

National Audit Office

Report of the Comptroller and Auditor General

Appropriation Accounts 1998-99
Volume 8: Class VIII
Lord Chancellor's Department and
Serious Fraud Office

Confidential

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Report by the Comptroller and Auditor General

Class VIII, Vote 1: Lord Chancellor's Department

Excess Vote

1 The appropriation account shows expenditure of £1,139,491 (0.24 per cent) in excess of the running costs limit on expenditure of £478,785,000. This comprised excesses arising on subhead A1 of £3,508,966 and on subhead C1 of £368,154 offset, with Treasury approval, by savings on subhead B1 of £2,737,629. As the excess in total cannot be met from savings on other running costs subheads within the Vote, it is proposed to ask Parliament to authorise the application of savings of £1,138,490.91 from other non-running costs subheads, leaving a token sum of £1,000 to be voted as a further supply grant. In addition, there was a shortfall of £496,586 in running cost related receipts which, with Treasury approval, has been met by the transfer of excess non-running cost related receipts. The overall position on running costs is reflected in the following table:

	Limit	Outturn	Variance
Running cost expenditure	478,785,000	479,924,491	1,139,491
Running cost related receipts	<u>20,659,000</u>	<u>20,162,414</u>	<u>496,586</u>
Running cost limit	<u>£458,126,000</u>	<u>£459,762,077</u>	<u>£1,636,077</u>

Reason for the Excess Vote

2 In respect of the excess on subhead A1, two payments of rent, due in 1997-98, were paid in that year using emergency procedures but were posted erroneously by the Department's finance contractor to the accounts ledger in 1998-99. The impact of this misposting on the 1998-99 account was not identified until the end of that financial year, which meant that the Department was unable to take any action internally to accommodate the excess or request additional supply to cover the expenditure by means of a supplementary estimate. Consequently the Department has exceeded its running costs limit for subhead A1.

3 The Department's Internal Assurance Division investigated the reasons for the overspend on subhead A1 in April 1999 and made recommendations addressing the control weaknesses which had led to the breach of the running costs limit. The Department has accepted these recommendations and action is being taken to tighten the financial controls. In particular, procedures have been tightened for monitoring payments and access to financial information has been improved following the changeover to a new accounting system. Furthermore, a Departmental Finance Committee has been set up to strengthen the mechanisms for exchanging information and to improve liaison on financial matters within the Department.

4 The excess on subhead C1 was due to an increase in the notional cost of capital charge for the Public Trust Office. For the first time in 1998-99, departments were required to include a notional capital charge in the appropriation account for civil estate property comprising an interest element for capital employed and depreciation. In September 1999 the Public Trust Office revalued Stewart House and the Department requested and received Treasury authority to re-open its books of account to reflect the revaluation. As a result of the revaluation, the notional charge increased from £829,000 to £1,280,000 and the increase has given rise to an excess on the running costs subhead C1, which cannot be offset by the savings on the non-running costs subhead C2. The Public Trust Office has been advised of the importance of revaluing its property in a more timely manner and keeping its sponsoring department informed of the outcomes.

Legal Aid Expenditure

5 Expenditure on criminal legal aid included in the 1998-99 account totals £633 million. This comprises £244 million paid in respect of proceedings in magistrates' courts and £389 million in higher criminal courts. Both amounts are included within the total expenditure of £1,625 million on subhead D2. Contributions from defendants towards their criminal legal aid totalled £8.5 million of which £1.9 million was refunded once the defendant was found not guilty.

6 Within the system of legal aid, the Lord Chancellor's Department has responsibility for policy and legislation affecting legal aid and for funding the costs incurred, through the Legal Aid Board, for magistrates' courts proceedings and directly through the higher criminal courts. In granting criminal legal aid, magistrates' courts act independently and are not subject to direction by the Lord Chancellor's Department or the Legal Aid Board.

7 Statistics published by the Lord Chancellor's Department and the Legal Aid Board for 1998-99 show the number of people assisted to defend a criminal case was 627,740 and that 98 per cent of all awards of criminal legal aid, which provides the underlying authority for payments to solicitors and counsel, are granted in magistrates' courts.

8 The National Audit Office examination of the Accounts for the years 1990-91 to 1997-98 confirmed that there was limited evidence available to give reasonable assurance of full compliance with statutory regulations relating to the award of criminal legal aid and the determination of contribution orders in magistrates' courts. I qualified my opinion on the Accounts for those years and reported accordingly.

9 Since 1990-91 the Committee of Public Accounts has taken evidence on four separate occasions, from the Lord Chancellor's Department, about the issues arising from my qualified opinion and the controls over criminal legal aid. Their conclusions and recommendations were set out in their Twenty First Report of Session 1991-92 (HC 192), their Forty Sixth Report of Session 1992-93 (HC 459), their Thirty Fourth Report of Session 1994-95 (HC 282) and their Thirteenth Report of Session 1997-98 (HC 416).

10 The Lord Chancellor's Department responded to the Committee's previous concerns that applications for legal aid were not being dealt with in accordance with statutory requirements and has attempted in a succession of ways to improve the magistrates' courts' performance in this respect. Its initiatives have included:

- review and amendment of the regulations governing criminal legal aid;
- three conferences held for Justices' Clerks and other senior managers in November 1997 to explain the problems over the continuing qualification of the Department's Accounts, and to seek greater co-operation to secure further improvements;
- improved guidance and training for justices' clerks and their staff on the practical application of the regulations;
- issue of Audit Bulletin on carrying out means assessment for criminal legal aid;

- close monitoring by the Department's Internal Assurance Division (internal audit).

11 During 1998-99 Internal Assurance continued its review of magistrates' courts' compliance with the legal aid regulations governing the means test and the assessment of contributions. In fulfilling their rolling programme of dedicated legal aid reviews, internal audit teams visited 30 courts in two tranches and examined 1,049 cases (749 cases of free legal aid and 300 assessment cases). Eight of the courts had previously been visited, during the 1997-98 review.

12 In addition to the examples of LCD management action in paragraph 10 above, Internal Assurance carried out pre-audit visits in July 1998 to all 30 courts. During each of these visits, IAD staff explained the nature of their forthcoming visits, and they reminded magistrates' court staff of the documentary evidence required for compliance with the regulations and the type of errors most often found in previous reviews. The work of the Internal Assurance Division was therefore directed to improving as well as monitoring performance and the National Audit Office has been encouraged by the results obtained so far. Internal Assurance reported to the Department in November 1998 and in March 1999.

13 In the first tranche of courts visited, Internal Assurance found that 95 per cent of those claiming free legal aid on the grounds of a qualifying means tested benefit (Income Support, Family Credit, Disability Working Allowance and income based Job Seekers Allowance) provided good proof that they were in receipt of that benefit (Appendix 1). This level of compliance is an increase on that found in the first tranche of visits (92 per cent) in 1997-98. The second tranche of visits found the level of proof of entitlement had been sustained.

14 For applicants not claiming free legal aid but who might be liable to make a contribution, Internal Assurance found that, in the first tranche of visits, 93 per cent had provided evidence of their income (Appendix 2). This is consistent with the level of compliance found during the same period in 1997-98. During the second tranche of visits, however, Internal Assurance found a continuing improvement in compliance with 99 per cent of those applicants supplying evidence of their income.

15 Internal Assurance found that the number of applicants providing proof of expenditure allowances (Appendix 3) had improved significantly, from 83 per cent in the first tranche of visits in 1997-98 to 96 per cent in 1998-99. In the second tranche of visits, those providing proof of allowances had increased from 79 per cent to 98 per cent between the two years. The accuracy of contributions

due from applicants calculated by court staff had also improved. The error rate fell from between 33 per cent and 43 per cent in 1997-98 to 31 per cent in the first tranche of visits in 1998-99. However the rate of error rose slightly to 32 per cent in the second tranche (Appendix 4).

16 To obtain independent evidence and to confirm the validity of the Internal Assurance Division's results, my staff conducted a similar examination at 10 locations. They revisited four courts that had been selected by Internal Assurance and reperformed the examination of a small sample of 60 cases previously examined by the internal audit teams. In addition, my staff tested an independent sample of 60 cases at these courts and they visited a further six locations, where their examination included a review of 180 cases. In total, therefore, their independent examination tested 160 cases where free legal aid had been granted and 80 cases where the applicant, who had not claimed free legal aid, might be liable to make a contribution.

17 My staff found that, for those claiming free legal aid, good evidence, mainly in the form of a written confirmation from the Benefits Agency that the applicant was receiving one of the qualifying benefits, was obtained in 93 per cent of cases examined (Appendix 1). Despite efforts by the Lord Chancellor's Department in recent years to provide guidance and training to magistrates' courts, my staff found that courts accepted, in 5 per cent of cases, documents that were not in a form which provided unequivocal evidence that a qualifying benefit to free legal aid was in payment. As in my report on the 1997-98 Account, the main reasons for evidence being considered inadequate were:

- evidence of receipt of Job Seekers Allowance did not indicate whether it was income based, entitling the recipient to free legal aid;
- evidence in the form of a photocopy of a page from a benefit book did not state which qualifying benefit was actually being received.

18 In the remaining 2 per cent of cases, therefore, applicants were either wrongly granted free legal aid on providing evidence of a non-qualifying benefit or were granted free legal aid without providing any evidence at all. These cases included applicants who were in custody and who, when subsequently released on bail before trial, were in a position to provide details and evidence of financial means. However, there had been no attempt by the courts to pursue these individuals, and my staff are concerned that this appears to be a continuing problem.

19 In their examination of applicants not claiming free legal aid, and who might be liable to make a contribution, my staff found that, while courts obtained some documentary evidence of all earnings or non-qualifying benefit for the applicant or applicant's partner in 91 per cent of cases (Appendix 2), the best evidence (ie. 13 weeks or three months consecutive pay slips) was obtained in only 50 per cent of cases, though this was a significant increase compared to 20 per cent in 1997-98. Where evidence to support earnings was not provided, courts did not in every case seek explanations for its non-production.

20 The Department's Internal Assurance Division found a significant increase in the level of evidence provided to support expenditure allowances, from 79 per cent in 1997-98 to 98 per cent in 1998-99. Similarly, my staff found that performance had increased from 69 per cent to 86 per cent over the same period (Appendix 3). In respect of the accuracy of the courts' calculations of contributions due from applicants, the National Audit Office found that errors had fallen from 38 per cent to 32 per cent between 1997-98 and 1998-99 (Appendix 4).

21 The Internal Assurance Division visits indicate an improvement in the performance achieved by the magistrates' courts they visited in 1998-99. These results are encouraging, though they also suggest there is still some room for improvement. In particular, they show that free legal aid has been granted in 1 per cent of cases examined without any evidence of entitlement. Furthermore, the National Audit Office visits show a lower level of compliance in terms of the amount and quality of documentary evidence in each category compared to the findings of the Department's Internal Assurance Division. However, these visits were carried out solely for audit rather than wider management purposes. They were not preceded by the pre-audit visits conducted by the internal auditors in their sample of courts, which should have helped to improve compliance with the regulations in those courts.

22 In view of the limited evidence available to me to give reasonable assurance of full compliance with the regulations relating to the award of criminal legal aid and the determination of contribution orders, and because there are no other procedures that I could adopt to confirm that all criminal legal aid payments had been applied for the purposes authorised by Parliament, I have again qualified my opinion.

23 The Lord Chancellor's Department is continuing to monitor the situation closely and to seek ways of imposing discipline, of raising awareness and of helping justices' clerks achieve better compliance with the regulations. Examples of recent action include the following:

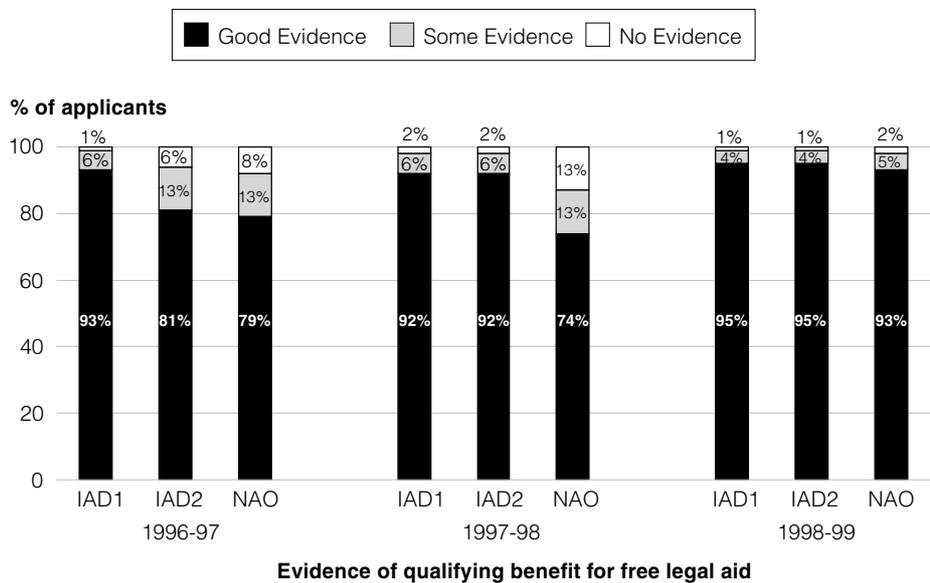
- The introduction of a regular programme of key financial and accounting controls checks to be carried out and documented by justices' clerks or other designated members of staff (the Management Assurance Programme includes a section on Legal Aid). This Programme became a performance standard for Magistrates' Courts Committees in February 1998.
- Audit bulletins were issued in June 1997 and in December 1998 to courts on typical failings in compliance with the legal aid regulations and detailing common errors found in the calculation of contribution orders.
- A comprehensive and practical guide on financial means assessment, "Criminal Legal Aid: A Guide to Eligibility", has been launched.
- Guidance was sent to all courts in March 1998 dealing specifically with the computation of disposable income and disposable capital, and the calculation of contribution orders. The guidance also notified courts of the revised levels of allowances coming into effect in April 1998.
- A help line has been set up for courts to provide advice on all aspects of means testing, and has been well received by court staff.

24 The Access to Justice Act 1999 included proposals for a fundamental reform of the legal aid system. Under the new scheme for criminal proceedings, which will be introduced in October 2000, courts will continue for the present to be responsible for deciding whether a defendant should be represented at public expense. The interests of justice test will be unchanged. However, in future, criminal legal aid will be available without reference to a defendant's means. Further, rather than seeking contributions from a defendant towards the costs of his or her defence during the criminal proceedings, there will be a new power for a judge in the Crown Court to order a defendant who is not acquitted to pay some or all of the costs of his or her defence at the end of the trial. Hence courts will no longer be required to means test defendants as part of the grant of criminal legal aid.

Appendix 1: Results of Lord Chancellor's Department Internal Assurance Division and National Audit Office examinations in 1996-97 to 1998-99

Documentary evidence supplied by applicants claiming free legal aid

Appendix 1



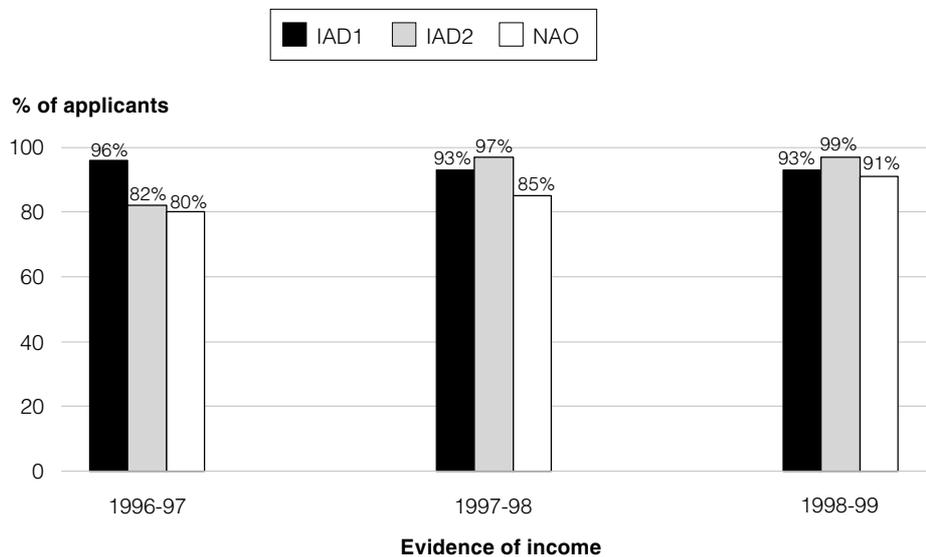
This appendix compares, for applicants claiming free legal aid, the levels of evidence of qualifying benefit to support claims in 1996-97 to 1998-99, as established by the LCD's Internal Assurance Division (IAD1 and IAD2) and the National Audit Office's examinations.

The figure excludes those applicants who provided a reason for not supplying evidence (for example remanded in custody until trial) or were too young to receive benefit.

Appendix 2: Results of Lord Chancellor’s Department Internal Assurance Division and National Audit Office examinations 1996-97 to 1998-99

Documentary evidence supplied by applicants of income

Appendix 2



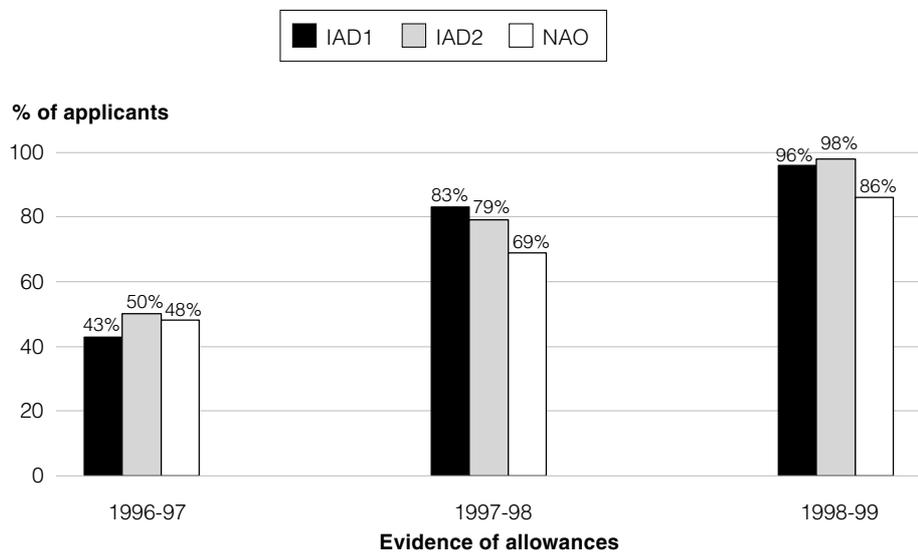
This appendix compares, for applicants not claiming free legal aid, the levels of evidence provided to support income in 1996-97 to 1998-99, as established by the LCD’s Internal Assurance Division (IAD1 and IAD2) and the National Audit Office’s examinations.

The appendix excludes those applicants who stated that they had no income.

Appendix 3: Results of Lord Chancellor's Department Internal Assurance Division and National Audit Office examinations 1996-97 to 1998-99

Documentary evidence supplied by applicants of expenditure allowances

Appendix 3



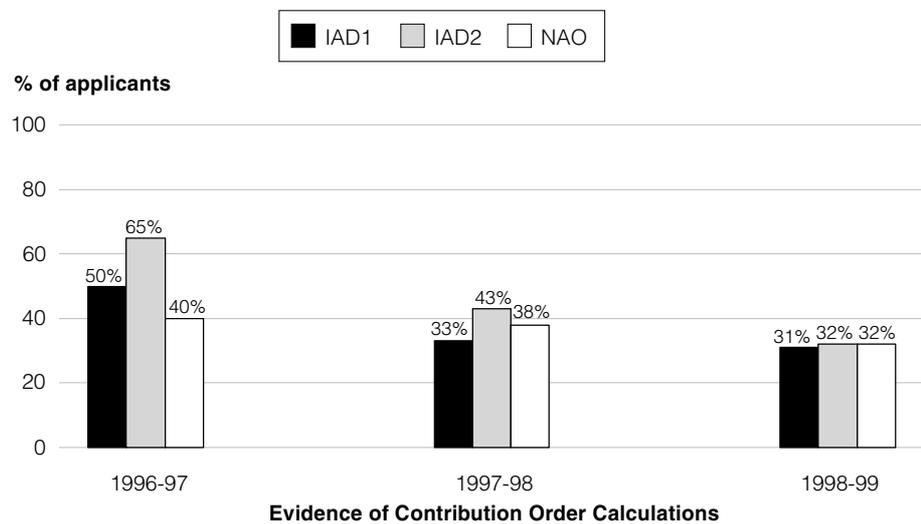
This appendix compares, for applicants not claiming free legal aid, the levels of evidence provided to support expenditure allowances which may be used to offset against income, in 1996-97 to 1998-99, as established by the LCD's Internal Assurance Division (IAD1 and IAD2) and the National Audit Office's examinations.

The appendix excludes those applicants who claimed no allowances.

Appendix 4: Results of Lord Chancellor's Department Internal Assurance Division and National Audit Office examinations in 1996-97 to 1998-99

The level of errors found in the assessments, made by the courts, of the contribution due from applicants for legal aid

Appendix 4



This appendix compares the level of errors in the assessments, made by courts, of the contribution due from applicants for legal aid in 1996-97 to 1998-99, as established by the LCD's Internal Assurance Division (IAD1 and IAD2) and the National Audit Office's examinations.

Class VIII Vote 5: Serious Fraud Office

Excess Vote

25 The appropriation account shows expenditure of £0.1 million (0.6 per cent) in excess of the Estimate which, as increased by the Supplementary Estimate presented in February 1999 (HC 237 of 1998-99), amounted to £17.4 million. Appropriations in Aid realised also fell short of the Estimate of £1.4 million by £0.6 million (43 per cent). It is proposed to ask Parliament to provide for the excess by voting a further supply grant of £740,165.

26 The excess of expenditure arose because unexpected costs and damages amounting to £159,628 were awarded against the Department when, upon judicial review, the court quashed search warrants obtained in connection with a mutual legal assistance case. This expenditure was incurred on the non-discretionary and non-cash limited Subhead C for prosecution and investigation expenditure. The Department had originally charged the costs awarded against it to a suspense account awaiting possible reimbursement from the US Authorities. However, following consideration of the reasons put forward by the Department for this accounting treatment, my staff concluded that the expenditure was properly chargeable to the Vote as a result of the Department carrying out its statutory activities.

27 The deficiency in Appropriations in Aid arose because of a misinterpretation of the proper accounting treatment for VAT on contracted out services, compounded by the introduction by the Treasury of a change in accounting practice for the 1998-99 financial year. Corrective action necessary to adjust the account to report sums received rather than sums receivable meant that the Department was permitted to bring to account only those VAT refunds from the Customs & Excise that were relevant to the 1998-99 financial year, received in that year and not already brought to account.

28 As a result of my staff bringing to the Department's attention the initial incorrect accounting treatments applied to both the mutual legal assistance expenditure and VAT refunds on contracted out services, the Department acted to remedy the situation. Had the Department recognised the correct accounting treatments and the implications for its appropriation account before the end of the financial year, changes could have been made to planned expenditure or if necessary a Supplementary Estimate would have been sought and the excess vote avoided. My staff will continue to monitor the Department's accounting practices closely during 1999-2000.

John Bourn
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