

LEGAL AID

History

Until 1949, there was no unified 'legal aid' scheme. During and after the Second World War thought was given to creating a fairer society for the post-war age. As well as the NHS, education, social security and housing, it was recognised that equality of access and the right to representation before the law was fundamental to a just society. Hence, the Rushcliffe Committee made a number of recommendations that led to the establishment of the first legal aid scheme by the Legal Aid and Legal Advice Act 1949. The Rushcliffe Committee rejected various alternatives which would have created a service delivered by salaried lawyers specifically orientated to the particular problems of the poor. The Committee was persuaded by the arguments put forward by the Law Society and up until 1970, legal aid work was confined to solicitors working in private practice with a focus on divorce and matrimonial problems.

In 1969/70 the Lord Chancellor's Advisory Committee on Legal Aid argued for more attention to be given to the needs of the people appearing before tribunals and called for 'some form of ancillary legal services'. As well as the failures of the scheme to cater for the needs of the poor, alternative models of publicly funded legal services was also emerging from the United States. There, legal challenge had played an important part in the civil rights movement in the 1950s and 1960s. Legal services were accepted as an integral part of President Johnson's 'war against poverty'. It was at this time, in the late 1960s that alternatives were explored. An advice project was expanded in the summer of 1967 in North Kensington. This became the first Law Centre, which was officially opened in July 1970.

Up until the passing of the Legal Aid Act in 1988, responsibility for legal aid lay with the Law Society. In 1988 the system was formalised and was bought under the control of central government who established the Legal Aid Board. With some exceptions, the Legal Aid Board was given responsibility for the funding of all work paid for by the state.

In 1999, the Access to Justice Act was passed. It abolished the Legal Aid Board and established the Legal Services Commission and redrew the whole system of funding and regulating legal aid. The Act gave it the power to radically reshape legal services. Civil legal aid now formed part of the Community Legal Service (CLS), and criminal work became the Criminal Defence Service (CDS). Any firm or agency which wants to undertake legal aid work now has to have a contract with either the CLS or CDS. Significantly, the Act also put a cap on the amount of money that could be spent on civil legal aid.

The Legal Services Commission is an independent government agency under the Department for Constitutional Affairs (DCA). Ultimate responsibility for legal aid was given to the Lord Chancellor in the 1999 Act and, in 2006, renewed emphasis was given to legal aid by creating a new Ministerial post dedicated to the reform of legal aid. Day to day running of the scheme is devolved to the LSC, which runs the budget, awards contracts, controls quality and assesses bills and acts as a link with providers. Broader policy is determined by the DCA, and budgets are set by the Treasury.

What does Legal Aid fund ?

The Legal Services Commission funds a range of legal services. The different levels of service in civil matters are:

Legal Help

Legal Help provides initial advice and assistance with any legal problem.

Help at Court

Help at Court allows for somebody (a solicitor or adviser) to speak on behalf of a client at certain court hearings, without formally acting in the whole proceedings.

Family Mediation

This level of service covers mediation for a family dispute, which means trying to reach an agreed settlement with the help of an independent mediator. For more information about mediation and Alternative Dispute Resolution, go to the: [ADR Now](#) website.

Legal Representation

The level of service provides legal representation in court if a client is taking or defending court proceedings. It is available in two forms:

- * Investigative Help: funding is limited to investigation of the strength of the claim.
- * Full Representation: funding is provided to represent a client in legal proceedings.

If a client is eligible for legal assistance and the application for legal aid has been approved, the cost of providing the service will be covered by the Legal Services Commission, although in certain cases clients may be asked to pay a contribution.

Who can get legal aid ?

The Funding Code

The 1999 Act introduced a Funding Code which is a set of rules used to decide which individual cases can be funded by the Legal Services Commission. The criteria define what services the Commission will fund, ranging from basic legal advice to representation in court proceedings. Different criteria are set for different types of case according to priorities set by the Lord Chancellor.

The criteria are complex, but solicitors have to consider each one. These include things like a 'sufficient benefit test', alternative funding and prospects of success. Some areas of law are also excluded, i.e. they are 'out of scope'. These include areas such as the making of wills, defamation, conveyancing and boundary disputes. It also excludes representation before most tribunals, although again there are some exceptions, such as representation at a Mental Health Review Tribunal and Representation before the Asylum and immigration Tribunal.

Personal Income

To receive legal aid, people must also be financially eligible. Clients have to provide evidence of their finances, such as bank statements, saving books and details of earnings. If people are in receipt of income support, income based jobseeker's allowance or guarantee state pension credit they will qualify for funding without having to pay a contribution. The Legal Services Commission has an on-line Legal Aid calculator which works out if people are financial eligible. It can be found at [Community Legal Services Direct](#).

Who provides legal aid services ?

Providing they hold a contract with the Legal Services Commission, legally aided services for civil cases are available from firms of solicitors and legal advice centres, such as Law Centres. To be awarded a contract the firm or Law Centre will have been checked by the LSC to see if they meet certain standards and provide a quality service.

The DCA and the LSC plan to introduce a new system of 'preferred supplier' which will be based on firms and legal advice centres having a high level of expertise. This will be assessed by 'peer reviewers' – independent assessors who will look at files to assess the quality of the work and the outcomes/results achieved for their clients. At the moment, firms and agencies are able to apply for a 'quality mark'. To receive funding from the LSC they must have the specialist quality mark. All Law Centres have this status.

Currently there are other quality marks, such as 'general help' and 'general help with casework' in a subject category. However, agencies with these levels of quality marks are unable to access funding from the LSC.

[Community Legal Services Direct](#) enables people to search an on-line directory of organisations who do legal aid work. There is also a help line on 0845 345 4 345. CLS Direct expanded in 2006 to provide a new services which will help to diagnose callers' problems, offer general information about rights and give callers further options about where to get help. A means test will be completed over the phone. BSS won the contract in June 2006 and will provide the service from multi-media contact centre in Manchester.

Go to [Legal Services Commission](#) website for more information about legal aid.

References

Understanding Legal Aid: A Practical Guide to Public Funding by Vicky Ling and Simon Pugh. Published by the Law Society in 2003

Justice: Redressing the Balance by Roger Smith. Published by Legal Action Group in 1997

A Practical Guide to Community Legal Service Funding. A leaflet published by the Legal Services Commission in April 2006.