

FROM:

CONFIDENTIAL

ce Bp

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.



HOUSE OF LORDS.
LONDON SW1A 0PW

30 May 1986

The Chief Secretary to
the Treasury
Parliament Street
LONDON
SW1

NBP

My dear John:

Public Expenditure Survey 1986

I have personally reviewed my requirements for public expenditure in the period up to 1989-90, in accordance with the guidelines which we all agree.

2. The paper attached describes the reasons why I am impelled to seek additional resources of manpower and money to maintain reasonable standards of performance in the court service in England and Wales; to avoid the innocent remaining for long periods on remand in custody and the guilt benefiting from delay. The growing volume of criminal cases coming to trial in the Crown Court means that extra money is also required for criminal legal aid. It is clear from the options set out in the paper, that the savings which would be required in civil legal aid to offset additional bids could only be achieved at great political and social cost.

3. At the moment we are awaiting the outcome of the Efficiency Unit's scrutiny of the determinants of legal aid, and I am due to return to E(A) Committee about the outcome of discussions with the legal professions about remuneration. Once we know the position on both of these, I shall want to take stock and consider what level of further additional bid is necessary. In the meantime my assessment of requirements for legal aid on current assumptions is set out in paragraphs 30 to 32 of my paper. I have made provision in my additional bids only for the extra cost of new policies.

4. Subject to my reservation on legal aid the programme which I consider necessary and the level of bids additional to those in the PES baseline, are set out in Annex 1 to this letter. My assumptions are set out in some detail in my paper and there is more technical supporting information in a number of Appendices which my officials will send to yours. But the main points to which I would like to draw your attention are summarised in this letter.

The court service (including Headquarters and Tribunals)

5. When we agreed gross running cost targets in the 1985 survey I accepted your proposals subject to a number of reservations set out in my letter of 30 September 1985. I was unhappy about the target for 1986-87 which was 5.9% above the running costs provision for 1985-86. I pointed out that if volume growth in business did not slow down then I doubted if I could meet the burden of actual pay increases and other costs beyond my control without a more realistic target for 1987-88 and 1988-90 as a consequence of reducing the base for 1986-87.

6. My fears have materialised. Volume growth seems set to continue at historic rates and the pay settlement for 1985 and 1986 have hit me particularly harshly. In addition a large proportion of running costs relate to growing accommodation needs, particularly for courtrooms and to judicial salaries and fees not met direct from the Consolidated Fund. I know that officials are discussing the possibility of excluding these judicial costs from the definition of running costs..

7. I see no prospect of reducing work in the courts. In the Crown Court this is dictated by committals for trial. In civil business it is dictated by the number of actions initiated by members of the public. Nevertheless the additional requirements set out assume annual increases in productivity of 3% a year for the Crown Court and 2% a year for county courts expressed as disposals per head. After taking account of these, gross running costs would rise by 11% in 1987-88, 6% in 1988-89 and 7% in 1989-90. But I propose to cover fully from fees the increase in gross running costs devoted to civil business. The large increase in 1987-88 is partly due to the need to make up ground being lost in 1986-87.

8. Capital expenditure for the court service is mainly on office machinery and computers. For these I have included additional expenditure of £5.6m in 1988-89 and £6.7m in 1989-90 to carry out plans for information technology. This expenditure is contingent on a full study report which will not be available until mid-1987. Benefits would not accrue until after the PES period, but I see no alternative if we are to ensure that the pit-falls in introducing new technology are successfully avoided.

9. I understand that in the course of this survey there will be a transfer of resources from PSA to client departments, who assume responsibility from 1 April 1987 for the resource costs of specialised major works. These figures are not at present in my baseline programme nor in my revised programme. My officials have still to examine in detail requirements for other PSA expenditure for which responsibility will be assumed from next year, namely the resource and works costs of major projects for office and general accommodation. I have not therefore yet included these in my additional bids. They could be of the order of £3.5m in 1987-88; and about £1m in 1988-89 and 1989-90.

Appropriations-in-aid

10. Most of the receipts under this heading are fees in respect of civil business. Demand is buoyant and fees now cover total costs. If this continues it would be difficult to justify increases in rates during the coming year. Moreover it is impossible to defend the deteriorating service for which the business community as well as individuals depend on redress and for which they are willing to pay. The income of the county courts totalled £78.4m in 1985-86 of which only £70.1m was appropriated in aid.

Other court expenditure

11. Work in the courts calls for a balance of resources other than the manpower related costs mentioned earlier. The three further elements covered in the attached Table are judicial salaries etc which are paid direct from the Consolidated Fund (others count as running costs and are paid from a Vote); expenses of jurors and court reporting which are paid from the Legal Services Vote; and expenditure arising from the court building programme which is borne in a Property Services Agency Vote. This expenditure is largely determined by the volume and complexity of criminal business and I cannot find offsetting savings. I could not contemplate any real reduction in the court building programme for which considerable momentum has built up.

12. Unless committals for trial are reduced (and the recent increase in policy resources makes this unlikely) I see no prospect of avoiding growing and unacceptable backlogs without increases in court resources as well as more legal aid expenditure. In 1985 the average time suspects were remanded in custody was 10 weeks. Unless steps are taken to improve the throughput of cases this period will probably increase to 15 weeks by the end of the decade. In 1985 about 3,000 defendants remanded in custody did not go on to serve a prison sentence because they were either acquitted or given non-custodial sentences. I understand that it costs about £250 a week to keep these people in custody. Thus there would be significant offsetting savings by improving waiting times in the Crown Court.

13. I am asking my officials to let yours have any additional information which they require to supplement this paper as well as passing on the additional Appendices mentioned. I need not burden you with them. I am, of course, ready to discuss my additional bids with you at any time.

Northern Ireland Court Service

14. Since 1980 the Northern Ireland Court Service was contended with an increasing tide of business in the courts there despite almost static manpower. This has been achieved at a heavy cost in terms of efficiency and morale. I believe that a point has now been reached where additional manpower resources are essential, to relieve a hard pressed staff and to permit the allocation of additional resources to the development of new technological solutions to the Service's longer-term problems. The Court Service wishes to bid for additional sums of £0.8m, £1.0m, and £1.1m, largely for manpower, in the survey years 1987-88, 1988-89 and 1989-90.

15. Additional resources are also required in relation to accommodation needs, principally in connection with major new works. Three courthouses require to be replaced on account of age, including the Crumlin Road Courthouse, Belfast where all trials of terrorist-type offences take place before a judge sitting without a jury. The provision of these buildings is as necessary investment to ensure the proper conduct of court business in the future. The overall sums required are £3.9m, £5.5m and £3.1m in the survey years already quoted.

16. Finally, the rising volume of business in Northern Ireland brings with it a requirement for additional funding for legal aid. Here the bids are for £1.7m, £1.8m and £2.6m in the survey years, but the principal component in each bid is a sum of £1.5m in respect of the possible future costs of major trials based on the evidence of informers, where the number of defendants tends to be large and the trials are very lengthy.

17. Officials in the Northern Ireland Court Service are writing to yours, giving details of all these additional requirements which are summarised in Annex 2 to this letter and which I fully support.

Land Registry

18. I must also press the case for additional resources for the Land Registry as shown in Annex 3 to this letter not only to carry forward the programme for compulsory registration after 1986 but also meet the Registry's burden of work which is already heavy and certain to rise with own occupation and increasing availability of mortgage funds from traditional and new sources. But increased revenues follow from increased applications and there should be no net effect on public expenditure. Nevertheless it is necessary to increase the Land Registry's provision for gross running costs.

19. Details of this bid have already been discussed between Land Registry and Treasury officials. Supplementary information, as required by the survey guidelines will also be provided.

20 I am copying this letter and enclosure to the Prime Minister, the Lord President, the Home Secretary, the Secretary

of State for Northern Ireland and the Secretary of State for
Scotland.

Yrs,

A handwritten signature in dark ink, consisting of a large, stylized initial 'L' followed by several loops and a final flourish.

FROM THE RT. HON. LORD HAILSHAM
OF ST. MARYCROFT, CH. FRS. DCL



1986 PUBLIC EXPENDITURE SURVEY

Memorandum by the Lord Chancellor

Introduction

Expenditure allocated to the Lord Chancellor's Department (LCD) is described in Table 3.11 of the January White Paper on Government Expenditure plans (Cmnd 9702). The main components as shown in the PESC Report are:

	£m				
	<u>1985-86</u>	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
<u>Court Services</u> (incl. HQ and Tribunals)					
Running Costs	180.7	190.9	193.9	198.8	203.8
Other	4.7	8.2	5.2	4.9	5.0
Appropriations-in-aid	-127.6	-135.7	-139.6	-143.2	-146.8
Total⁽¹⁾	57.8	63.4	59.4	60.5	62.0
Jurors & Shorthand Writers	26.1	26.9	27.3	27.9	28.6
Court Building	24.0	34.4	41.3	39.0	40.0
Consolidated Fund	22.8	26.3	27.2	28.6	29.3
<u>Legal Aid</u>	325.3	356.3	399.7	442.2	453.3
<u>Costs from Central Funds</u>	62.5	54.5	21.9	21.7	22.2
<u>Legal Aid Admin.</u>	20.5	24.6	26.5	25.9	26.5
TOTAL LCD⁽¹⁾	539.0	586.4	603.3	645.8	662.0

(1) May not sum because of roundings.

It is clear from the detailed examination of needs which I have undertaken in this survey that I need additional resources of the order of £26m in 1987-88, £48m in 1988-89 and £60m in 1989-90 and that I will need to come back to colleagues later about legal aid. A breakdown into the main components for the proposed new programme is set out in Annex 1 to this paper.

CONFIDENTIAL

2. The purpose of this paper is to consider the factors which determine the size and shape of the bulk of LCD expenditure which is spent on the court service and legal aid and its administration by the Law Society. All the expenditure is devoted to tasks dictated by influences largely outside my direct control. Other Ministers frequently sponsor new legislation creating new or redefining existing offences or changing procedures e.g. Roskill. The number and gravity of criminal cases coming to the higher criminal courts depend on social factors; the ability of the police (whose numbers have risen since 1979 from an average of 111,000 to 121,000) to detect and apprehend; the future effectiveness of the Crown Prosecution Service (CPS) the number of cases which are referred to the higher courts by magistrates; and a commensurately high demand for legal aid whose unit costs are rising beyond general inflation.

3. Civil business, where concern about delays, cost and complexity led me to establish the Civil Justice Review, is initiated in the county court and the High Court by plaintiffs who pay fees at appropriate stages in the course of any action. These fees fully cover relevant costs and receipts are in excess of the targets agreed with the Treasury. Legal aid for pursuing and defending civil cases has grown from £26.6m in 1979-80 to an expected £132m in 1989-90. As for criminal legal aid this is partly because volume has grown but also because of higher unit costs.

4. The factors outlined above have led to increasing pressures in the courts, though important strides have been made following the financial management initiative. I look in the longer term to information technology, particularly in the county courts, releasing resources (see paragraphs 26 and 27). But it is clear that time is against me. Resources available for 1986-87 are already seen to be woefully inadequate. There is no scope for further improvements in productivity of the scale needed to cope with the rising tide of cases, particularly in the Crown Court.

5. It is an essential aspect of the government's law and order policies that justice should be dispensed quickly and fairly. This objective is in serious jeopardy because of the severe bottle-necks, particularly in London. Unless the numbers of cases coming before the higher courts can be cut back (e.g. by reducing the number of either-way cases), they can only be disposed of by increasing manpower and money for the court service and allocating more expenditure to criminal legal aid.

6. The remainder of this paper provides a detailed explanation of requirements under the following heads:

- Crown Court objectives and forecast of workload (paragraphs 8 to 14).
- county court objectives and forecast of workload (paragraphs 15 to 18).
- new policies and procedures (paragraphs 19 to 21).
- disposal of cases in the Crown Court (paragraphs 22 and 23).
- output of process in the county courts (paragraphs 24 and 25).
- information technology strategy (paragraphs 26 and 27).
- resources needed for the court service (paragraphs 28 and 29).
- legal aid needs (paragraphs 30 to 35).
- summary of proposals (paragraphs 36 and 37).

Crown Court objectives and forecast of workload

8. In the Crown Court, my principal objective is to provide for the speedy and effective administration of justice. This means keeping backlogs of cases and waiting times to the necessary minimum, both to secure the quality of justice (the innocent should not languish in jail longer than absolutely necessary and the guilty should not benefit from delay because evidence is weakened) and to contain the pressures on remand prisons.

9. The Beeching Royal Commission recommended that the waiting time between committal and trial in the Crown Court should be held as close as possible to 4 weeks, particularly when the accused is in custody. As it is, the national average waiting time in 1985 was about 14 weeks; over 10 weeks in custody cases and over 15 weeks in bail cases. 45% of custody defendant and 65% of bail defendants whose cases were dealt with waited more than 8 weeks for their trials to come on. The waiting times in London are conspicuously longer than elsewhere; almost 16 weeks in custody cases in 1985 and almost 26 weeks in bail cases. The variations between circuits are shown in Annex 2. I take the view that in principle an 8-week average waiting time in the Crown Court is the maximum defensible target, taking due account of the balance between administrative requirements in the listing of cases and the need to bring cases on as quickly as possible compatibly with the interests of justice.

CONFIDENTIAL

10. The trial workload of the Crown Court has increased by about 65% since 1979. This surge in the caseload and the cumulative effect of resource constraints have served to preclude any appreciable reduction in waiting times in recent years. By the end of 1985, the Crown Court backlog had reached a record level of over 23,000 cases. Some worsening of delays overall is envisaged for 1986-87 because available resources supported by increased effort cannot keep pace with expected growth in cases.

11. Concern about delays, and the consequent pressures on the prison remand population have repeatedly been expressed, for example by the Home Affairs Select Committee in its 1984 Report on the remand system. The Home Secretary was prompted by the political concern to make provision in the Prosecution of Offences Act 1985 for statutory time limits to be set for criminal trials. The field trials now under way serve to focus further attention on the length of waiting times and the need for measures to reduce those waiting times, particularly in London and the South-East.

12. The level of committals for trial to the Crown Court depends on the extent of activity in earlier parts of the criminal justice system. The number of police, the level of recorded crime, the clear-up rate, the percentage of persons arrested who are charged, and the proportion of defendants appearing before magistrates for indictable (including "either-way") offences who are committed for trial all affect the workload of the Crown Court. The Home Office are unable to offer any clear-cut guidance on the level of impact each of the above factors has on Crown Court workload. There has however been an increase in the last of these factors, i.e. in the proportion of defendants aged 17+ dealt with at magistrates' courts who were committed for trial. This has risen from 18% in 1980 to 22% in 1984. Without this increase, the number of committals for trial received in the Crown Court would only have risen by approximately one-third of the amount that they actually did over this period.

13. In addition to those factors listed above which influence Crown Court workload, the introduction of the Crown Prosecution Service and the (likely) modest reclassification of offences under a new Criminal Justice Act will also play their part. At this stage, however, it is not possible to estimate with any precision their potential impact on the volume of Crown Court workload. No allowance has, therefore, been made for these factors in my projections.

CONFIDENTIAL

14. Committals for trial to the Crown Court have increased at an average rate of around 9% per annum since 1980. My best forecast is that this rate of growth will continue throughout the forthcoming PES period, resulting in an increase from 83,800 cases committed for trial in 1985-86 to 118,000 in 1989-90. Full results of this projection are shown in Appendix I.

County court objectives and forecast of workload

15. The overall objective for county courts is to enhance the efficient management of the business of the courts to promote their effectiveness as the appropriate means of resolving disputes and enforcing judgments and orders. The number of proceedings issued is governed overwhelmingly by the general level of consumer debt and the extent to which creditors regard the civil process as cost-effective. Restrictions on access to civil justice would be politically unacceptable.

16. The county courts cover the cost of civil business, by fees, and the service currently being provided provokes a significant level of criticism. There are two main areas of criticism. Having paid a substantial fee for issuing proceedings, plaintiffs justifiably complain of delay in various stages of their cases which are under the court's control; e.g. the service of documents, the listing of hearings and the recovery of money and goods through the bailiffs. Reasonable standards of performance, measured against key indicators, are increasingly not being met due to restraints upon manpower and other running costs in the face of a rising workload.

17. The effectiveness of civil proceedings is judged by the degree of success courts have in enforcing their judgments. Due to a reduction in the number of bailiffs, the service provided has inevitably deteriorated, to such extent now that it is increasingly difficult to justify the fees taken from creditors. Those creditors who are deterred from asking court proceedings for this reason may in consequence either fail to recover, or look to less scrupulous means, for pursuing recovery of their debts. On the other hand bulk users of the county court are increasing because of the high level of recovery from issue of summonses.

18. County court business is very different from that undertaken in the Crown court. Its pattern is complex and is considered in more detail in Appendix II. County court "units" are used to project the workload of the courts during the PES period. These units are an aggregation of different areas of work undertaken in the courts, weighted to allow for different levels of staff time that have to be devoted to each of these areas. I consider this a better measure of the workload

of county courts than counting cases regardless of complexity. In the unit projection the trends from 1980 to 1985 (3.4% average growth per annum) are extrapolated forward to give an average annual increase between 1985-86 and 1990-91 of 2.9%. Detailed results are shown in Appendix II.

New policies and procedures

19 The forecasts of receipts in the Crown and county courts only take account of existing policies and procedures. But the workload is also influenced by new policies and changes in procedures at varying stages of consideration and which frequently originate in other departments. I attempt to evaluate the impact of these on the court service and on legal aid as soon as they come to my attention. This is made particularly difficult because of lack of precision about the numbers and types of case involved and a persistent failure on the part of most legislating departments to accept that they should secure resources to cover the knock-on effects for my programme, both in terms of legal aid and court service provision generally.

20 In the last few months my officials have been developing costing models, which will, at the very least provide better insights into the factors which may influence resource requirements; enable the LCD better to intervene with other departments before irrevocable decisions are made; and allow policy evaluation to take place after implementation. Since the 1985 survey a number of initiatives will have resource implications for which provision must be included in the current forecasts. There is no scope for covering these from savings in the existing programme where PES transfers have not been made. I must therefore seek additional resources in the current survey. Details, including agreements about PES transfers from other departments or the Treasury's Reserve, are in Annex 3.

21. The Civil Justice Review, to be completed in December 1987, embraces major factual studies by outside consultants of all the main business of the civil courts - personal injuries, small claims, debt, housing and commercial cases. The purpose of the review is, in particular, to reduce delay, cost and complexity. This will involve reforms in jurisdiction, procedure and court administration. These reforms are unlikely to reduce the net input of staff and expenditure into the civil justice system. They will provide defined opportunities to improve efficiency. They will also lead to a significant sharpening of objectives, to be accompanied by improvements in effectiveness.

Disposal of Cases in the Crown Court

22. In the last few years cases have been increasing at an average rate of about 9%. This has meant prolonged waiting times. The scope for increasing output in the light of sustained high growth and reducing resource inputs (particularly manpower) is now more limited than ever before. We cannot provide more sitting days in the courts without more Crown Court expenditure. Court staffing (clerks and ushers) are at a bare minimum and cannot absorb increased work. Over half the staff time is spent on pre-trial paper work and post-trial taxation of bills. There are backlogs in taxations.

23. I have carefully examined the relationship between various inputs (court buildings, judge power, manpower etc) and the effects on waiting times. There is necessarily a balance to be struck in using available and additional resources in the most cost-effective way. Recruitment of circuit judges paid direct from the Consolidated Fund poses problems. The balance of need has to be made up of additional recruitment and sittings of part-time judiciary paid from Voted moneys. To be fully effective as early as possible training is essential and an enhanced Judicial Studies Board programme is necessary over the PES period. A detailed description of my officials' analyses is contained in Appendix III. I have concluded that if growth of cases follows historical trends the waiting time without new resources could reach up to 38 weeks in England and Wales by 1990 compared with my objective of 8 weeks and a national average of 14 weeks in 1985 (as described in paragraph 9 above). The effect on the law and order programme would be politically damaging with innocent defendants remaining in custody and increasing numbers being wrongly acquitted.

Output of Process in the County Courts

24. Since 1981, the number of proceedings commenced in county courts has increased by 16%. The main productivity increases responsible for enabling that increase to be handled by an almost constant level of staff - the establishment of bulk issue sections in county courts - is referred to in Appendix II, but a recent reduced rate of increase in the number of debt proceedings issued and increasing backlogs indicates that the short term scope for further productivity improvements in this area will be very limited.

25. The administration of the debt recovery process (including the production of court documentation, accounting for money and fees and the enforcement of warrants) is particularly manpower-intensive. It currently consumes almost 3,000

CONFIDENTIAL

of the 5,500 staff employed in county courts. These procedures are based on manual record keeping and accounting systems. Though some productivity gains have resulted from the deployment of a number of micro computers, which deployment will continue to be extended over the next two years, major productivity gains can only result from fundamental changes to the procedures and the systems on which they rely.

Information Technology Strategy

26. After careful consideration of a report produced by independent consultants, I have concluded that the only way of securing significant increases in county court productivity lies in the development of an Information Technology (IT) strategy which will lead to the establishment of a centralised "Claims Registry" to handle "debt recovery" processing. A summary of the proposed IT Strategy is at Appendix IV. This includes tentative details of the projected costs, savings, and timescales associated with the Claims Registry.

27. I am, of course, well aware of the potential difficulties involved in the implementation of such a fundamental change in procedures and the risks involved in a computer project of this nature. But I see no alternative if the necessary productivity gains are to be made. Specific approvals will be sought on completion of the full Study Report, scheduled for mid-1987. No additional expenditure is expected to fall in 1987-88. But it is likely that £12m more than I had allocated to IT in the following years will be needed to implement the strategy and I have tentatively included this in my bids. In addition there may be a requirement for additional manpower during the peak phasing-in period.

Resources needed for court services

28. Manpower savings agreed in the past have assumed privatisation and contracting out which have largely been achieved. Further cost-effective privatisation is hampered by shortage of cash in the short-term e.g. to meet redundancy payments. Computerisation of the staff-intensive manual procedures was the other major measure necessary to improve output and effectiveness as described above. It is essential for this initiative to succeed and for the lessons learned from earlier abortive projects to be applied. The preparation necessary cannot bring improvements during the period covered by the 1986 survey. In the meantime additional judicial resources manpower and allied expenditure is necessary to avoid a breakdown. I do not consider it reasonable to seek offsetting savings from the legal aid programme to finance court services, because of the similar pressures arising on criminal legal aid (see paragraph 30 et seq).

CONFIDENTIAL

29. The assumptions used in calculating requirements, including targets for increases in output are set out Appendix V. The resulting running cost needs are:

	£m			
	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
	(Estimate)			
<u>Gross Running Costs</u>				
Salaries	95.0	100.9	105.2	109.2
Judicial Fees	18.0	20.4	21.0	21.6
Admin. Expenditure	26.1	(30.0)	31.7	33.5
IT current		(3.8)	3.8	4.5
PRS	50.1	54.4	58.0	64.0
Other ⁽¹⁾	1.8	2.8	4.8	6.7
	<hr/>			
	190.9	212.3	224.4	239.5
Baseline	(190.9)	(193.9)	(198.8)	(203.8)

(1) VAT Tribunal and cost of new policies (Annex 3).

These figures give year-on-year increases in running costs of:

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
	%	%	%
	11.2	5.7	6.7

The reasons for such increases despite output per head rising are the high growth of criminal business; higher than average burden from TSRB salary awards; a growing estate of court buildings; and the gross costs of dealing with civil business which is financed from fees. In addition there are additional requirements, as shown in Annex 1 for the cost of full-time judiciary borne on the Consolidated Fund and for jury and court reporting costs borne on the Legal Services Vote.

Legal aid needs

30. 98% of cases dealt with in the criminal higher courts are legally-aided. It follows that increasing crime and disposals means an increased number of criminal legal aid bills. Moreover unit costs are rising at higher rates than inflation. I have agreed with you (Chief Secretary) in the context of 1986-87 Estimates that officials should investigate this. My officials are separately discussing with circuits how costs can be restrained. But the scope for reductions in our best

CONFIDENTIAL

forecasts for this "demand-determined" expenditure is small. Even severe restrictions on eligibility for criminal legal aid, for example confining to those on supplementary benefit or FIS (which would probably need primary legislation and would cause political uproar) would only save £20m to £35m. I have therefore asked my officials to look at the legal aid programme as a whole in drawing up a list of options for securing offsetting savings additional to the estimating reductions identified for the Legal Aid Fund.

31. The amounts we would need to find to stay within the January White Paper figures for the legal services programme (excluding new measures; the outcome of discussions on remuneration and assuming that we are successful in bringing costs down for criminal legal aid) would be:

	£m		
	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Criminal legal aid	+24.6	+29.3	+38.7
Legal Aid Fund	- 2.1	-11.7	+ 4.7
Central Funds	-	-	+ 2.0
Balance to find	+22.5	+17.6	+45.4

32. The forecast increase for criminal legal aid in the higher courts assumes volume growth consistent with disposals in the Crown Court described elsewhere in this paper and that annual increases in costs will gradually reduce from the current level of 11% a year to 6% in 1987-88, 5% in 1988-89 and 4% in 1989-90. If, despite these efforts costs continue to rise at current rates my additional requirements for criminal legal aid would be:

	£m		
	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Criminal legal aid	29.8	38.8	53.1
Balance to find	25.8	27.1	59.8

These figures do not include the cost of a further payments on account scheme, because colleagues have not yet agreed to a permanent scheme: but I expect to be coming back to colleagues on this later in the Summer.

33. The list of options in Annex 4 shows that changes in the scope, eligibility and cost of legal aid cannot be effected without serious political difficulty.

All would require secondary legislation: and most of those options which would secure savings of the order required would need primary legislation. It would be particularly difficult to explain why cuts were being made in the civil legal aid and advice and assistance programmes, when these are generally within the existing budget, solely in order to absorb the increased cost of criminal legal aid.

34. Of all the options identified the only ones it would be possible to achieve within the PES timescales are those involving restrictions on eligibility and scope. It would be difficult to avoid restrictions on the scope of the scheme which would not be arbitrary. Restrictions on the scope of this scheme would cause us to fall foul of the European Convention on Human Rights. To save the sums of money necessary, legal aid eligibility would have to be restricted to people at, or very near, supplementary benefit levels. The proportion of the population eligible for legal aid would be reduced from around 70% to perhaps 30% or less. The Efficiency Unit study may point to other possibilities, though these are likely to be longer term; and the remuneration discussions with the Bar and the Law Society may have an impact on the amounts required to be saved. One way of making substantial savings without prejudicing the government's overall objectives would be to look to other lay advice agencies to provide at least part of the advice currently provided under the Green Form Scheme. This looks a promising option, but it would require primary legislation.

35. The Law Society received a substantial increase in grant for administering legal aid in last year's survey (of the order of 27% excluding the 24-hour duty solicitor scheme). I consider it reasonable that they should be restricted to current levels of expenditure plus allowance for computer purchase and these are the figures included in the bids. The Law Society have, however made bids of £1m to £7m above these levels on grounds that the service given would otherwise deteriorate to the point of collapse. My officials have been discussing with the Law Society a comprehensive system of monitoring and control of the legal aid administration cash limit. In general the aim is to enforce a regime of running cost control consistent with that applied in the civil service.

Summary

36. I conclude that:

(a) it is not politically acceptable to allow the result of current pressures in the courts. My longer-term aim is to secure a transfer of manpower from the county courts to the Crown Court through computerisation. But there is an interim peak to be covered, given the current growth rates, for which I must make an additional bid in this survey.

(b) growth in crime produces increases in criminal legal aid. The only offsetting savings would have to come from legal aid and could only be achieved at great political and social costs. But until the outcome of the efficiency scrutiny and discussions on remuneration are known I cannot provide firm figures for additional bids nor a preference for particular options amongst those listed in Annex 4.

37. The scope for reducing the scale of additional bids for the court services and criminal legal aid is very limited, depending so significantly on events outside my control. In any event it will be necessary to:

(i) consider further the reclassification of offences with a view to reducing the numbers coming to the higher criminal courts and thus cut down the unit cost of disposing of criminal cases.

(ii) continue efforts to secure the appointment of the required number of circuit judges to improve disposals and to cover the balance of needs from judiciary paid from the Administration of Justice Vote.

(iii) take action to keep down running costs in the courts by careful control of expenditure and improvements in throughput and output per head.

(iv) watch closely the implications of new policies for expenditure in the courts and on legal aid.

(v) follow-up the work in hand aimed at controlling legal aid costs and securing value for money.

PROPOSED NEW PROGRAMME 1987-88 TO 1989-90

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
<u>Court Services (incl. HQ and Tribunals)</u>			
Running Costs	212.3	224.4	239.5
Other	6.3	11.2	12.7
Appropriations-in-Aid	-146.2	-150.5	-154.5
TOTAL	72.4	85.1	97.7
Jurors & Shorthand Writers	32.3	34.3	36.5
Court Building	41.3	39.0	40.0
Consolidated Fund	32.2	33.9	35.8
<u>Legal Aid</u>	403.9	450.3	460.8
<u>Costs from Central Funds</u>	21.9	21.7	24.2
<u>Legal Aid Admin</u>	25.5	29.0	27.3
TOTAL LCD	629.5	693.3	722.3

Additional Bids 1987-88 to 1989-90

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
<u>Court Services</u>			
Running Costs	18.4	25.6	35.7
Other	1.1	6.3	7.7
Appropriations-in-aid	- 6.5	- 7.3	- 7.7
TOTAL	13.0	24.7	35.7
Jurors & Shorthand Writers	5.0	6.4	7.9
Court Building	5.0	5.3	6.5
Consolidated Fund	5.0	5.3	6.5
<u>Legal Aid</u>	4.2	8.1	7.5
<u>Costs from Central Funds</u>			2.0
<u>Legal Aid Admin</u>	- 1.0	3.1	.8
TOTAL LCD	25.2	47.5	60.4

Manpower

	<u>1.4.86</u>	<u>1.4.87</u>	<u>1.4.88</u>	<u>1.4.89</u>	<u>1.4.90</u>
Additional bids included above incl. the conversion of 121 casual posts to counted staff		586	911	1200	1318

WAITING TIMES OF DEFENDANTS DEALT WITH DURING 1985

		(WEEKS)	
	All Defendants	Defendants Committed in Custody	Defendants Committed on Bail
Midland and Oxford	9.1	8.1	9.4
North Eastern	12.6	9.1	13.6
Northern	10.8	8.7	11.4
South East Provinces	16.2	11.5	17.5
South East London	23.5	15.7	25.7
Wales and Chester	9.2	6.6	9.7
Western	10.6	7.7	11.6
E&W less London	11.8	8.9	12.7
E&W Total	14.0	10.1	15.2

MEASURES WITH RESOURCE IMPLICATIONS FOR LCD FOR WHICH PROVISION HAS NOT YET BEEN MADE

MEASURE	COST £M						COMMENTS
	1987-88		1988-89		1989-90		
	Legal Aid	Court Services	Legal Aid	Court Services	Legal Aid	Court Services	
1. Pre-trial restraint and confiscation orders in drug trafficking cases	-	0.2	2.0	0.2	2.0	0.2	The Court Services costs represents 1 Master/Judge. The Chief Secretary has recognised in correspondence that the Lord Chancellor will be making a claim against the Reserve and that such a claim will be greatly outweighed by the predicted gain to the Consolidated Fund from monies confiscated.
2. The Criminal Justice Bill - Roskill - Prison Disciplinary Tribunals - extending the confiscation order provisions - reclassification of offences - other provisions	-	-	2.4	0.8	2.6	0.9	The Chief Secretary is prepared to consider justified bids for modest additions.)))))) These proposals are not yet) sufficiently advanced to be) included in this year's PES) Bid.))
3. Changes in the operation of the statutory charge	1.8	-	1.3	-	0.5	-	The Lord Chancellor has already announced his acceptance of this in principle.
4. Green Form for the housebound	1.0	-	1.0	-	1.0	-	"
5. Fee Policy Working Group proposals	1.4	-	1.4	-	1.4	-	Although the proposals offset expenditure on Court Services by £11m, some of the fees, particularly matrimonial ones, will be met by the legal aid fund.
6. VAT Tribunals takeover and implementation of Keith		2.6		3.7		5.6	Bid on Reserve accepted, but a formal additional bid necessary.
TOTAL (All figures rounded to nearest £100,000)	4.2	2.8	8.1	4.7	7.5	6.7	

Immigration Appeal Tribunals: if we take these over, a PES transfer will be forthcoming.

Longer term proposals

The Family Law Reform Bill: illegitimacy. The Lord Chancellor wishes to proceed with this when he is able to meet the cost from within his own resources.

The following have not all been costed but could have significant resource implications to be taken account of in PES exercises in future years:

- Legal aid for defamation (hinging on a European Court case)
- Legal aid for tribunals
- The Booth Report
- Criminal legal aid remuneration
- The Family Court
- Civil Justice Review

LEGAL AID OPTION CUTS

1. Raise the contribution fraction for civil legal aid from $\frac{1}{4}$ to $\frac{1}{2}$ of disposable income

Estimated saving:

1987/88	1988/89	1989/90
£9m	£9m	£9m

Implications: This would require Regulations subject to affirmative resolution. The previous Labour Government reduced the contribution fraction from $\frac{1}{3}$ to $\frac{1}{4}$ in 1979 because there was evidence that people were refusing legal aid because the contributions level was set too high. The savings assume present levels of eligibility and scope. They would of course be overtaken if the more radical options at 7, 8, 9 and 11 below were adopted.

2. Double the rate of Contribution collected in criminal legal aid

Estimated savings:

1987/88	1988/89	1989/90
£2m	£2m	£2m

Implications: This would follow logically from the first option (since the rate of criminal legal aid contributions is roughly the same as for civil legal aid, expressed weekly) and again could be done by Regulation. Doubling the rate of contribution would not double income because the difficulties in enforcement and collection, already apparent in criminal legal aid, would increase. Savings would be overtaken if the more radical option at 10 below were adopted.

3. Impose a £25 fee on all applications for civil legal aid with exemption for people on supplementary benefit and FIS

Estimated savings:

1987/88	1988/89	1989/90
£6m	£6.3m	£6.5m

4. Impose a £10 fee on all applications for Green Form (excluding people on supplementary benefit and FIS)

Estimated savings:

1987/88	1988/90	1989/90
£4.7m	£5m	£5.3m

/ ..

Impose a £25 fee on all applications for criminal legal aid (excluding people on supplementary benefit and FIS) refundable if applicant subsequently acquitted

Estimated savings:

1987/88	1988/89	1989/90
£2.5m	£2.8m	£3m

Implications of 3, 4 and 5: These three options could be taken together (indeed it may seem illogical to impose one without others). All envisage the application fee being an extra payment on top of the contribution which the applicant is assessed as being able to pay. In all cases primary legislation would be required. There may be problems with collection (particularly where criminal legal aid is concerned) which could significantly reduce the savings. These options would of course be overtaken if options 7 to 11 were adopted.

6. Extend the contribution period for civil legal aid from one year to end of proceedings

Estimated savings;

1987/88	1988/89	1989/90
£5m	£5m	£5m

Implications: This would almost certainly require primary legislation. It would also add to the administrative burden of both the Law Society and the DHSS who could expect to be asked to carry out a greater number of redeterminations. This option would be overtaken if options 7, 8 or 11 were adopted.

7. Confine legal aid eligibility to people on supplementary benefit or family income supplement

Estimated savings:

1987/88	1988/89	1989/90
(£13.4m)	(£4.4m)	£24.9m

8. Confine legal aid eligibility to people below the lower income limit i.e. supplementary benefit plus 16%

Estimated savings:

1987/88	1988/89	1989/90
(£11.7m)	(£3.6m)	£3.6m

Implications of 7 and 8: Those two options would involve a significant reduction in the proportion of the population eligible for legal aid, perhaps to something like 30-40% from the present 70% figure. Option 8 would be the less drastic measure, though the political uproar would be as great. It might be possible to do either by Affirmative Resolution, though the Act is worded so as to require both an upper and lower limit and any attempt to manipulate this might be open to challenge. Savings only begin to accrue in the third year: the first and

~~CONFIDENTIAL~~

Second years would produce increases in net expenditure because the immediate loss of contribution income would be offset by bills which continued to be paid from certificates already issued.

9. Confine Green Form to those on Supplementary Benefit or FIS

Estimated savings:

1987/88	1988/89	1989/90
£26m	£29m	£32.3m

Implications: This would require primary legislation. The political implications, both in terms of restructuring access to advice and of restricting the incomes of solicitors would be considerable. It would deny any state assistance with preliminary legal advice to all except those at what is effectively poverty level.

10. Confine criminal legal aid eligibility to those on supplementary benefit or FIS

Estimated savings:

1987/88	1988/89	1989/90
£20m	£30m	£35m

Implications: Primary legislation would certainly be required. We would be accused of denying people access to a proper defence, and this option, even more than 6 and 7 might be open to challenge on Human Rights grounds.

11. Confine the scope of the civil legal aid scheme to matrimonial, domestic violence and personal injury cases

Estimated savings:

1987/88	1988/89	1989/90
(£4.5m)	£0.4m	£17.2m

Implication: This could be done by affirmative resolution but it would be highly arbitrary. It may well breach the Human Rights Convention. The main areas excluded would be contract, adoption and guardianship, and negligence claims. Savings would only begin to accrue in the second year because payments would continue to be made in respect of those bills still to come in from certificates already issued.

UNIVERSITY OF CALIFORNIA

