess costs (Richman *et al*, 1999). Insofar as fixed fees succeeded in 'neutralising' incentives to spend 'too long' on cases, a fixed fee approach could be expected to reduce costs per case. Economists were usually reluctant to claim this as a panacea because they assumed that professionals would typically be opportunistic in their response to any set of controls.

A study of the Scottish experiment with fixed fees suggested that it had the expected effect on guilty pleas. Stephen and Tata (2006) found an increased rate of guilty pleading at the Intermediate Diet. They noted that this was accompanied by a reduction in guilty pleas at the earlier Pleading Diet. They attributed this unintended consequence to solicitors and their clients both benefiting from a policy of pleading not guilty initially and then changing their plea later.

This had the implication that case handling might be significantly affected by changes in the fee structure of legal aid. The implication of research findings in this field was that the

incentive structures facing lawyers and their clients have to be examined carefully when designing reforms to the legal aid system.

9.4 Human rights legislation

Another important influence had been the development of human rights legislation and thinking. This had been countering the effects of moves to limit the scope of legal aid. The guaranteeing of a right to representation for all individuals charged with criminal offences⁴² puts upward pressure on the provision of legal aid in the criminal sphere. Quite how far this same pressure will emerge in the civil field remained a matter of conjecture (Flood & Whyte, 2006).

⁴² Subject to financial eligibility criteria. See: http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen_20060009_en_1.htm accessed 27 May 2009.

10. Conclusions

Legal aid was a complex subject. Aid was provided for different kinds of motives, conditioned by different kinds of legal systems and evolved operationally along a variety of pathways. The expenditure on legal aid that emerged reflects this wide range of influences and histories.

The data in this report covered the period 2000/01 to 2006/07. Making comparisons of international justice systems was complex due to significant differences in the methodology and reporting of data associated with justice systems. Therefore all comparisons in this report should be treated with care as to their interpretation. Additional analysis of data collection methodologies might have revealed alternative explanations for some of the differences found. However, this additional work was beyond the study remit.

There seemed no escaping the observation that legal aid in E&W was significantly more costly than elsewhere. Various things contributed to this situation, particularly:

- High volume of cases supported.
- High expenditure per case.
- High income ceiling on eligibility.
- Wide (if narrower than previously) coverage of areas of law.
- The adversarial legal tradition of a common law country.

Although legal aid costs were unusually high in England & Wales the same did not apply to the overall costs of the Justice System. The CEPEJ Report data reported in table 7.2 suggested that spending on courts and public prosecution were comparatively low in England & Wales. This would imply that looking at legal aid expenditure in isolation risked missing important structural differences between justice systems. But it could also be the case that this was an artefact of technical issues related to data collection.

The scope for addressing the high legal aid spending levels seemed somewhat limited. There was an element of 'path-dependence' that would inhibit a major overnight shift to a lower spending trajectory.

Areas where there might be some scope to address cost issues included:

- More effective 'gate-keeping' or 'triage' that matched people with legal problems, through a consultation process, to a variety of possible solutions not just approaches that relied on formal legal process.
- Greater use of mediation and other forms of dispute resolution, along Swedish lines, particularly in the family area.
- Review of cases or firms where the postponement of hearings occurred frequently.
- Review of the scope for procedural change to enable reductions in the proportion of matters in which court hearings were required.
- Continuing analysis of legal aid expenditure at case level to identify key correlates of high spending per case and high demand for support.

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Appendix A - Literature review methodology

The strategy followed in identifying the literature on legal aid was summarised below.

Study Selection

To qualify for inclusion studies must report findings or contain discussions about issues of legal aid. Such documents can include policy documents, reports and empirical studies.

The following initial exclusion criteria were used.

- Exclude 1. Not published in English
- Exclude 2. Published before 1996
- Exclude 3. Papers not considering, or whose main focus was not, legal aid

The following electronic databases were searched 1996-present:

- ASSIA
- ERIC
- IBSS
- CJA
- Sociological Abstracts
- Google Scholar
- British Library Catalogue
- Relevant international websites

The search was based on the following terms in the keywords (including titles and abstracts):

("legal aid" OR "access to justice" OR "public defence") AND
(cost* OR expenditure OR expense* OR fees).

Studies were assessed for methodological quality using the Scientific Methods Scale (or 'SMS': Sherman et al., 2002).

Following a detailed analysis of the information derived in this way, recorded themes and discussions presented in the literature were linked to the hypotheses being explored.

Appendix B - Survey of legal aid schemes in study countries

England & Wales

Funding of access

Legal aid was available subject to both a means test and a legal merits test. It covers advice, assistance and representation. It was primarily a judicare system in which legal services were provided by private legal practitioners via procurement arrangements agreed between practitioners and the government.

Legal Expenses Insurance was available to considerable numbers of individuals but was normally purchased as an option along with household or motor policies. Advice, including limited legal advice, was available from Citizens' Advice Bureau which were part-funded by the legal aid budget.

Spending on access to justice

Total spending (2004) based on CEPEJ table 4 data	€3,070 m.
Spending per capita	€57.87

Scope, eligibility and ease of access

Legal aid was subject to both a means test and a legal merits test. The ceiling was gross income during the last month of £2,435 and an upper limit on capital of £8,000 excluding owner-occupied property.

Public expenditure and access to justice

Annual budget allocation to legal aid per capita as % of per capita GDP: 0.235%

Numbers receiving assistance and cost per act of assistance

	2004-05:	2006-07:
Total spend (£m.)		
CLS (civil & family / non-criminal)	-	£808.9
CDS (criminal)	-	£1,174.4
Cases/acts supported		
Criminal	1,587,000 cases	1,594, 000 acts
Non-criminal	856,000 cases	1,064,000 acts
Cases supported per 10,000 inhabitants:		
Criminal	298	-
Non-criminal	161	-
Cost per case/act supported:		
Criminal	£751 per case	£734.7
Non-criminal / civil & family	£988 per case	£760.1

Role of social and cultural factors

Common law country; relatively high crime rate (although recorded crime and victimisation rates both falling); relatively high divorce rate; public health, education and other services were widely used and often available at zero user cost. Legal aid was introduced originally as part of the post World War 2 reforms.

Background data on the country

Population:	53.046 m.
Number of divorces:	166,536
Divorces per 10,000 inhabitants	31.39
GDP per capita (€) CEPEJ Table 1	€24,579
GDP per capita (\$US, 2003, PPP)	\$US29,800
Crime rate per 10,000 inhabitants:	1,112.1
Cases brought to criminal court per 100,000 inhabitants:	3,604

France

Funding of access

Access to legal aid only for those of limited means.

Spending on access to justice

Total spending based on CEPEJ table 4 data	€124.044m.
Spending per capita	€4.68

Scope, eligibility and ease of use

Legal aid proper was available for court proceedings and out-of-court settlements. Aid towards advocates' fees was available in criminal proceedings that were an alternative to prosecution and for those held by the police for questioning and those held in prison. Legal aid entitles the recipient to free legal advice and to exemption from court fees.

The upper limit on monthly resources for a single person to receive aid was the very modest sum of €830 for full legal aid and €1,244 for partial aid: higher with dependents.

Aid was available to French citizens, citizens of the EU and foreign nationals habitually residing lawfully in France. There was a standard kind of legal merits test. Application forms were available from the Regional Court or the District Court for the place of residence. Completed forms can be sent to the LA Bureau for the area of residence.

Public expenditure and access to justice

Annual budget allocation to legal aid per capita as % of per capita GDP: 0.018%

Numbers receiving assistance and cost per act of assistance

Cases supported	
Criminal	354,411
Non-criminal	
Cases supported per 10,000 inhabitants:	478,766
Criminal	57
Non-criminal	77
Cost per case/act supported:	
Criminal	€350
Non-criminal / civil & family	€350

Role of social and cultural factors

Legal aid had been available for 150 years. It relied on private sector service suppliers. Expenditure by the state on it was very low. Most of the burden was shouldered by the legal profession based on a duty of solidarity and as a quid pro quo for their monopoly position. Catholicism was an important part of the French context as was the system of local government.

Background data on the country

Population:	62.177m.
Number of divorces:	125,175
Divorces per 10,000 inhabitants	20.13
GDP per capita (€) CEPEJ table 1	26,511
Crime rate per 10,000 inhabitants:	-

Netherlands

Funding of access

Legal aid was available to those unable to afford legal services.

Spending on access to justice

Total spending based on CEPEJ table 4 data	€378.358 m.
Spending per capita	€23.22

Scope, eligibility and ease of use

Access to legal aid was available through LA bureaux located in all major Dutch cities, or through lawyers or through the legal aid board.

For 2002 the maximum disposable income after tax at which individuals could get legal aid was €1,424 for single persons and €2,000 for couples. There was an assets limit of €9,100. Special guarantees applied in the case of criminal law. Evidence was required to support applications.

Defendants in criminal cases were eligible for subsidised legal aid if: the crime committed had a maximum prison sentence of four years or more; they were remanded in custody or they had a low income. Criminal defence was available for all who were arrested (or deprived of personal freedom) and all who were charged before court.

Recipients of legal aid had to pay an income-related fee, the minimum being €61 (in 2002) and the highest €532. In criminal cases fees were not generally payable. There was a legal merits test of the usual sort.

Around 10% of the 11,000 Dutch advocates regularly did legal aid work (had more than 100 clients per year).

Public expenditure and access to justice

Cases supported	
Criminal	128,707
Non-criminal	213,425
Cases supported per 10,000 inhabitants:	
Criminal	79.0
Non-criminal	
Cost per case/act supported:	131
Criminal	€1,118
Non-criminal / civil & family	€1,092

Role of social and cultural factors

Legal aid was well established and there was an extensive support network enabling individuals to get advice and assistance. The country was said to have a litigation avoidance infrastructure. But there was an emphasis on seeking professional help for legal problems unlike the encouragement of self-reliance as in countries such as the US.

Background data on the country

Population:	16.292m.
Number of divorces:	31,479
Divorces per 10,000 inhabitants	19.32
GDP per capita (€) CEPEJ Table 1	29,993
Crime rate per 10,000 inhabitants:	873.4
Cases brought to criminal court per 100,000 inhabitants:	688

Germany

Funding of access

There was legal aid, but it was based on the 16 autonomous federal states rather than being a single national scheme. There were over 80 legal aid budgets and not all were administered by the Department of Justice.

Legal aid relied on a century-long tradition of waiving fees for the poor. In matters of criminal and administrative law only advice was granted.

The Legal Expenses Insurance market was well developed in Germany, and many firms sold stand-alone LEI (before the event) policies, not just add-ons to household or motor policies. These policies however normally excluded criminal and family matters.

Spending on access to justice

Total spending based on CEPEJ table 4 data	€468.4m.
Spending per capita	€5.68

Scope, eligibility and ease of use

A legal advice scheme provided for people on low incomes to receive assistance with the cost of advice and representation outside the court. People in need received assistance with the cost of court proceedings. From 2001 data (Kilian, 2001) the ceiling for receiving aid was disposable monthly income less than 30DM, although even then a nominal fee of 20 DM had to be paid to the lawyer giving advice. For those with incomes between 30DM and 1,500DM the applicant qualified for legal aid for court proceedings but had to make contributions according to a sliding scale.

Public expenditure and access to justice

Annual budget allocation to legal aid per capita as % of per capita GDP: 0.021%

Numbers receiving assistance and cost per act of assistance

Cases supported	
Criminal	-
Non-criminal	577,500
Cases supported per 10,000 inhabitants:	
Criminal	-
Non-criminal	-
Cost per case/act supported:	
Criminal	-
Non-criminal / civil & family	€657

Role of social and cultural factors

There was a century-old tradition of right to counsel. This was supported broadly by the private part of the legal profession in exchange for substantial protection of their monopoly interests. Spending by the state remained carefully circumscribed.

Background data on the country

Population:	82.5m.
Number of divorces:	213,975
Divorces per 10,000 inhabitants	25.94
GDP per capita (€) CEPEJ table 1	27,100
Crime rate per 10,000 inhabitants:	788.8
Cases brought to criminal court per 100,000 inhabitants:	671

Sweden

Funding of access

No information provided.

Scope, eligibility and ease of use

Legal aid scheme covered:

- Legal advice: all could get legal advice on all matters. Legal advice could be provided by a lawyer at a lawyer's office. Up to 2 hours could be provided, costing approx. €120. This charge was reduced by half for those with insufficient resources. Lawyer received balance from the state.
- Legal aid: could be granted in most legal matters. Must have had at least 1 hour of advice. The ceiling on eligibility was an annual income of €27,375 and took account of child maintenance expenses, property and debts⁴³. You needed a lawyer for purposes other than advice and be unable to afford one by any other means. The state might contribute depending on the merits of the case. If you had, or should have, Legal Expenses Insurance, this was taken into account first.
- Available to Swedish citizens and nationals of all EU Member States.

Court proceedings were free except for an application fee of €47, which was paid by the state for those on legal aid.

Legal aid cannot be granted if a Public Counsel or Public Defence Counsel might be appointed.

Victims of crime received free legal representation.

⁴³ There was however some doubt as to what exactly the ceiling is. Another source puts it quite a lot lower. At the website of domstol in Sweden can be found the following: "You pay for the advice and you pay directly to the legal representative providing the advice. You can have the advice fee reduced if there were special reasons, such as if you have an annual income of less than SEK75,000."

Legal aid covered counsel's fees for up to 100 hours plus reasonable representation costs up to about €1,000 and mediation costs.

Applicant could select own lawyer provided this does not add significantly to cost. Applicant makes a contribution to the costs (via a charge based on income brackets) ranging from 2% to 40%.

Public expenditure and access to justice

Annual budget allocation to legal aid per capita as % of per capita GDP: 0.021%

Numbers receiving assistance and cost per act of assistance

Virtually no data available from standard sources.

Role of social and cultural factors

There was a tradition of reliance on professionals rather than self-help where legal services were available but the range of areas of law covered was rather narrow. Sweden had a Lutheran tradition and was an agricultural community until comparatively late into the twentieth century. Like Germany it relied quite a bit on the idea of individuals having legal expenses insurance to cover legal costs in areas other than crime and divorce.

Background data on the country

Population:	9.034m.
Number of divorces:	21,130
Divorces per 10,000 inhabitants	23.39
GDP per capita (€) CEPEJ table 1	28,832
Crime rate per 10,000 inhabitants:	1366.7
Cases brought to criminal court per 100,000 inhabitants:	671

Australia

Funding of access

Legal aid was available from the separate organisation or commission in each of the eight states. Funding was derived in part from the state government, part from the federal government and part from recovery of costs. Legal aid organisations themselves employed substantial numbers of in-house legal staff (who handled 54% of criminal cases, 28% of family cases and 43% of civil cases). An incentive for individuals to make use of this was that the minimum contribution to costs was \$30 for a private lawyer compared with \$20 for the in-house option.

Spending on access to justice

Total spending:	\$AUS397.161m. (c.£172.3m.)
Spending per capita:	£9.11 at December 04 exchange rates

Scope, eligibility and ease of use

Free legal advice available to anyone in the early stages of cases via telephone or from duty solicitors in courts. One key feature was that courts had more discretion to restrict the range of cases in which aid was available. Applicants had to demonstrate that their situation 'justifies spending scarce public funds'. Both state and federal governments issued 'guidelines' on priorities. This included criminal offences for which a term of imprisonment could exceed 14 years, so a great deal tougher than any EU schemes.

Standard type of legal merits test applied.

Public expenditure and access to justice

Legal aid expenditure 06-07	\$AUS456.131m.
Total public expenditure 06 (IMF data)	\$AUS250,475m.
Legal aid expenditure as % of total public expenditure:	0.18%

Numbers receiving assistance and cost per act of assistance

Acts of assistance (04-05):	668,868
Spend per act of assistance	£257.6
Civil & family representation	53,007
Civil & family legal help	180,152
Advice & assistance criminal	80,905
Representation in criminal courts:	105,606
Average cost per case (representation):	\$AUS2,454 (c. £1,189)
Range across states in cost per case	£676 (Tasmania) to £1,919 in West Australia.

Role of social and cultural factors

The common law system, as developed in the United Kingdom, formed the basis of Australian jurisprudence. The Australian Constitution of 1901 established a federal system of government, under which powers were distributed between the federal government and the states. Each state had its own legal aid commission and provision varied across states. The federal government funded a network of nine organisations across Australia that provided legal aid services specifically to Indigenous Australians.

Background data on the country

Population:	20.140m.
Number of divorces:	53,145
Divorces per 10,000 inhabitants	26.39
GDP per capita (€) CEPEJ table 1	26,511
Crime rate per 10,000 inhabitants:	-
Cases brought to criminal court per 100,000 inhabitants:	-

New Zealand

Funding of access

Legal aid was administered by the Legal Services Agency, a Crown entity established under section 91 of the Legal Services Act in 2000. The Agency had a CEO and nearly 250 staff, 12 regional offices. Two Public Defence Service pilot offices have been established in Auckland: LSA NZ (2007).

Legal aid was demand-driven, with the budget set on the basis of forecast growth. The system was basically a 'judicare' system under which the LSA granted aid to fund eligible people using private practitioners for approved services. There were about 3,000 listed providers. All were in private practice except 18 PDS lawyers and 13 employed by community law centres. For civil matters, a citizen chose a legal provider who helped them apply for a grant of legal aid. For criminal legal aid, a person might choose a listed provider or LSA might allocate a provider.

There was a Memorandum of Understanding between the Ministry of Justice and the Legal Services Agency specifying outputs and performance measures.

Spending on access to justice

Total spending:	
03-04	\$NZ84.035 m.
04-05	\$NZ92.895 m.
05-06	\$NZ96.046 m.
07-08	\$NZ112.037m.

Spending per capita on legal aid related services: \$US21.86.

Scope, eligibility and ease of use

Legal aid was available for advice, assistance and representation in both civil and criminal matters. Legal merits test and means tests both applied. When making a grant the LSA usually specified a maximum in terms of a dollar amount or number of hours or length of time. Permission was needed to exceed these maxima. Policy guidelines were used to ensure consistency in the amounts granted.

Eligibility rules were changed from 1 March 2007. They referred to both income and assets. For a single person the limits were gross annual income of \$NZ 19,471 during previous 12 months: this was the equivalent of around £7,400, well below the equivalent figure for E&W.

Public expenditure and access to justice

Legal aid expenditure 05-06:	\$NZ96.046m.
GDP 05-06:	\$NZ155,398m.
Legal aid expenditure as % of GDP:	0.06%

Numbers receiving assistance and cost per act \$ NZ

	03-04		04-05		05-06	
	No.	Av.cost	No.	Av.cost	No.	Av.cost
Criminal	40,391	932	41,834	995	46,836	1,029
Family	18,098	1,268	17,706	1,370	17,467	1,358
Other civil	1,723	3,134	1,852	3,392	1,518	2,933
Total	60,277		61,392		65,821	

Note: increase in proportion of criminal cases; rise in average cost per criminal case (result of more serious cases).

Role of social and cultural factors

New Zealand had pragmatic and populist governments. It had a mix of European and Asian/Pacific influences. In social policy terms it had at different times been pioneering and very conservative. It was a small country. It had a unified administration for legal aid.

Background data on the country

Population (March 2006):	4.03m.
Number of divorces:	10,491
Divorces per 10,000 inhabitants	25.66
GDP per capita (2004)	€18,466
GDP per capita (2003, \$US, PPP)	\$US23,200
Exchange rate, June 04:	\$NZ1 = €0.519 = £0.348
Crime rate per 10,000 inhabitants:	717.3
Cases brought to criminal court per 100,000 inhabitants:	3,164

Canada

Funding of access

Legal aid was available for low-income individuals. It was administered by state-level agencies funded by a mix of federal and state revenue.

Spending on access to justice

Total spending	\$CAN599.23m.
Spending per capita	€11.84

Scope, eligibility and ease of use

Services were provided through area offices and community and specialised legal clinics. There were duty counsel services available at courthouses. Schemes did however differ between states. Even the legal system varied between states, Quebec relying on a continental kind of system.

In British Columbia, for example, the net income ceiling for a two-person household to qualify for legal aid was \$1,950. There were also limits on the value of assets in 5 categories including cars, boats and property.

In Manitoba legal aid could include people who were working. For free legal aid the income limit for a one person household was \$14,000 gross income per annum.

Corresponding ceilings were \$16,000 for partial pay-back legal aid and \$23,000 for full pay-back. These latter schemes were based on paying back on a monthly plan, so were loan-based.

Criminal legal aid in Manitoba could be granted legal aid if you were charged with an indictable offence and were financially eligible, likewise for a summary offence for which you can be imprisoned or deported.

Civil litigation matters were excluded from legal aid.

Public expenditure and access to justice

Legal aid expenditure per capita	20.19
GDP per capita 06-07: \$CAN	44,333
Legal aid expenditure as % of GDP:	0.046%

Numbers receiving assistance and cost per act of assistance

Cases supported	
Criminal	246,280
Non-criminal	222,422
Cases supported per 10,000 inhabitants:	
Criminal	79.3
Non-criminal	71.64
Cost per case/act supported:	
Criminal	\$CAN1,264 approx. €776
Non-criminal / civil & family	\$CAN1,294 approx. €794

Role of social and cultural factors

No information provided.

Background data on the country

Population:	31.051m.
Number of divorces:	70,828
Divorces per 10,000 inhabitants	22.81
GDP per capita (€)	€26,055
GDP per capita (2003, \$US, PPP)	\$US30,500
Crime rate per 10,000 inhabitants: (UNODC, 2002)	810.6
Cases brought to criminal court per 100,000 inhabitants:	1,778

Appendix C - Supporting Statistical Data

Table C1 Legal aid expenditure in England & Wales, 2000-2006

	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Expenditure £million net cash							
Community Legal Service (CLS)							
Civil & family representations	560	476	483	514	490	547	548
Civil & family legal help	144	138	162	188	184	182	180
Immigration & Asylum	87	120	168	196	171	102	81
Total CLS	791	734	813	898	846	831	809
Criminal Defence Service (CDS)							
Criminal Higher Courts	422	474	569	645	682	696	642
Magistrates Court Representation	233	299	297	298	287	295	292
Advice and Assistance	218	209	230	236	223	206	237
Total CDS	873	982	1096	1179	1192	1197	1171
TOTAL LEGAL AID SPEND	1664	1716	1909	2077	2038	2028	1980
Consumer Price Index, 2005=100	93.1	94.2	95.4	96.7	98.0	100	102.3
Expenditure, 2005 prices, £millions	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Community Legal Service (CLS)							
Civil & family representations	602	505	506	532	500	547	536
Civil & family legal help	155	146	170	194	188	182	176
Immigration & Asylum	93	127	176	203	174	102	79
Total CLS	850	779	852	929	863	831	791

Criminal Defence Service (CDS)							
Criminal Higher Courts	453	503	596	667	696	696	628
Magistrates Court Representation	250	317	311	308	293	295	285
Advice and Assistance	234	222	241	244	228	206	232
Total CDS	938	1042	1149	1219	1216	1197	1145
TOTAL LEGAL AID SPEND	1787	1822	2001	2148	2080	2028	1935
Total CLS (real terms)	850	779	852	929	863	831	791
Total CDS (real terms)	938	1042	1149	1219	1216	1197	1145
TOTAL LEGAL AID (real terms)	1787	1822	2001	2148	2080	2028	1935

Sources: Legal aid data from MOJ Legal Aid Factsheet
Price Index data from ONS: reference TZ854869439

Current Price spending in the top half of the table is deflated by the Consumer Price Index to get the real terms figures in the lower half of the table.

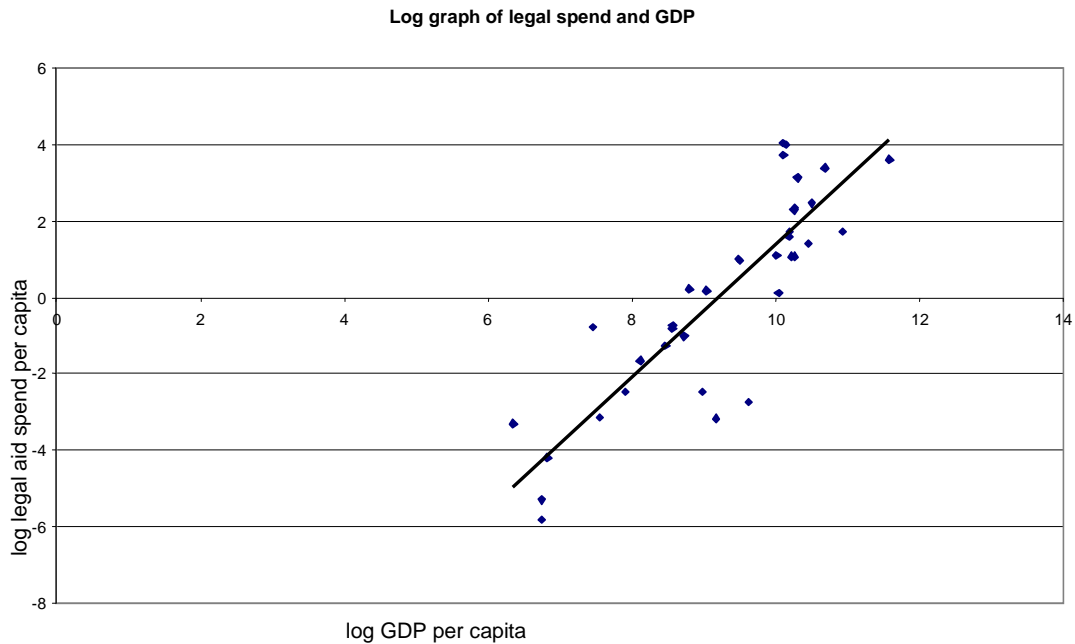
Table C2 Total legal aid spending per capita and GDP

Please note this is the data for Figure 5.1.

Country	GDP per capita (euros)	Annual spend on legal aid per capita 2004 (euros)
Albania	1,920	0.04
Andorra	22,347	3.00
Armenia	850	0.01
Austria	29,000	2.94
Azerbaijan	852	0.00
Belgium	27,579	2.94
Boznia and Herz	1,732	0.46
Bulgaria	-	0.20
Croatia	6,200	-
Cyprus	7,216	-
Czech Rep	8,446	1.20
Denmark	0	0.59
Estonia	6,644	1.26
Finland	28,648	9.96
France	26,511	4.88
Georgia	923	0.02
Germany	26,754	5.68
Greece	15,119	0.07
Hungary	8,025	0.08
Iceland	34,700	4.09
Ireland	36,737	11.79
Italy	23,115	1.13
Latvia	4,777	0.28
Liechtenstein	108,000	37.34

Lithuania	5,264	0.48
Luxembourg	56,488	5.69
Malta	9,647	0.04
Moldova	572	0.04
Monaco	-	3.43
Montenegro	2,113	-
Netherlands	29,993	23.22
Norway	43,818	29.86
Poland	5,248	0.44
Portugal	13,550	2.62
Romania	2,718	0.08
Russian Federation	3,478	-
San Marino	26,350	-
Serbia	2,255	-
Slovakia	6,200	0.36
Spain	13,103	2.77
Sweden	28,832	10.57
Turkey	3,259	0.19
England and Wales	24,579	57.97
N. Ireland	25,343	54.75
Scotland	24,600	42.53

Figure C1 Legal aid spending per capita and GDP per capita in 36 European countries, 2004



Notes:

The estimated linear regression line (estimated in double log format) has the following form:

$$\text{Log (LAspend per cap.)} = -15.96 + 1.733 \cdot \text{Log(GDP per cap.)}$$

(9.95)

R-bar squared = 0.74 no. of observations = 36

Data from tables 1 and 4 in CEPEJ (2006)

For E&W the predicted value of legal aid spending per capita, given the level of GDP per capita in 2004 was 4.75 Euros

Omitting countries with incomes below €5,000 reduces the number of observations to 27. The regression output then becomes:

$$\text{Log (LAspend per cap.)} = -17.63 + 1.90 \cdot \text{Log(GDP per cap.)}$$

(5.07)

R-bar squared = 0.49 no. of observations = 27

Table C3 French legal aid by type of matter and level of support, 2001-05

	2001	2002	2003	2004	2005
Civil matters (Affaires civiles)					
Full support (aide totale)	286,219	282,396	311,087	349,803	365,143
Partial support (aide partielle)	71,976	74,966	76,933	80,315	83,480
All support	358,195	357,362	388,020	430,118	448,623
Administrative matters (affaires administratives)					
Full support (aide totale)	9,221	11,279	12,724	13,485	13,613
Partial support (aide partielle)	861	941	996	917	1,001
All support	10,082	12,220	13,720	14,402	14,614
Immigration matters (conditions d'entrée et de sejour des etangers)					
Full support (aide totale)	22,956	28,630	33,642	33,918	39,733
Partial support (aide partielle)	43	40	30	32	65
All support	22,999	28,670	33,672	33,950	39,798
Criminal Matters (affaires penales)					
Full support (aide totale)	252,207	275,256	305,402	337,556	365,201
Partial support (aide partielle)	14,333	15,129	15,037	15,851	18,297
All support	266,540	290,385	320,439	353,407	383,498

Source: anuaire statistique de la Justice, Edition 2007, Ministere de la Justice

Table C4 Australian legal aid (representation) volumes by state & provider type, 2005-06

State	Type of legal aid	In-house	Private	% in-house
ACT	Civil	175	347	34%
	Crime	664	685	49%
	Family	434	528	45%
	Total	1273	1560	45%
NSW	Civil	1040	402	72%
	Crime	31919	9232	78%
	Family	2992	9620	24%
	Total	39951	19254	65%
NT	Civil	22	159	12%
	Crime	992	60	94%
	Family	322	292	52%
	Total	1336	511	72%
QLD	Civil	920	2807	25%
	Crime	5718	14240	29%
	Family	1931	6770	22%
	Total	8569	23817	26%
SA	Civil	191	379	34%
	Crime	3449	5536	38%
	Family	960	1604	37%
	Total	4600	7519	38%
TAS	Civil	0	14	0%
	Crime	2176	2280	49%
	Family	528	1291	29%
	Total	2704	3585	43%
VIC	Civil	1091	3887	22%
	Crime	8832	14515	38%
	Family	2858	8131	26%
	Total	12775	26169	33%
WA	Civil	89	210	30%
	Crime	3060	2612	54%
	Family	1224	1795	41%
	Total	4373	4617	49%
ALL STATES	Civil	3528	8205	30%
	Crime	56810	48796	54%
	Family	11243	30031	27%
	Total	71581	87032	45%

Source: www.legalaid.tas.gov.au/nla/reports/20052006.html

Table C5 Australia: further supporting data

Type of assistance		In-house	Private	Total	Proportion
Duty scheme	Total	189,594	59,604	249,198	37%
Cases (representation)	Total	71,581	87,032	158,613	24%
Advice	Crime	80,181	724	80,905	12%
Advice	Civil and family	177,819	2,333	180,152	27%
ALL ASSISTANCE	ALL	519,175	149,693	668,868	100%

Cost per case (representation all states 2005-06:

	Total spend \$AUS '000	Total cases	Cost per case \$AUS	Cost per case £ (2005 exchange rate)
All states	397,161	158,613	\$2,504	£1,086

Exchange rate Dec 05 \$AUS 2.305 = £1

All states, service delivery mode, 2005-06:

	In-house	Private	Total Approvals	% in-house	Approvals per 1,000 citizens
Civil	3,528	8,205	11,733	30%	0.57
Crime	56,810	48,796	105,606	54%	5.17
Family	11,243	30,031	47,274	27%	2.02
TOTAL	71,581	87,032	158,613	45%	7.77

Case mix (representation):

State	Crime	Non-crime	All cases	% crime
NSW	41515	14054	55205	75%
VIC	22983	15961	38944	59%
QLD	19958	12428	32386	62%
SA	8985	3134	12119	74%
WA	5672	3318	8990	63%
TAS	4456	1833	6289	71%
ACT	1349	1484	2833	48%
NT	1052	795	1847	57%
ALL states	105606	53007	158613	67%

Other data

Legal aid expenditure: time series

	2002-03	2003-04	2004-05	2005-06	2006-07	% growth 2002-03 to 2006-07
Total spending \$AUS	320905	357262	378455	397161	456131	
Total 1992 real term spend	233216	252839	261364	267629	295613	27%
Population ('000)			20410	20409	20701	
Spend per cap \$			18.79	19.46	22.03	
Spend per cap Euros			10.71	12.29	12.87	
GDP per cap (\$AUS)			45712			
GDP per cap (euros)			25968			

Table C6 Eligibility limits and GDP

	GDP per capita 2003	Legal aid: upper income limit €
France	27800	14982
Germany	27100	27820
Netherlands	30300	24000
Sweden	28900	27820
UK	29800	27906
Australia	30100	9498
Canada	30500	8327
New Zealand	23200	10040

OCED data, PPP

Table C7 Reconciling data on legal aid spending in E&W between data sources

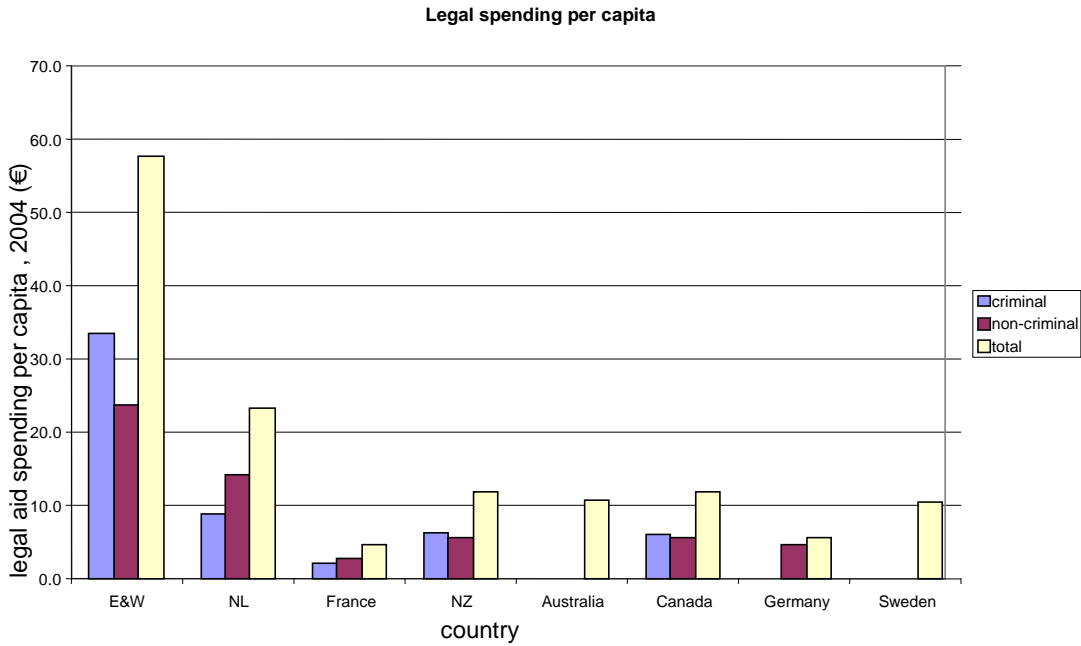
Legal aid Spending in England and Wales 2003/04 and comparison with CEPEJ 2006
Based on MOJ Legal Aid Data Factsheet

	£000,cash	Population E&W	Spend per capita, £	Spend per capita (Euros)	No of Acts (MOJ), 000	Average cost per act, £	Average cost per Act (Euros)
Total CDS	1,179	53,046,300	22.23	32.39	1,708	690	1,006
Total CLS	898	53,046,300	16.93	24.67	925	971	1,415
Total legal aid	2,077	53,046,300	39.15	57.05	2,633	789	1,149

Based on CEPEJ (2006) data:

Criminal	No of LA criminal cases per 10,000 inhabitants	298
	Implicit number of criminal cases in total	1,580,780
	Average amount granted per criminal case (euros)	1,108
	Implicit expenditure on cases 000 (euros)	1,715,504
	Implicit expenditure on cases 000 (£)	1,202,057
Non-Criminal	No of LA non-criminal cases per 10,000 inhabitants	161
	Implicit number of non-criminal cases in total	854,045
	Average amount granted per non-criminal case (euros)	1,542
	Implicit expenditure on cases 000 (euros)	1,316,938
	Implicit expenditure on cases 000 (£)	903,815
Total	No of LA cases per 10,000 inhabitants	459
	Implicit number of cases in total	2,434,825
	Average amount granted per case (euros)	1,260
	Implicit expenditure on cases 000 (euros)	3,067,880
	Implicit expenditure on cases 000 (£)	2,105,486

Figure C2 **Composition of legal aid spending for study countries**



Note: full breakdown unavailable for Australia, Germany and Sweden

Figure C3 **Criminal case volume and the number of cases brought**

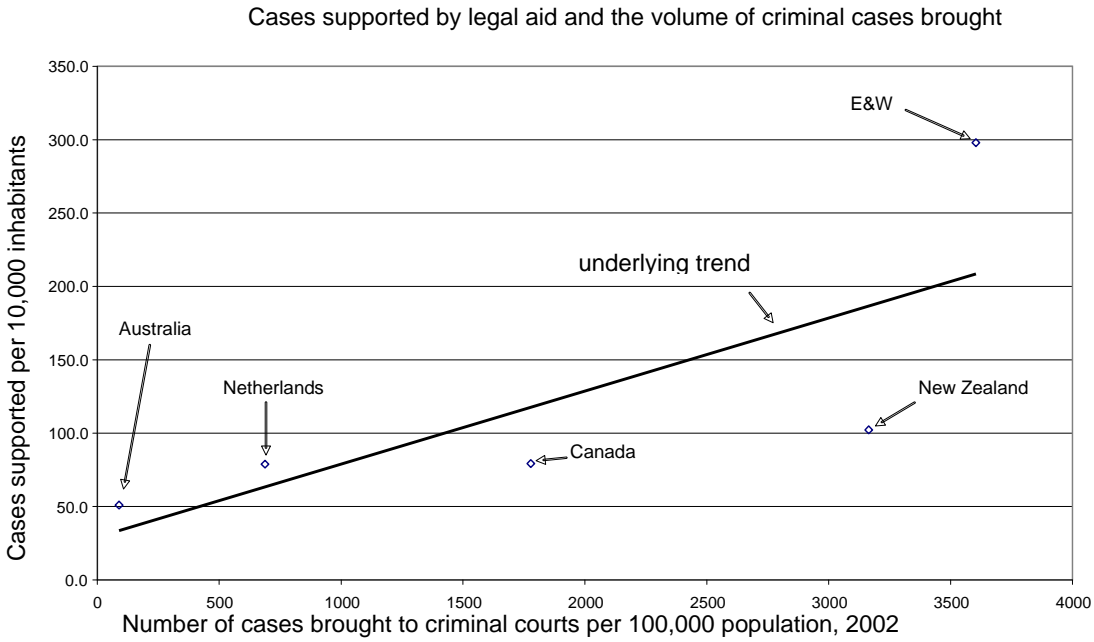
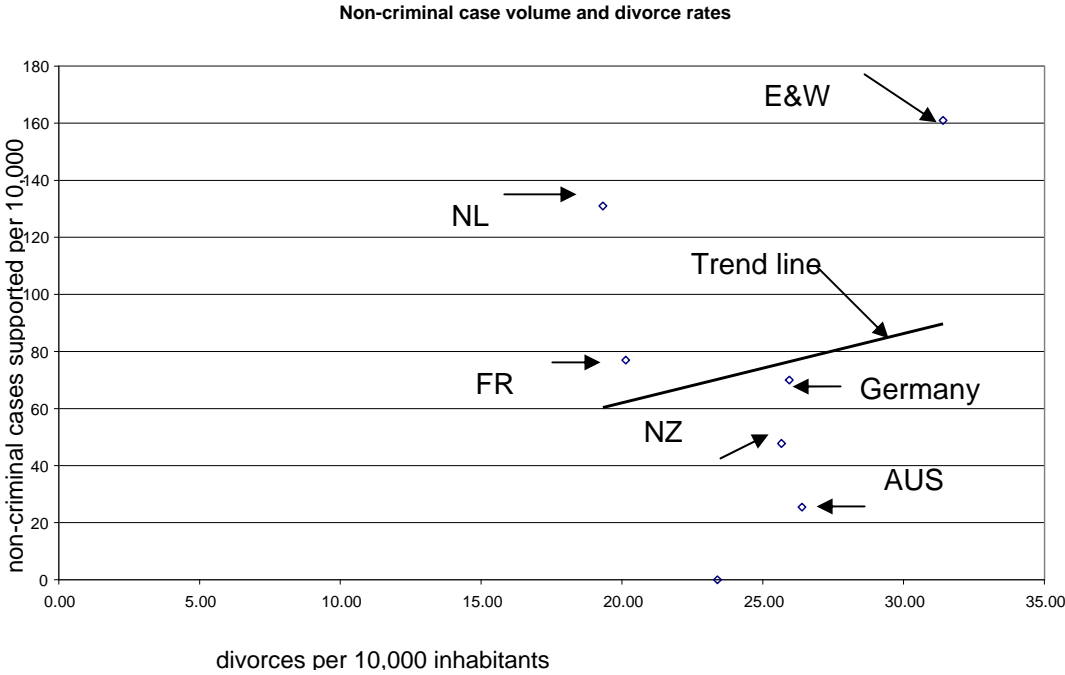


Figure C4 Non-criminal case volume and divorce rates



Ministry of Justice Research Series 14/09

International comparison of publicly funded legal services & justice systems

International data suggests spending on legal aid in England and Wales is comparatively high. The research explored evidence to support hypotheses developed to explain these differences. It comprised a literature review and analysis of economic and social characteristics of study countries. Higher case volumes and higher average costs appears to confirm higher spending per capita in England and Wales than in Australia, Canada, France, Germany, Netherlands, New Zealand or Sweden. However, comparisons were complex, due to significant differences in the methodology and reporting of data, and should be treated with care as to their interpretation.

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