



Ministry of
JUSTICE

International Comparisons of Public Expenditure on Legally Aided Services

Ad hoc Statistics Note

Ministry of Justice

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Introduction

This note provides an update on international comparisons of public expenditure on legally aided services to support the passage of the 'Legal Aid, Sentencing and Punishment of Offenders' Bill.

Robust international comparisons of legal aid expenditure are complex due to differences in legal systems, political, cultural and religious traditions, varying quality across sources and data collection. In order to understand these factors, the Ministry of Justice (MoJ) commissioned University of York to undertake research which was published as *International Comparison of Publicly Funded Legal Services and Justice Systems* (2009)¹. The study showed, based on 2004 data, that the combination of a higher number of cases supported and higher costs per case meant that expenditure on legal aid in England and Wales was substantially higher than in other study countries.

Since the report was published, new data has become available. The revised set of figures presented in this note updates figures published in the University of York study and England and Wales figures in the European Commission for the Efficiency of Justice (CEPEJ) reports on *European judicial systems: Efficiency and quality of justice*². This note focuses on comparisons between England and Wales and countries with similar legal traditions, that is Northern Ireland, Ireland, Canada and New Zealand.

If you have any feedback, questions or requests for further information about this statistical bulletin, please direct them to the appropriate contact given at the end of this report.

International comparisons

£2.1 billion was spent on legal aid in England and Wales in 2010/11, representing expenditure of around £39 per head³. The England and Wales estimate of £39 per head has remained fairly stable since 2008/9.

The estimated £39 per head legal aid expenditure in England and Wales is higher than the latest estimates available for other countries with similar legal and judicial traditions, for example £10 in Canada and £20 in Ireland (all 2008). It is also higher than £18 in New Zealand (2010). The exception is £48 in Northern Ireland (2008) which has had similar or higher expenditure per head over the period for which data are available See **Table 1** below.

The estimated £39 per head legal aid expenditure in England and Wales in 2008/9 (and 2009/10)⁴ is also higher than other European Union (EU) countries in 2008, such as £5 in France, £5 in Spain, £13 in Denmark, £15 in Sweden, £25 in the Netherlands and £31 in Norway. However, these countries tend to have different

¹ *International Comparison of publicly funded legal services and justice systems*, MoJ Research Series 14/09, October 2009. See <http://www.justice.gov.uk/publications/docs/comparison-public-fund-legal-services-justice-systems.pdf>

² *European judicial systems - Edition 2010 (2008 data): Efficiency and quality of justice*, European Commission for the Efficiency of Justice (CEPEJ), October 2010
http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp

³ This estimated is based on a *provisional* cash expenditure estimate of £2.131bn for 2010/11 financial year and population estimates for England and Wales of 55.24m for mid-2010 as published by ONS http://www.statistics.gov.uk/downloads/theme_population/population-estimates-analysis-tool-2010.zip

⁴ Throughout the note where financial years are used, the first year is used in the comparative tables (e.g. Table 1).

legal systems which explain at least part of the difference. Further detail is provided at **Annex A**.

England and Wales also spends more on legal aid relative to other EU countries after accounting for the size of the economy. In 2008, the estimated legal aid expenditure per head as a proportion of GDP was 0.18% in England and Wales, compared to 0.02% in France, 0.02% in Spain, 0.03% in Denmark and 0.05% in Sweden. See **Table 2** below.

Table 1: Common Law – Legal Aid Expenditure Per Head (£)					
	2004	2006	2008	2009	2010
Northern Ireland	38	37	48	-	-
England and Wales (r)	38	37	39	39	39 (p)
Ireland	8	10	20	-	-
Canada (r)	7	8	10	-	-
New Zealand (r)	8	8	9	14	18
Australia	7	-	-	-	-

*Note: (r) refers to revised figures, England and Wales, Canada and New Zealand have been revised from prior published reports in line with the explanation set out at **Annex A**. Northern Ireland and Republic of Ireland figures are those set out in the CEPEJ reports and have not been updated. Figures for Australia are from the University of York study. England and Wales figures for 2010 are provisional (p).*

Table 2: Legal aid expenditure per head as proportion (%) of GDP per head, 2008	
Northern Ireland	0.29
England and Wales (r)	0.18
Scotland	0.16
Netherlands	0.07
New Zealand (r) ⁵	0.06
Sweden	0.05
Norway	0.05
Ireland	0.05
Canada (r)	0.04
Finland	0.03
Denmark	0.03
Switzerland	0.02
Spain	0.02
Portugal	0.02
France	0.02
Luxembourg	0.01
Italy	0.01
Belgium	0.01
Austria	0.01

Source: European country figures (with exception of England and Wales) are from CEPEJ 2010 report. Canada and New Zealand figures are revised based on GDP per capita figures from the IMF / World Bank database⁶. Australia is excluded from this list because no comparable figures are available for 2008..

⁵ New Zealand figures for 2009 and 2010 are 0.08%. This is still significantly lower than England and Wales.

⁶ World Economic Outlook Database
<http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/weoselgr.aspx>

Analysis

A combination of a larger number of cases supported and higher costs per case means that expenditure on legal aid is higher in England and Wales than other countries reviewed. The University of York Study for MoJ⁷ found that expenditure was higher in England and Wales because more cases per head are funded for criminal and non-criminal areas; more criminal suspects are brought to court, and more of this group are given criminal legal aid; and there is higher spending per case on criminal and non-criminal cases relative to other countries.

Differences in expenditure between countries will reflect differences in the justice system. Costs in the justice system are distributed differently, depending on the nature of the justice system and traditions of each jurisdiction. For example, a more inquisitorial style system may spend more on inquisitors and the judiciary, but have a lower legal aid spend as the examining authorities will undertake much of the work traditionally conducted by defence lawyers in England and Wales.

Even among countries with similar legal traditions as the UK (e.g. New Zealand), a range of factors are likely to contribute to differences in costs per case. These include differences in criminal procedure (e.g. length and nature of proceedings) underlying cost structure in the provision of legal services (e.g. differences in regulatory burdens to legal aid suppliers) and level of competition in the market.

The University of York research also highlighted the areas where practice in England and Wales may have led to higher costs, including: higher income ceilings on eligibility (although this only applies when England and Wales are compared with jurisdictions outside Europe); and wider scope in terms of what is covered.

The scope of legal aid appears to be more restrictive in other jurisdictions outside England and Wales. Criminal scope also appears to be narrower in some jurisdictions, due to procedural differences and differences in the role of the justice system. For example:

- New Zealand: In 2007, eligibility for civil legal aid is more restricted in New Zealand with a lower monthly income limit. Scope is marginally limited, excluding Public law, Mental Health, immigration and Medical negligence. In 2006 divorce and crime rates are also lower than in England and Wales, as are the number of criminal cases brought to court.
- Ireland: In 2010 Ireland applied tighter merits test for civil legal aid than England and Wales and is considered to be one of the most robust of the jurisdictions. The Legal Aid Board considers the reasonableness of funding the case along with the chance of success, likely cost against likely benefit and whether there is an available alternative method for dealing with the problem. Civil legal aid in Ireland does not generally cover debt, public law, discrimination, mental health or medical negligence cases.
- Australia: In 2010 cases for debt, property, public law, mental health, immigration and medical negligence were outside the scope of the scheme. For criminal legal aid, both advice and representation is only available for the most serious offences. Australia applies a strict merit test which considers the chance of success, reasonableness, whether a prudent self-litigant would fund the case and also looks at Government guidelines on priorities.

⁷ See note (1)

Although alternative dispute resolution [ADR] systems are well established in a number of comparator countries, the arrangements in each country vary in terms of the range of cases which are in scope, how they are funded, and the extent to which participants are encouraged or even compelled to participate. A preliminary assessment of published evidence suggests there is mixed evidence on how effective these are at reducing volumes of legal aid work, and on whether ADR cases are more cost effective than the alternatives. It is therefore not possible to draw firm conclusions at this stage about the extent to which the existence of ADR contributes to lower legal aid expenditure.

Summary

In 2009, MoJ published research undertaken independently by University of York to provide the most robust international comparisons at the time of publication. This showed that in 2004 England and Wales had one of the highest levels of legal aid expenditure per head in the world.

The report concluded that *“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”*. However, the report also recognised that making international comparisons was complex, due to significant differences in the methodology and data associated with different justice systems. Further, looking at legal aid in isolation risked missing important differences between justice systems, so that any comparison should be treated with care as to their interpretation.

This note provides an update on international comparisons of public expenditure on legally aided services to support the development of the ‘Legal Aid, Sentencing and Punishment of Offenders’ Bill. The data shows that at £39 per head legal aid expenditure in England and Wales is among the highest in the world.

ANNEX A: FURTHER DETAIL ON INTERNATIONAL COMPARISONS

This Annex explains in more detail the international comparisons discussed in the main section. It updates existing England and Wales figures reported by the European Commission for the Efficiency of Justice (CEPEJ) reports and some common law countries figures reported by the University of York study.

European Comparisons (CEPEJ Publication)

CEPEJ publishes reports on *European judicial systems: Efficiency and quality of justice*. Four reports have been published so far: 2004 report (containing figures for 2002); 2006 (containing figures for 2004); 2008 report (containing figures for 2006), and the 2010 report (containing figures for 2008). These reports contain a range of information on judicial systems, including legal aid, for a broad selection of European Union countries.

The CEPEJ publication has used varying definitions for legal aid per head. For 2002 and 2004, the figures were broadly based on expenditure on legal aid. In 2006 and 2008 emphasis shifted to budget allocations, with some figures showing expenditure whilst others showing budget allocation. CEPEJ data are compiled by individual countries and so can vary considerably in terms of definitions and coverage.

Revised figures for England and Wales

Further analysis has shown that the legal aid figures for England and Wales reported in the CEPEJ publications as previously supplied by MoJ to CEPEJ need to be revised. For example, the 2008 figure used by CEPEJ showed that legal aid expenditure in England and Wales in 2008 was £1.8 billion (€1.9 billion) rather than £2.1 billion (€2.2 billion)⁸. **Table A1** provides corrected data for England and Wales legal aid expenditure per head in 2004, 2006 and 2008.

Table A1: CEPEJ Reports - England and Wales Revision (Legal Aid Per Head)							
CEPEJ Report	Year	Legal Aid Budget Allocations (bn)		€ exchange rate	Population (m)	Per Head Estimate	
		€	£			£	€
2006 report	2004	3.07	2.10	0.6850	53.0	39.6	57.9
2008 report	2006	3.02	2.03	0.6715	53.7	37.7	56.2
2010 report	2008	1.88	1.81	0.9609	54.4	33.2	34.5
MoJ Revisions	2004	2.98	2.04	0.6850	53.0	38.4	56.1
MoJ Revisions	2006	2.95	1.98	0.6715	53.7	36.9	54.9
MoJ Revisions	2008	2.19	2.10	0.9609	54.4	38.6	40.1

In line with CEPEJ the revised figures in Table A1 are based on cash expenditure and include only the sums directly paid to those benefiting from legal aid or their lawyers. These do not include administrative costs. However, it should be noted that

⁸ Legal aid spend per head figures for European Union countries are taken from the *European judicial systems - Edition 2010 (2008 data): Efficiency and quality of justice*, European Commission for the Efficiency of Justice (CEPEJ), October 2010; see Figure 2.15 on page 32. See http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp This report presents figures for 2008 in euros, which have been converted to £sterling using an exchange rate of €1 = £0.9609 (*Bank of England*, as 31 December 2008 – MoJ England and Wales CEPEJ Response)

this reporting practice is not consistent across all CEPEJ returns, with some countries including “administration” costs of those organisations that administer legal aid. Therefore some care should be taken when comparing England and Wales figures with figures from other jurisdictions as presented in the CEPEJ report.

The revised legal aid expenditure figures for England and Wales also affects other figures in the CEPEJ report. Namely, the legal aid expenditure per head as a proportion of GDP per head in 2008 has been slightly revised for England and Wales to 0.18% rather than 0.15% as quoted in the 2010 CEPEJ report.

European Comparisons

A comparison of legal aid expenditure per head among selected European countries, including the revised figures for England and Wales, is set out below in **Table A2**.

Table A2 : Selected European Countries - Legal Aid Expenditure (£ per head)			
	2004	2006	2008
Northern Ireland	38	37	48
England and Wales (r)	38	37	39
Norway	20	22	31
Scotland	29	31	31
Netherlands	16	14	25
Ireland	8	10	20
Sweden	7	11	15
Denmark	0	0	13
Finland	7	7	10
Belgium	2	3	5
Luxembourg	4	4	5
France	3	3	5
Spain	2	3	5
Portugal	2	2	3
Austria	2	1	2
Italy	1	1	2
Germany	4	5	N/A
Sources: European Commission for the Efficiency of Justice; <i>European judicial systems - Edition 2010 (2008 data)</i> ; <i>Efficiency and quality of justice; European judicial systems - Edition 2008 (2006 data)</i> ; and <i>European judicial systems - Edition 2006 (2004 data)</i> . All figures are from CEPEJ except for England & Wales. Exchange rates assumptions are set out in Table A1			

Common Law Jurisdiction Comparisons (MoJ Publication)

The MoJ commissioned University of York to undertake research which was published as *International comparison of publicly funded legal services and justice systems* (2009)⁹. This research provides the most robust international comparisons at the time of publication. It also outlined the key issues which need to be considered when interpreting the data, including jurisdictional limitations and data problems.

⁹ See note (1)

The report provides a comparison with a selection of “common law” countries that have similar legal traditions to England and Wales based figures for 2004. This report updates these figures with more recent data on New Zealand and Canada adjusted for key methodological differences¹⁰.

New Zealand

The University of York estimated New Zealand legal aid expenditure per head in 2004 at £8 (or €11). These figures have now been updated as set out in **Table A3** below for the period between 2004 and 2010. The figures are based on ‘cash applied to legal aid’ as set out in New Zealand Legal Services Authority annual reports. Population assumptions have also been updated using the recorded population estimates from the New Zealand Statistics Authority.

The effect of these changes leads to the estimate of legal aid expenditure per head for 2008 at £9 per head, rising from £8 in 2004. The figure for 2010 is substantially larger at £18 per head. The change between 2008 and 2010 is due mainly to exchange rate movements and increases in expenditure.

Table A3: New Zealand Legal Expenditure Per Head Update : 2004 – 2010						
Period	Certified Claims (NZ\$m) ¹¹	Total Expenditure (NZ\$m) ¹²	Population (m) ¹³	Per Head Expenditure (NZ\$)	Exchange Rates (£1 =NZ\$) ¹⁴	Legal expenditure per head (£)
2004	84.95	84.66	4.09	20.71	2.62	8
2005	92.89	95.52	4.14	23.09	2.51	9
2006	96.04	95.87	4.19	22.90	2.85	8
2007	107.38	102.08	4.23	24.13	2.59	9
2008	114.83	102.39	4.27	23.97	2.75	9
2009	139.85	139.95	4.32	32.41	2.25	14
2010	164.52	158.64	4.37	36.30	2.06	18

Legal aid expenditure per head as a proportion of GDP per head in New Zealand is 0.06% (2008) and 0.8% (2009 & 2010)¹⁵.

¹⁰ It has not been possible to update figures for Australia as legal aid expenditure figures are not kept centrally but devolved across the states with elements of federal funding.

¹¹ The value of claims certified represents amounts approved for payment in a financial year. This amount will differ to the amount paid in cash to providers because of small timing differences between the approval of a claim and the payment to the provider where these actions occur across financial years. Figures are taken from various Annual Reports e.g. Page 69, LSA Annual Report 2008-9 (2007,2008 and 2009 figures); and, Page 88, LSA Annual Report 2009-10 (2010 figures)

¹² Figures are set out at the Statement of Cash Flows (See note iii) : Statement of Cash Flows (Page 59, LSA Annual Report 2004-2005) - Cash applied to payments for legal aid (Expenditure Figures : 2004 & 2005); Statement of Cash Flows (Page 55, LSA Annual Report 2005-2006) - Cash applied to payments for legal aid (Expenditure Figures : 2005 & 2006); Statement of Cash Flows (Page 51, LSA Annual Report 2006-2007) - Cash applied to payments for legal aid (Expenditure Figures : 2006 & 2007); Statement of Cash Flows (Page 55, LSA Annual Report 2007-2008) - Cash applied to payments for legal aid (Expenditure Figures : 2007 & 2008); Statement of Cash Flows (Page 45, LSA Annual Report 2008-2009) - Cash applied to payments for legal aid (Expenditure Figures : 2008 & 2009); and, Statement of Cash Flows (Page 62, LSA Annual Report 2009-10) - Cash applied to payments for legal aid (Expenditure Figures : 2009 & 2010)

¹³ New Zealand end-year population estimates.

<http://www.stats.govt.nz/~media/Statistics/Methods%20and%20Services/Tables/National%20population%20estimates/HistoricalPop.xls>

¹⁴ HMRC revenue and customs historic exchange rates – end year.

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageImport_RatesCodesTools

Canada

The legal aid expenditure per head for 2004 assumed in the University of York research was €11.8. This figure was based on total Legal Aid Plan Revenue¹⁶ figure of CAN\$599.23m. It does not reflect actual expenditure for a given year. It also includes administrative and other non-legal services. It has therefore been necessary to update these figures and focus on Legal Aid Plan expenditure on direct legal services (DLS)¹⁷. **Table A4** sets out revised figures. Total legal spend per head on direct legal services has increased from £7 in 2004 to £10 per head in 2008.

Table A4: Canada Legal Expenditure Per Head Update : 2004 – 2010

Period	Total Legal Aid Plan Revenue (CAN\$m)	Total Legal Aid Plan Expenditure (CAN\$m)	Total Legal Aid Plan Expenditure (CAN\$m)	Population (m) ¹⁸	Per Head (CAN\$)	Exchange Rates (CAN\$1 = £) ¹⁹	Per Head (£)
2004/5	599.23	607.60	497.07	31.94	15.56	2.21	7
2005/6	625.95	680.34	563.86	32.25	17.49	2.05	9
2006/7	633.69	668.15	547.03	32.58	16.79	2.18	8
2007/8	727.79	679.64	546.67	32.93	16.60	2.04	8
2008/9	727.84	741.18	597.39	33.33	17.92	1.87	10

Legal aid expenditure per head as a proportion of GDP per head in 2008 is 0.04%²⁰.

¹⁵ GDP per head are at current prices are taken from the *World Economic Outlook Database*. These are converted from national currencies to £ based on the exchange rates set out in this Annex and (unadjusted for PPP for comparability with legal per head figures)

<http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/weoselgr.aspx>

¹⁶ Total Legal Aid Plan revenue refers to all monies received directly by the Legal Aid Plan during a given fiscal year. Funds received for specific projects from agencies external to the Plan are not included as revenue. In general the total legal aid plan revenue represents the budget allocation for administrative and non-administrative purposes. See Table 1.1 in *Legal Aid in Canada : Resource and Caseload Statistics - 2007/2008* http://dsp-psd.pwgsc.gc.ca/collection_2009/statcan/85F0015X/85f0015x2008000-eng.pdf and *Legal Aid in Canada : Resource and Caseload Statistics - 2009/2010* http://publications.gc.ca/collections/collection_2011/statcan/85F0015X/85f0015x2010000-eng.pdf

¹⁷ Direct legal services expenditures refer to the actual gross Canadian dollars expended on criminal and civil matters by the Plan in a given fiscal year. This excludes expenditures on central administrative expenditures and any other expenditure See Table 5 in *Legal Aid in Canada : Resource and Caseload Statistics - 2007/2008* http://dsp-psd.pwgsc.gc.ca/collection_2009/statcan/85F0015X/85f0015x2008000-eng.pdf and *Legal Aid in Canada : Resource and Caseload Statistics - 2009/2010*

¹⁸ Population estimates are from Statistics Canada <http://estat.statcan.gc.ca/cgi-win/CNSMCGI.EXE>

¹⁹ See note (13)

²⁰ See note (14)

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