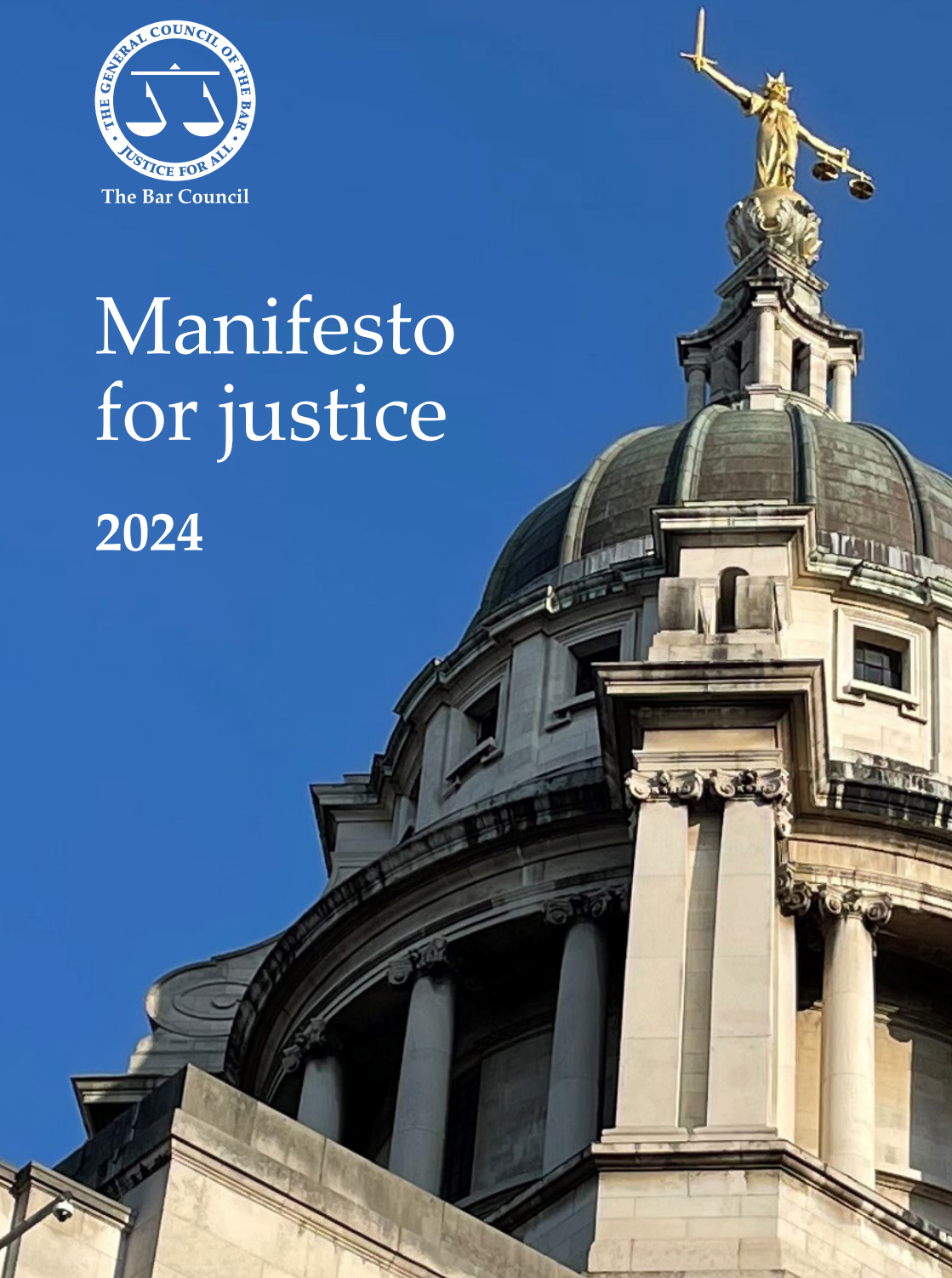




The Bar Council

Manifesto for justice

2024



Manifesto for justice

The next government should:

1. Establish a Royal Commission on the criminal justice system
2. Ensure that Crown Court trials have a start date within six months of the first hearing
3. Invest to secure a sustainable and resilient justice system that commands public trust and confidence
4. Recognise the courts as a vital public service that is the foundation stone of a good society – just like schools and hospitals
5. Support communities by providing easily accessible and trusted early legal advice – online and locally
6. Ensure access to justice by widening the scope of legal aid eligibility across civil, family and crime
7. Uphold, respect, and promote the rule of law
8. Promote the Bar's position as an internationally respected world leader and recognise the value of legal services



▶ A strong, effective and properly funded justice system



▶ Access to justice



▶ Uphold the rule of law

Foreword

As the General Election approaches, the justice system is in a critical condition. Record court backlogs, over-crowded prisons, legal aid deserts, crumbling buildings, judge and court staff shortages, matched by shortages and burnout amongst publicly funded solicitors and barristers.

Justice is a fundamental public service, but over the last decade it has been starved of resources. Professionals – lawyers and judges alike – have been subject to attack for just doing their jobs. This has been coupled with the instability of the revolving door of ten Lord Chancellors.

Cuts to justice spending have been a false economy. Every penny stripped from the justice sector increases costs elsewhere: in housing, welfare and health. And justice delayed leads to injustice.

Law and order will no doubt be a key battleground in the election campaign, but tough talk on crime including policing numbers, new offences and longer sentences, must be backed by proper resources to cater for the further increasing demands that meeting that rhetoric requires. Otherwise, it is yet more pressure on a system that is already at the point of structural failure.

In civil and family law, swingeing austerity cuts to legal aid from 2013 led to a surge in unrepresented litigants – individuals attempting to navigate the legal system by themselves, which has led to increased delays and expense. Delays are now as endemic to civil and family courts as they are to the criminal courts, at great cost to children, tenants, consumers, small businesses and others.

Justice should be seen and treated as a vital public service where the government can spend to save. The siloed approach to public investment by the Treasury, where each department is treated as in competition, needs to be departed from. Well-funded early legal advice can divert cases from the courts saving money for state services, including health and welfare, as well as the Ministry of Justice. Investment in buildings and technology will save time, boost morale and is essential for the maintenance of the sector's pre-eminent international reputation upon which £7 billion exports are founded. Making sure fees are reasonable and fair for the work done will help to stem the exodus of legal professionals from publicly funded areas of law.

The public must have confidence in the justice system and, as well as investment, that requires full throated political support. So, as the campaigning begins, we reiterate our plea to all parties and candidates to keep political attacks on lawyers and judges out of the debate.

Access to justice is a right that no one wants to have to exercise. But, just like the health service, it is vital that it is available at the point of need.

This manifesto for justice makes the case for change: it sets out the policies we need for reform and is honest about the level of investment required.

Sam Townend KC
Chair of the Bar Council

Barbara Mills KC
Vice Chair of the Bar Council

June 2024



A strong, effective and properly funded justice system

The next government should:

1. Establish a Royal Commission on the criminal justice system
2. Ensure that Crown Court trials have a start date within six months of the first hearing
3. Invest to secure a sustainable and resilient justice system that commands public trust and confidence

1. Establish a Royal Commission on the criminal justice system

Successive governments have attempted to improve the criminal justice system through small changes often in response to a looming crisis. The Ministry of Justice's current early release scheme is one such example.

The truth is that the existing system, now bunged up with a backlog of in excess of 67,000 Crown Court cases and with a prison system bursting at the seams, requires more fundamental reform. This is likely to require consideration of difficult decisions including the level of investment, discounts for early pleas of guilt, the length of

Full 

Prisons are operating at full (or beyond) capacity in England and Wales



sentences and alternatives to prison. We posit the question of what is more important to the public, speed of justice or length of incarceration? If both are non-negotiable that requires a total change in approach as to public investment in the criminal justice system.

Even contemplation of such reforms requires measured consideration outside of the day-to-day political wrangles with shouted claims that one or other political party is 'soft on crime'. The stakes are high and greater seriousness is required.

A Royal Commission should be established to examine the whole of the criminal justice system in England and Wales with the objective of identifying reforms to:

- ensure efficient and effective case progression from first report to release
- support victims and participants with a low witness attrition rate
- treat all users of the system respectfully, fairly and proportionately
- create a sustainable and resilient criminal justice system
- restore public confidence and safety with a reduction in crime

2. Ensure that Crown Court trials have a start date within six months of the first hearing

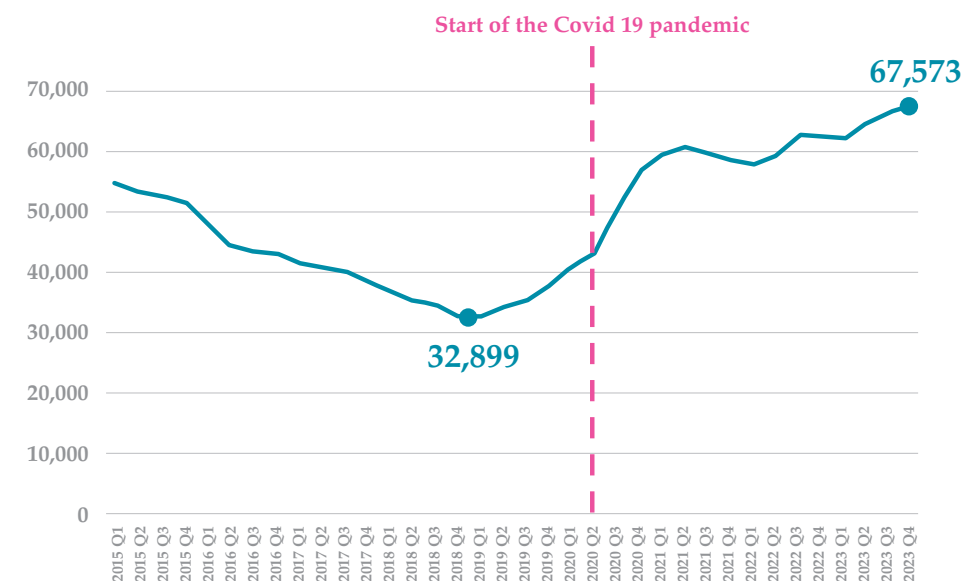
The backlog in the courts simply means the number of cases that are waiting to be heard. There will always be some backlog, as a case cannot be listed the day after charge. However, in recent years, the backlogs in courts – and particularly criminal courts – have increased so much that the delays are impacting on victims, defendants, witnesses, and all those involved in the system.

The backlog began to grow in 2019, when the then government capped the number of days judges could sit to hear cases – partly because of predictions about falling crime rates but also to save money.¹ The pandemic exacerbated this pre-existing problem and as of December 2023, the backlog was 67,573 cases.² The backlog is disproportionately composed of more serious cases, which will take more time in court. Twenty-eight per cent of the current outstanding cases in the Crown Court have been waiting for more than a year.³ The Institute for Government estimates that if case complexity is taken into consideration the backlog is more like 89,996 cases – well over twice the pre-Covid baseline.⁴

The input of cases into the criminal justice system is at record levels. There are not, however, consistently sufficient criminal barristers to service this demand.⁵ A solution that would ensure a long-term pipeline of criminal barristers to take cases, keep the system moving, and help to clear the Crown Court backlog would be to match fund 100 criminal pupillages per year for the duration of the next Parliament.

Timeliness is now being seen as the main way to measure the ongoing impact of the pandemic on the court system. Timeliness in the family courts is declining in most case types. Data on public law cases is not currently available. In October to December 2023, it took on average 46 weeks for private law cases to reach a final order, i.e. case closure, up almost one week from the same period in 2022. This is 91% higher than in Q2 2016, when the upward trend began.⁶

Outstanding cases in the Crown Court



In the interests of justice, the next government should also provide a fully evidenced figure



46 weeks

Average time for private law family cases to reach a final order. The statutory target is 26 weeks.

for what would be a reasonable standing backlog going forward and ensure that all Crown Court trials start within six months of receipt through proper investment and boosting the workforce.

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1. Justice Committee (27 April 2022) 'Court Capacity' <https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/69/report.html>
2. Ministry of Justice (28 March 2024) 'Criminal court statistics quarterly, England and Wales, October to December 2023' <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2023>
3. Ministry of Justice (28 March 2024) 'Criminal court statistics quarterly, England and Wales, October to December 2023' <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2023>
4. Institute for Government Performance Tracker 2023: Criminal courts <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts>
5. Financial Times (11 October 2021) 'UK efforts to ease courts backlog hit by barrister exodus' <https://www.ft.com/content/b6734dd9-68e9-4368-ad7c-5d47fd977bbc>
6. Ministry of Justice (28 March 2024) 'Family court statistics quarterly, England and Wales, October to December 2023' Table 9 <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2023>

3. Invest to secure a sustainable and resilient justice system that commands public trust and confidence

A fair society depends on a strong and effective system of justice. Despite providing a vital public service, funding for justice in England and Wales declined by 22% in real terms per person in England and Wales between 2009/10 and 2022/23.⁷

Unlike some frontline public services, justice spending is not protected. As a result, successive governments have damaged the reputation of the system by severe cuts that have limited access to

justice and led to significant delays across civil, family and crime – for all those involved in it. Whilst there was some welcome additional funding in the Spring Budget 2024, it is a drop in the ocean in terms of the investment the justice system desperately needs.⁸

Justice funding declined between 2009/10 and 2022/23 by

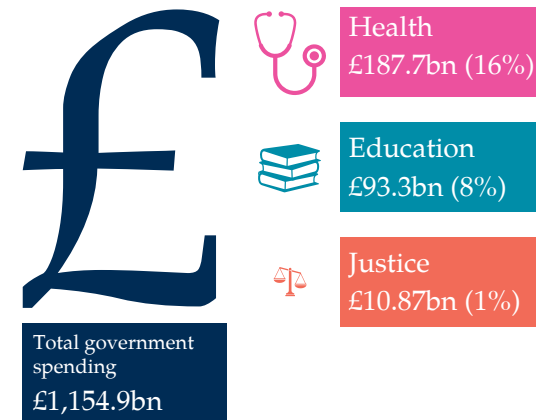


If funding for courts is excluded from the

calculations, there has been a 30% reduction in real per person funding for the remaining areas of the justice system: this is 41% below where justice funding would be if it had kept pace with inflation, population growth and the economy.⁹

Justice should be seen as an area where the government can spend to save. We need urgent investment to repair our crumbling court buildings and facilities, funding for early legal aid and advice to

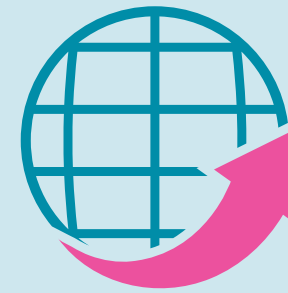
Total government spending in 2022/23



reverse the increase of unrepresented people (litigants in person), and an injection of money into legal aid fees to stem the exodus of legal professionals from publicly funded work. Failure to invest in our legal system at home risks undermining our reputation abroad.

Justice in numbers

Justice funding declined between 2009/10 and 2022/23 by



Net exports of UK legal services in 2022

£5.7bn

Full

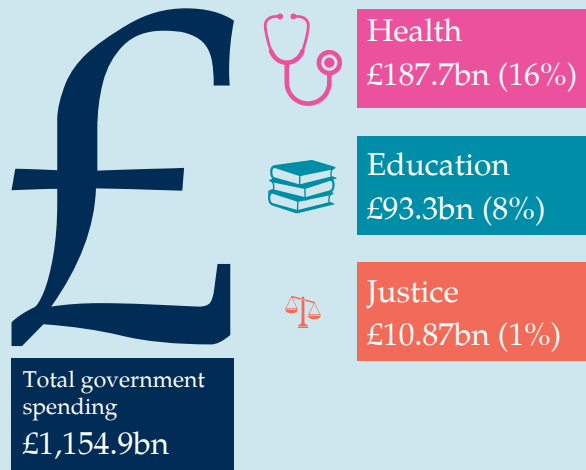
Prisons are operating at full (or beyond) capacity in England and Wales



67,000+

Cases in the Crown Court backlog

Total government spending in 2022/23



Legal services contribution to the UK economy in 2022



43%

reduction in the court estate since 2010



46 weeks

Average time for private law family cases to reach a final order. The statutory target is 26 weeks.

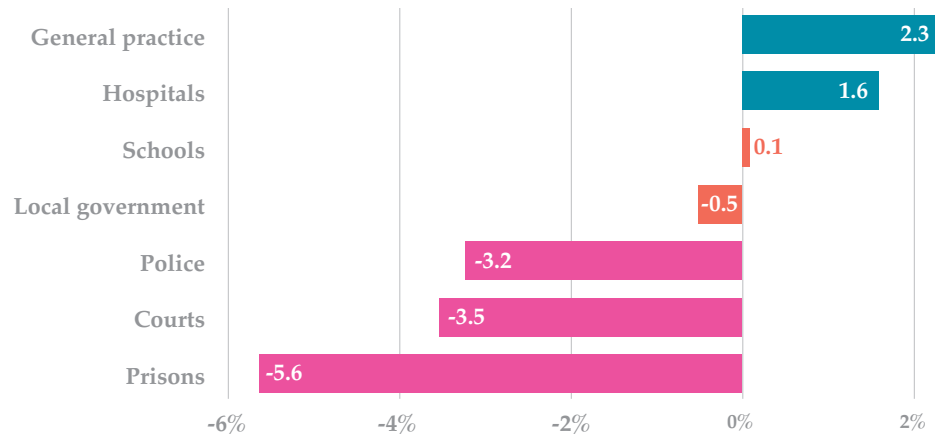
Extra £2.48bn

needed

for justice



Average annual real-terms change in spending between 2024/25 and 2028/29 under current government plans relative to demand



Source: Institute for government (2024)

The next government needs to invest an extra £2.48bn (29%) throughout the system to meet demand and restore trust and confidence in it.¹⁰ Without additional funding, particularly to legal aid, access to justice will be further diminished.



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7. Professor Martin Chalkley and Alice Chalkley (2024) Updated analysis of public spending on justice 2010-2023. Forthcoming.
8. The Bar Council (March 2024) 'Bar Council reaction to the Spring Budget' <https://www.barcouncil.org.uk/spring-budget-reaction>
9. Professor Martin Chalkley and Alice Chalkley (2024) Updated analysis of public spending on Justice 2010-2023. Forthcoming.
10. Bar Council (July 2020) 'Small change for justice' <https://www.barcouncil.org.uk/resource/small-change-for-justice-report-2020-pdf.html>



Access to justice

The next government should:

4. Recognise the courts as a vital public service that is the foundation stone of a good society – just like schools and hospitals
5. Support communities by providing easily accessible and trusted early legal advice – online and locally
6. Ensure access to justice by widening the scope of legal aid eligibility across civil, family and crime

4. Recognise the courts as a vital public service that is the foundation stone of a good society – just like schools and hospitals

Local courts matter and local justice matters. There is an increasing demand, and indeed expectation, for access to local public services including access to justice. However, the physical court estate has been reduced by 43% since 2010¹¹ meaning that the local administration of justice is becoming less and less possible.

The closure of hundreds of courts over the last decade means that people must travel further and

often longer to get to court. But it also means that waiting times have got longer and backlogs have grown, across all jurisdictions. What remains are buildings that are crumbling, in poor condition, and often without basic amenities or reliable technology.

Whilst technology may be able to help in some areas such as administrative hearings, the next government needs to commit to a long-term rebuilding of the entire court estate so that the administration of justice can function smoothly, and so courts can regain their place as one of our national assets. If people cannot access justice quickly, efficiently and safely, the public will lose confidence in the system and ultimately the rule of law.

The next government should continue to properly invest in court



infrastructure on an ongoing basis, beyond the £220m funding that HMCTS secured to enhance its maintenance programme between 2023 and 2025.¹²

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11. The Bar Council (June 2022) 'New data reveals decline in access to justice' <https://www.barcouncil.org.uk/resource/new-data-reveals-decline-in-access-to-justice.html>
12. HMCTS, Ministry of Justice (August 2023) 'Courts operate at full throttle to cut delays' <https://www.gov.uk/government/news/courts-operate-at-full-throttle-to-cut-delays>

5. Support communities by providing easily accessible and trusted early legal advice – online and locally

The economic and societal value of free early legal advice cannot be overstated. Organisations such as Citizens Advice and Law Centres that historically gave free specialist legal advice have largely closed, despite playing a vital role in supporting those unable to access or afford legal advice.

Such people are often the most disadvantaged in society. For every person in receipt of free advice, the average net benefit to the Treasury is £8,000 while the average cost of the advice is just £510 per person.¹³ Given that demand for early legal advice remains high and in the interests of access to justice, the next government should support communities by providing easy and accessible early legal advice – both online and locally.

The government's Early Legal Advice Pilot (ELAP) offered up to three hours of legal advice for housing, debt, and welfare benefit matters. We support this approach being rolled out more widely through councils and local support providers.

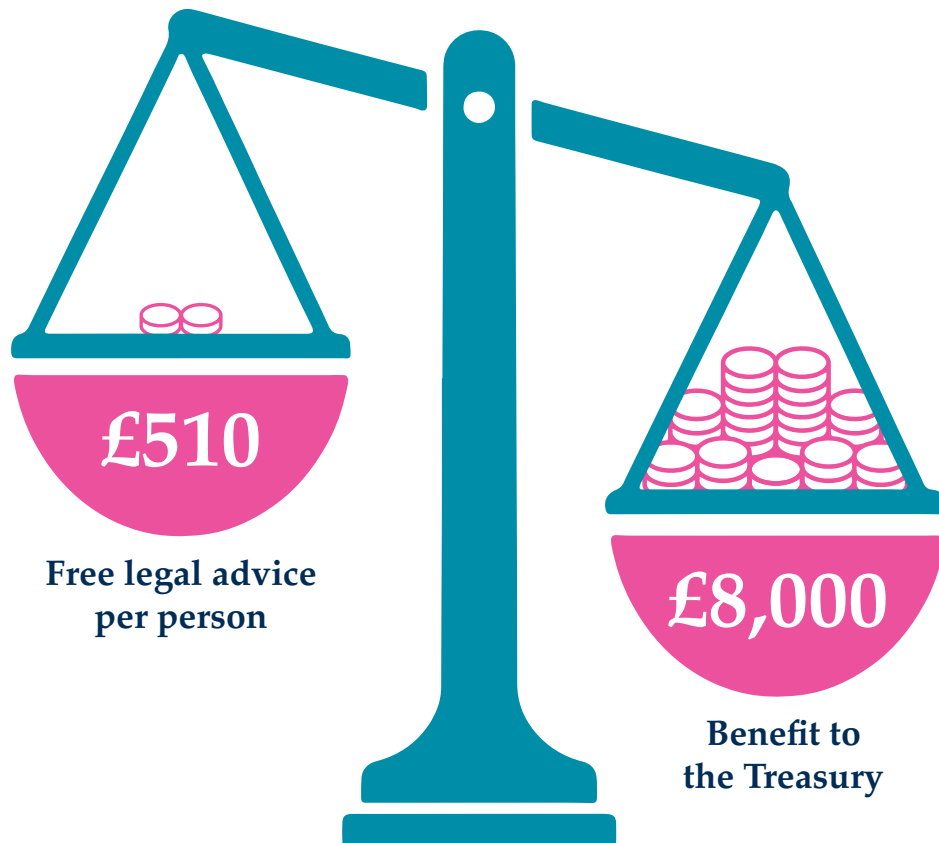
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13. Access to Justice Foundation (September 2021) 'Defending the public purse: The economic value of the free legal advice sector' <https://cebr.com/reports/defending-the-public-purse-the-economic-value-of-the-free-legal-advice-sector/>

6. Ensure access to justice by widening the scope of legal aid eligibility across civil, family and crime

The next government should widen the scope of legal aid eligibility through a targeted re-introduction across civil and family. Legal aid fees for civil, family and crime should be urgently increased, and mechanisms put in place to address the continual problem of erosion from inflation.

Over the last 14 years, the amount the government spends on legal aid has reduced by 40% from £52.52 per person in real terms in 2009/10 to £31.76 in 2022/23.¹⁴ Yet the need for representation



in housing, in immigration and in welfare cases persists and is often one of the main reasons constituents have to contact their local MP.

We have repeatedly called for an increase in legal aid funding over the last decade, highlighting that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) took many legal services out of scope for legal aid, reducing the ability of many people across the country to readily access justice.

The rise in the number of litigants in person in family courts is another visible sign of the problem. The proportion of cases where both parties had legal representation went from 41% in Q1 2013 to 20% in Q4 2023.¹⁵ The loss of critical legal aid support has effectively disenfranchised a whole sector of society from obtaining access to justice and early legal advice. The next government should introduce a targeted restoration of legal aid to assist vulnerable citizens who are currently left to fend for themselves.

References

14. Professor Martin Chalkley and Alice Chalkley (2024) Updated analysis of public spending on Justice 2010-2023. Forthcoming.
15. Ministry of Justice (28 March 2024) 'Family court statistics quarterly, England and Wales, October to December 2023' <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2023>



Uphold the rule of law

The next government should:

7. Uphold, respect and promote the rule of law
8. Promote the Bar's position as an internationally respected world leader and recognise the value of legal services

7. Uphold, respect and promote the rule of law

All sections of society have a part to play in upholding the rule of law. For it to be maintained in the long term, public commitment to this fundamental principle is essential.

Parliamentarians have a particularly important role to play. The government and its ministers bear responsibility for upholding the rule of law and respecting the separation of powers when they bring forward legislation. MPs have a great deal of responsibility too given that Parliament is the final decision-making body for shaping and passing laws. This gives it the ultimate responsibility for upholding the principles on which the UK constitution rests, including the rule of law.

On important issues such as SLAPPs (strategic litigation against public participation) and non-disclosures agreements (NDAs), it is the role of Parliament to make good law in the public interest and not to simply pass the responsibility to regulators (who in turn pass the burden onto regulated professionals, and the subsequent cost onto the public).

Recent and repeated public attacks on the legal profession and on the independence of our judiciary by politicians, coupled with negative rhetoric, has undermined the trust and confidence in our justice system – both at home and abroad.

We remain deeply concerned about the way in which politicians and political parties continually use disparaging language about practising lawyers, often associating them with their clients.

Lawyers should not be associated with the views or causes of their clients when they are simply doing their jobs. Under the 'cab rank rule' barristers accept cases irrespective of the identity of the client or the issue at hand.

Legal challenges help to ensure that the government is acting properly and following the laws made by Parliament. It is not acceptable to denigrate lawyers merely because they represent individuals who challenge government policies or actions.

The UK has a longstanding reputation across the world for leading, upholding and respecting the independence of judges and the rule of law. This hard-won reputation is at risk and easily lost.

8. Promote the Bar's position as an internationally respected world leader and recognise the value of legal services

Legal services contribute huge sums to the British economy (£34bn in 2022) and allow an array of other sectors to flourish, from financial services to pharmaceuticals to retail to tech. The UK accounts for around 10% of the global market for legal services, second only to the US. It is also the largest market in Europe, accounting for around a fifth of Europe's legal services fee revenue.¹⁶



**Net exports of UK
legal services in 2022**
£5.7bn

Across the world, the Bar of England and Wales has a strong, respected reputation for excellence, integrity and high standards.

The English and Welsh Bar is often the first choice for citizens and businesses across the world on a broad range of issues from international commercial contracts to environmental harm to intellectual property to arrest and detention.

The quality of our legal services coupled with the pre-eminent reputation of the law of England and Wales, the independence of our judiciary and the rule of law is what makes our jurisdiction so attractive – and has done for decades.

But we cannot rest on our laurels. Recent years have seen the rise of competing international dispute resolution centres which are taking active steps to promote themselves as suitable jurisdictions for the resolution of cross-border disputes. The next government should prioritise the promotion of England and Wales as the law and jurisdiction of choice for international contracts and disputes.

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Legal services contribution to the UK economy in 2022





The Bar Council

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