

March 2020



The Bar Council

**The Bar Council
Budget Submission**

About us

1. The Bar Council represents over 17,000 barristers in England and Wales. It promotes the Bar's specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
2. A strong and independent Bar exists to serve the public and is crucial to the administration of justice, making a vital contribution to the efficient operation of criminal and civil courts and alternative dispute resolution. It provides a pool of talented lawyers, from increasingly diverse backgrounds, from which the vast majority of the senior judiciary (and most of the overall judiciary) is drawn, and on whose independence the Rule of Law and our democratic way of life depend.
3. Legal services contributed £26.8 billion to the UK economy in 2017 and produced a trade surplus of £4.4bn in 2017. Legal services generate 1.4% of UK Gross Value Added and employ over 338,000 people across the country, two-thirds of whom are based outside London. Major centres of legal services employment include Manchester (13,000 in employment), Birmingham (11,000), Leeds (10,000) and Bristol (8,000).¹

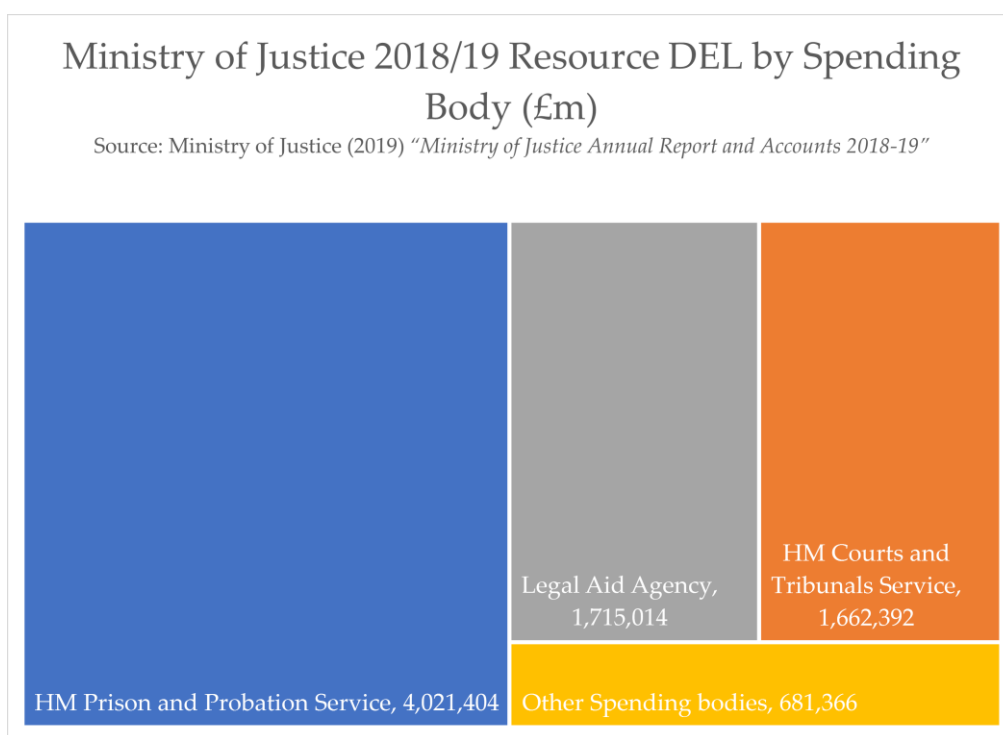
Summary

We call on HM Treasury to urgently invest in our justice system by implementing the following:

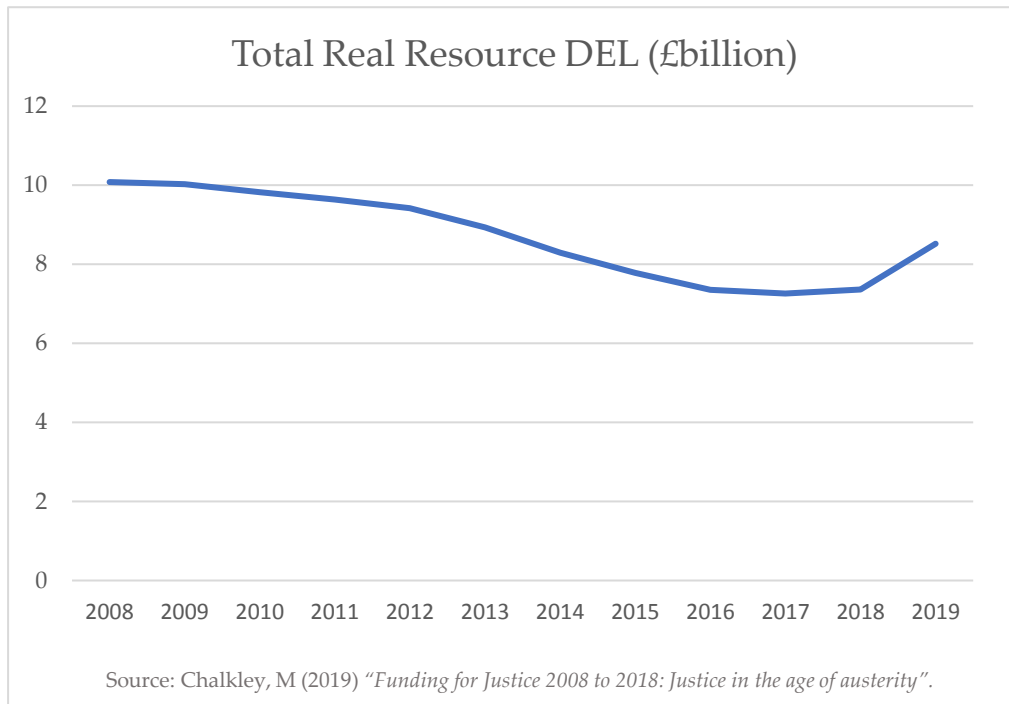
1. **Justice spending to be swiftly increased, in recognition of the Ministry of Justice's 27% budget cut in the last decade.**
2. **A three-year commitment to an additional 5,000 Crown Court sitting days per annum.**
3. **Urgently increase defence and prosecution publicly funded fees to fairly reflect the vital public service lawyers provide and ensure a sustainable workforce.**
4. **The rehabilitation of offenders budget to be doubled to £800m.**
5. **A targeted re-introduction of civil and family legal aid.**
6. **Additional resourcing of the Legal Aid Agency.**
7. **Abolition of the 'innocence tax'.**
8. **A cross-departmental review of decision-making made by civil servants in order to save costs and relieve pressure on tribunals.**
9. **Stop any further court closures and increase spending on maintenance of court and tribunal buildings by £30m.**
10. **Consult on the establishment of a Professional Services Promotion Fund.**

Recommendation 1: Justice spending to be urgently increased, in recognition of the Ministry of Justice’s 27% budget cut in the last decade.

4. The Ministry of Justice budget is broken down in the following table:



5. In 2019/20 the total managed government expenditure in real terms on justice was projected at £8.48 billion. Justice spend was therefore just 1.3% of total managed government expenditure.²
6. The Government has provisionally increased the Ministry of Justice’s (MoJ) budget by 4.9% for 2019/20.³ This £1.2 billion injection of emergency funding granted by HMT was indicative of the scale and impact of the very deep cuts that the justice budget has endured over the preceding decade. This represents a 4.9% increase which has now been included in the 2019/20 budget as the revised baseline in which to operate moving forward.
7. Government expenditure grew by 13% between 2008-18 whilst funding for the MoJ has fallen by over 25% since 2010/11 as illustrated in the graph⁴ below:



8. Between 2010/11 and 2014/15, HM Prisons and Probation Service (HMPPS) reduced its budget by nearly a quarter. Sir Richard Heaton, Permanent Secretary at the MoJ, told the Public Accounts Committee in 2017 that the reduction in staff numbers "has been detrimental to security, stability and good order in prisons".⁵
9. By March 2023, Her Majesty's Courts and Tribunals Service expects to reduce annual spending by £265 million.⁶

Recommendation 2: A three-year commitment to an additional 5,000 Crown Court sitting days per annum.

10. Recorded crime is increasing but charging rates and prosecution rates are decreasing.⁷ The reduction in police resources, investigation and the prosecution of crime is leading to the apparent decriminalisation of certain criminal activity. There is a backlog of cases exacerbated by courts sitting fewer days which has been recognised by the recent announcement of an extra 4,500 sitting days for this year.
11. This is sending a clear message to the public and victims of crime that in some areas across the country certain crimes, including theft and even rape, are effectively being decriminalised because suspects are not being charged, whilst crime rates are increasing. This trend needs to be reversed by urgently investing in the entirety of the criminal justice system.
12. In the year to June 2019, 6,020,801 incidences of crime including antisocial behaviour incidents were reported in England and Wales, representing a 33% increase in five

years.⁸ Of those six million crimes, only 1.58 million individuals were dealt with by the criminal justice system.⁹ This is the lowest number since records began and very worryingly fell 2% from the year 2017/2018. In the year to September 2019, only 7.3% of cases had charges brought.¹⁰ In other words, 13 out of every 14 crimes were left unsolved.

13. As well as an insufficient number of sitting days, another factor exacerbating the backlog is that 170 criminal court buildings in England and Wales have closed since 2010. The total number of closures across the court estate is 295, a third of the court estate in England and Wales.¹¹
14. Increasing sitting days would enable courts to plan listing better, negating the need for 'floaters' thereby making the system more cost-effective and efficient and less stressful for all. A floater is a case listed for trial which is not allocated to a specific court or judge but which may be taken in any court in the same court centre within a period of time (usually a week). Floaters currently float out of the list repeatedly. They are inherently inefficient and costly. As well as causing inevitable uncertainty and inconvenience to all the parties involved, there are resultant costs. Witnesses who attend court for a floater which is not heard will still submit claims for expenses. Defendants on bail have no such right. Police who spend their day at court waiting to be called as witnesses could spend their valuable time policing. Prisoners are delivered to court for trials which are then not heard. When a floater is moved to another date, prisoners will return to prison, causing more cost to be expended holding them on remand, until the case is relisted. Those representing the parties cannot manage their diaries with certainty and either they or their clients invariably lose money.

Recommendation 3: Urgently increase defence and prosecution publicly funded fees to fairly reflect the vital public service lawyers provide and ensure a sustainable workforce.

15. In anticipation of the increase in work that the recruitment of additional police officers and Crown Prosecution Service (CPS) prosecutors will create, and recognising that the only way to reduce the backlog in our courts is to increase the amount of work flowing through the courts, we recommend that defence and prosecution fees be increased to fairly reflect the complexity of work done.
16. Legal aid for defence advocacy in the Crown Court is paid through the Advocates' Graduated Fee Scheme (AGFS). Between 2007 and 2018 the result of fee cuts and inflation meant that the fees were in real terms more than 40% lower in 2018 than in 2007.¹²

17. In December 2018, the Government increased fees by an average of 10%, so the fees are now roughly 30% lower in real terms than in 2007, whilst at the same time the amount of work required for each case - with the enormous increase in electronic evidence - means that cases are more complex and time-consuming to prepare.
18. Legal aid fee schemes where advocates are paid a small fraction of what would be a commercial rate does not encourage a sustainable and diverse profession, which is crucial to the proper administration of justice.
19. Fees paid to barristers by the CPS to prosecute cases in the Crown Court are paid under the CPS Graduated Fee Scheme. Having had no fee increases since 2005 and a cut in 2012, the limited pay increases in September 2019 and February 2020 were welcome. However, together with the effect of inflation, these were not enough to bring the fees close to earlier levels in real terms, just as with defence fee increases.
20. The recruitment of 20,000 additional police officers will result in more cases being prosecuted. The CPS is therefore recruiting an additional 390 lawyers to cope with that work. Many of the additional CPS lawyers being recruited are duty solicitors (criminal defence solicitors) which will only exacerbate the chronic sustainability issues already facing duty solicitors.
21. The obvious consequence of having more police officers and CPS prosecutors is that even more work will reach the criminal courts. Expert advocates will be required to prosecute and defend the additional cases. It is vital that these advocates are properly paid for this work.
22. Throughout 2020, the Bar Council and Criminal Bar Association are engaging with the CPS in a wider review of its fee scheme. Similarly, we are engaging with the MoJ's Criminal Legal Aid Review which concerns defence fees. More money will be necessary.

Recommendation 4: The rehabilitation of offenders budget to be doubled to £800m.

23. The total estimated economic and social cost of reoffending in a 12-month period in 2016 was £18.1 billion.¹³ Criminals in all parts of the criminal justice system, require access to rehabilitation services. Proper, targeted and effective rehabilitation is proven to lead to lower reoffending rates.
24. The overall proven reoffending rate was 28.7% for the period January to March 2018 (based on just under 107,000 adult and juvenile offenders). Within that rate, adult offenders had a proven reoffending rate of 28% and juvenile offenders had a proven reoffending rate of 39.2%.¹⁴

25. Adults released from custody or starting court orders had a proven reoffending rate of 36.7% and adults released from custodial sentences of less than 12 months had a proven reoffending rate of 62.7%.¹⁵
26. It is estimated that a 10% reduction in reoffending (across all reoffence types) committed by adult offenders (previously sentenced to custody for less than 12 months) can be attributed to rehabilitation intervention. If the cost of this cohort's reoffending is £4.9 billion, at the very least there would be an estimated economic benefit of £490 million if proper rehabilitation was offered to all offenders in this cohort. When translated to the entire cohort of re-offenders, the potential saving to the Exchequer (based on current reoffending rates) would be £1.8billion.¹⁶

Recommendation 5: A targeted re-introduction of civil and family legal aid.

27. There has been a 36% cut in legal aid spending between 2010/11 and 2018/19 - £2.6 billion to £1.66 billion. Restricted access to civil and family legal aid has led to a huge decline in pre-hearing advice and representation by lawyers in court. More people than ever are representing themselves in court (litigants in person) having had no access to legal advice.
28. In the financial year 2012/13, immediately preceding the introduction of LASPO¹⁷, a total of 58% of parties were recorded as having legal representation in private law cases. In 2017/18, this had reduced to 36% of parties.
29. This lack of access to legal advice and representation is both unsustainable and inherently inefficient. Proper funding of civil and family legal aid would: greatly reduce the number of litigants in person navigating the courts, allow those cases to progress through busy courts more quickly, permit other cases to be heard more quickly and, crucially, enable people to achieve justice more swiftly and efficiently.
30. In 2018/19 Support Through Court (an organisation that supports litigants in person, formerly the Personal Support Unit) helped clients on a record 75,432 occasions, up 15% from 65,456 occasions the previous year.¹⁸ Fifty-four per cent were not employed and 24% had health problems; some were homeless, and many had literacy issues. In addition, domestic abuse features in a high percentage of cases in the family courts.
31. It is widely believed that cuts to civil legal aid have simply passed costs to other government departments which ultimately deal with the consequences of unresolved legal problems. A Legal Action Group study estimated that £1 of expenditure on civil legal help saves the government around £6 in other public expenditure.¹⁹

Recommendation 6: Additional resourcing of the Legal Aid Agency.

32. In a recent survey of 28,663 adults, 92% of respondents said that they support legal aid.²⁰ The Legal Aid Agency processes applications for legal aid in England and Wales. It is underfunded and struggles to handle the applications it receives.
33. A recent Bar Council survey of barristers' chambers found that for certain civil payments alone, chambers had been waiting for periods of two to 14 years after the conclusion of a case to receive payment by the Legal Aid Agency.
34. The Bar Council has been working with the Legal Aid Agency to identify how applications can be processed more quickly and effectively, but it has become clear that the main issue is a lack of staff and resources more broadly.
35. In anticipation of an increased workload given the recent investment in other parts of the criminal justice system (police and CPS) the Legal Aid Agency needs additional investment to meet this demand.

Recommendation 7: Abolition of the 'innocence tax'.

36. There can be no place for an innocence tax in this country. The current situation of the state prosecuting an individual, refusing to give them legal aid and then refusing to reimburse their private legal costs in full when they are acquitted, is desperately unfair. There is also an illogical reverse incentive for defendants to use legal aid lawyers to represent them because of the inability to claim their costs, even at legal aid rates, for those who are acquitted of a crime but who choose to pay privately for representation. This must be reformed.

Recommendation 8: A cross-departmental review of decision-making made by civil servants in order to save costs and relieve pressure on tribunals.

37. We have long been concerned about the impact of poor decision-making on our system of tribunals. Be it the Home Office, Department for Work and Pensions or Her Majesty's Revenue and Customs staff, poor decision-making all too often results in litigation which is heard in the tribunals. Those cases attract direct costs including tribunal judge costs and the cost of the government defending itself. If better decisions were made by government employees, much of this work would not result in litigation, saving the Exchequer significant sums of money.

38. Our system of justice provides that there are first-tier tribunals, with an appellate structure thereafter, that determine the outcome of appeals. It should not be that justice is only available to the citizen that has the wit, stamina and resources to pursue the matter. The conspicuously high success rate of tribunal appeals from wrongful decisions by the state shows that an alarming number of those decisions - which can be life-altering for many citizens - are wrong. For example, approximately 66% of appeals in relation to PIPs²¹ and 50% of bail applications on behalf of detained immigrants are successful²² – meaning decisions were wrong in the first place.
39. Be it a disabled citizen denied entitlement to a Personal Independence Payment, an erroneous HMRC demand for tax which is not due, or a local authority's wrongful refusal to recognise a child's special educational needs, avoidable poor decisions are being made daily.
40. The commonality of problems in each part of the tribunals is striking and this large corner of the delivery of justice in our society requires attention. Although it can never provide a complete solution, advances in technology will have a part to play in providing better support and decision-making. A combination of this, together with an intelligent redeployment of legal aid targeted to the most vulnerable, will result in better scrutiny of the poor quality of initial decision-making.
41. We recommend that the Government conduct a cross-departmental review of decision-making to ensure that only those with the requisite skills are in a position to make decisions with consequences for the Exchequer. Better recruitment of staff and provision of training must be funded. Cross-departmental, joined up thinking and action is required to ensure that better decisions are made. This will avoid unnecessary litigation and cost.

Recommendation 9: Stop any further court closures and increase spending on maintenance of court and tribunal buildings by £30m.

42. We recommend that the Government increase spending on the maintenance of court and tribunal buildings by £30m. Our courts and tribunals are where justice is delivered. It is vital that the remaining court estate is fit for purpose, following the closure of so many courts. Many of our courts and tribunals are housed in old buildings so regular investment and improvement work is vital to ensure that those courts and tribunals can function effectively.
43. In 2018, £81m²³ was spent on the maintenance of court and tribunal buildings, with an additional £15m²⁴ injected during the year because the court estate was in such a poor

state. Broken lifts, leaking roofs, security and access problems all lead to avoidable court delays.

44. It is imperative that the maintenance budget is increased and maintained at that higher level so that the state of our courts and tribunals does not worsen any further. Our court estate must be fit for purpose so that justice can be delivered effectively and efficiently.

Recommendation 10: Consult on the establishment of a Professional Services Promotion Fund.

45. We recommend that the Government consults on the establishment of a two-year Professional Services Promotion Fund for the professional services sector to secure funding to promote the UK's world leading services abroad.
46. The Fund would be based on the Government's Brexit Readiness Fund²⁵ but would be piloted for two years initially and allow sectors such as legal and accounting to promote professional services overseas with Government support.
47. The Fund would be used for projects including business missions, promotional materials and exchange schemes with overseas jurisdictions of interest to the Government.
48. As is standard with other forms of governmental support, there would be a requirement for matched funding from successful applicants, which would take the form of direct financial support or organisational support and resources.
49. The Fund would be fully contestable and linked to clear performance and outcome metrics.
50. Legal services contributed £26.8 billion to the UK economy in 2017 and produced a trade surplus of £4.4bn in 2017. Legal services generate 1.4% of UK Gross Value Added and employ over 338 000 people across the country.²⁶
51. The UK is the largest legal services market in Europe (valued at approximately £35bn in 2018) and is second only to the US globally. It accounts for a third of Western European legal services fee revenue and around 5-6% of global legal services fee revenue (which totalled between \$680bn and \$886bn in 2018 and is expected by some to grow to above \$1trn by 2021). The UK's broader professional services sector is key to the success of the legal sector.²⁷
52. Over 25% of the world's 320 legal jurisdictions are founded on English common law principles, and 40% of governing law in global corporate arbitrations is English law.²⁸
53. With increasing competition from other leading global centres, such as New York, Dubai, Paris and Singapore, the UK must work to ensure that London and the UK

retains its position as a world-class global dispute resolution centre. Without concerted action the UK's position will be under threat.

54. The enhanced international promotion of UK legal services will help the sector continue to contribute to increased UK productivity growth. Income from international legal services continues to grow, but further investment and support from the government through a Professional Services Promotion Fund could help that productivity to grow much more quickly.

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Endnotes

¹ Legal excellence, internationally renowned: UK legal services 2019 <https://www.thecityuk.com/research/legal-excellence-internationally-renowned-uk-legal-services-2019/>

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³ HM Treasury (4 September 2019) "Policy Paper: Spending Round 2019" CP170. <https://www.gov.uk/government/publications/spending-round-2019-document/spending-round-2019>. Accessed 12 December 2019.

⁴ Chalkley, M (2019) "Funding for Justice 2008 to 2018: Justice in the age of austerity".

⁵ Quoted from Prison Reform Trust (2019) "Prison Reform Trust evidence for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – January 2019". <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Consultation%20responses/European%20Committee%20for%20the%20Prevention%20of%20Torture%20and%20Inhuman%20or%20Degrading%20Treatment%20or%20Punishment%20Jan%202019.pdf>. Accessed 20 December 2019.

⁶ National Audit Office (2018) "Early progress in transforming courts and tribunals" <https://www.nao.org.uk/wp-content/uploads/2018/05/Early-progress-in-transforming-courts-and-tribunals.pdf>. Accessed 12 December 2019.

⁷ Office for National Statistics (2019) "Crime in England and Wales: Other Related Tables" Table F1 Police recorded crime and anti-social behaviour incidents in England and Wales, year ending March 2008 to year ending June 2019 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesotherrrelatedtables>. Accessed 07 January 2020.

⁸ Office for National Statistics (2019) "Crime in England and Wales: Other Related Tables" Table F1 Police recorded crime and anti-social behaviour incidents in England and Wales, year ending March 2008 to year ending June 2019 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesotherrrelatedtables>. Accessed 07 January 2020.

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¹⁰ Crown Prosecution Service (2020) "CPS data summary Q2 2019/2020" <https://www.cps.gov.uk/publication/cps-data-summary-quarter-2-2019-2020> Accessed 07 February 2020.

¹¹ House of Commons Library (2019) "Court Closures and Access to Justice" Debate Pack CDP-0156.

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- ¹² Bar Council (2019) response to Ministry of Justice consultation “Amending the Advocates’ Graduated Fee Scheme” <https://www.barcouncil.org.uk/uploads/assets/033c4aad-95ac-4bac-8f5dc329fdbe58e2/20181012barcouncilagfsresponse.pdf>
- ¹³ Ministry of Justice (2019) “Economic and social costs of reoffending Analytical report” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814650/economic-social-costs-reoffending.pdf. Accessed 31 January 2020.
- ¹⁴ Ministry of Justice (2019) “Economic and social costs of reoffending Analytical report” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814650/economic-social-costs-reoffending.pdf. Accessed 31 January 2020.
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