



The Bar Council

The cost of everything but the value of nothing: what goes wrong when governments starve the justice system of funding

Speech by Sam Townend KC Chair of the Bar Council of England and Wales at the Forum for Barristers and Advocates event, IBA annual conference 17 September 2024

What goes wrong when governments starve the justice system of funding?

As the Bar Council set out in its submission to the UK government's spending review lodged last week and in our [Justice short changed report](#), the justice system is the part of English and Welsh public services that has been cut the most over the last 14 years.

Public funding for justice administration - including costs of prosecution, courts, legal aid, prisons and probation together - have declined by 22.4% in real per person terms since 2010.

Legal aid spending has been cut more than any constituent part - an astonishing 39.5% in real per person terms. No wonder our vigorous tabloid press no longer talk about 'fat cat' legal aid lawyers. The consequences of starving the justice system of money are stark and obvious.

Underfunding justice

Underfunding has resulted in record backlogs (68,000 in the Crown Court) and delays in all jurisdictions of the court (average time for private family law cases to reach a final order is 46 weeks), with all the consequences that has for access to legal rights and justice.

There are not enough prison spaces and not enough advocates prepared to do the cases at the low legal aid rates. Last year 1 in 20 Crown Court trials, over 1,400, were abortive because no barrister could be found to act for the prosecution or the defence or both. This almost never happened just six years ago.

This is nothing short of a catastrophe for everyone involved, the alleged victim, witnesses, families, defendants, the courts and prosecution services and, of course, the taxpayer. It is an obvious waste of money and utterly sapping of participants' and the public's confidence in the justice system.

Spending on justice

England and Wales are not unique in having public funding for justice reduced. Data to provide international comparisons on this topic is somewhat difficult as each country has quite different systems. For example, in England and Wales, along with Northern Ireland and Scotland, we have adversarial systems which spend more on legal aid for funding defence and prosecution litigators and advocates, but less on the judicial system when compared to countries which have a civil judicial investigative system.

It is useful then to analyse the average spent on justice administration overall, including the money spent on the provision of the courts, defence legal aid and prosecution services. This approach has its limitations when trying to identify the value a state places on justice because it does not include sums spent on preventive measures, prisons and probation.

Europe

The European Commission on the Efficiency of Justice in 2022 published the [European judicial systems CEPEJ Evaluation Report](#). The average spent on justice administration, including the provision of the courts, defence legal aid and prosecution services, in the countries of Europe in 2022 was EU 78.09 or 0.35 of GDP. Switzerland has the highest at EU 217.31 per person, with Luxembourg not far behind. Netherlands does relatively well at EU 125.17 per person. Northern Ireland is cited at an average per person of EU 111.86; and Scotland at EU 85.20, a mere 0.27% of GDP. France spends just EU 72.53.

Think about quite how little that is – spending on health services in the UK is around 10% of GDP. Justice spending is a rounding error in the budgets of the other major public services - a 0.1% of GDP increase would transform our justice systems.

Australia

Other parts of the world suffer similarly from the starvation of resources for justice. In Australia, legal aid relies on mixed funding from both government and private sources. The [Independent Review of the National Legal Assistance Partnership \(NLAP\)](#) identifies that current funding is inadequate to meet demand. The NLAP requires an estimated \$1.8 billion to address service needs. The inadequate resources means that at present about 40% of eligible individuals are being turned away. The [Justice on the Brink](#) report, released on 22 November 2023, further emphasizes this issue and indicates that an additional \$484 million is needed to expand family and civil law services, carry out means testing, and cover salaries for legal aid lawyers.

In 2022/23, Australia's total expenditure for civil legal aid was a risibly small £142 million for a population of 26.6 million. The [Productivity Commission](#) notes that "Civil law matters are the poor cousin in the legal assistance family," with Australia's most disadvantaged people particularly vulnerable to the adverse consequences of unresolved civil law issues.

Canada

In Canada, total expenditure for civil legal aid in 2021/22 was £262 million for a population of 40 million. Despite this investment, the legal aid system faces significant challenges similar to those in the UK, such as legal advice deserts and geographic disparities. The Government of Canada's report, [the Impact of the Lack of Family Legal Aid in Canada](#), highlights that individuals in northern regions are particularly disadvantaged due to the sparse distribution of lawyers, resulting in unequal access to justice. Additionally, women fleeing domestic abuse often struggle to prove their eligibility for legal aid due to a lack of access to necessary financial documentation.

[The high cost of legal representation remains a major barrier](#), especially for low income and Indigenous communities, exacerbated by limited legal aid funding. In 2019/2020, only 3% of family law applicants were represented by legal aid lawyers, while self-represented litigants made up 58% of family case litigants, underscoring the challenge of navigating the legal system without professional assistance.

Underfunding is tragic and counterproductive

Looking at the position worldwide in the round, not only is starving the justice system of funding a tragedy in terms of timely access to justice, for assertion of basic rights by the poor and vulnerable, with all the consequences that has for sliding into misery, poverty and despair. It is also wholly counterproductive to the state and taxpayer due to the additional costs when people become insolvent, cannot access benefits and welfare, assert employment rights, continue to suffer domestic abuse, fall ill, lose their home, cannot support themselves, and fall back on emergency and mental health services.

The value of justice for all

There are countless studies from the countries I have mentioned, and others that focus on the savings that are made when justice is properly resourced. In England and Wales we have recently published [The value of justice for all report](#). It was commissioned by the Access to Justice Foundation together with my Bar Council, and the report evaluates the economic value of the free legal advice sector.

Researchers found that legal aid advice and support, provided free to the citizen, at an average cost of £3,300 per case, save the government £9,100 in 2023 - in effect for every £1 spent on legal advice, it saved the taxpayer £2.71.

The report set out that the bulk of those savings are realised in the first year of spend, with continuing savings over time.

So, I ask you what more positive case should be needed to persuade governments to invest?