

Report on the affordability of legal proceedings for those who are excluded from eligibility for criminal legal aid under the Means Regulations, and for those who are required to pay a contribution towards their legal costs.

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About the author

Donald Hirsch is Professor of Social Policy and Director for the Centre for Research in Social Policy at Loughborough University. He has spent over 35 years analysing and writing about social policy issues, initially as a journalist and later as an official for the Organisation for Economic Cooperation and Development (OECD). Subsequently he was consultant to a range of organisations including the Audit Commission and the Prime Minister's Strategy Unit. From 1998 to 2008, he was poverty advisor to the Joseph Rowntree Foundation, playing a leading role in monitoring welfare reform, social security policy and trends in poverty and low income. Since 2008, he has led the Minimum Income Standard research programme at Loughborough. He played a central role in establishing an accredited "living wage", currently adopted by over 4,000 employers throughout the UK, by providing an empirical basis for setting a wage level benchmarked on socially defined minimum living standards.

Foreword

This report has been commissioned by the Law Society and responds to the questions set out in its letter of instruction. I have been instructed by the Law Society to prepare the report on the same basis as I would if I were preparing a report for use in litigation. I have been instructed to provide an expert report that is independent, in the sense that it represents my own unbiased opinion. Although the report has been paid for by the Law Society, the opinions I have expressed are my own and are not influenced by the Law Society or its objectives. Although this is not a court report, my attention has been drawn to the duties and responsibilities of experts in legal proceedings, as summarised in Part 35 of the White Book on Civil Procedure, and I confirm that I have complied with the duties that would apply if this were a court report.

Summary of findings

This report considers whether people defending criminal proceedings in Magistrates' Courts and the Crown Court who are required by the criminal legal aid system to contribute to or pay fully for legal costs, based on their income, can always afford to do so while maintaining a minimum acceptable living standard. This standard is based on my research into what members of the public consider such a minimum to be – the Minimum Income Standard. The report also considers whether legal costs can be afforded without a defendant and their household falling into poverty as commonly measured.

The report's central finding is that the means testing of legal aid is set at a level that can require people on low incomes to make contributions to legal costs that they could not afford while maintaining a socially acceptable standard of living. An underlying factor contributing to this outcome is the fact that the criminal legal aid means test only allows for living costs that are typically only around half of the minimum costs estimated by my research, as well as being well below the commonly recognised poverty line. The living allowances and income limits on which the system is based have not been updated since 2008, since when the average cost of living according to the Consumer Prices Index has risen by over a quarter, and the minimum cost of living according to my research has risen more rapidly.

The report identifies four main types of outcome of the system with regard to criminal legal aid applicants' ability to pay legal costs where required, and still afford to pay their minimum living costs:

- 1) *The available income of applicants who have just enough to be required to pay for legal services, in full in the Magistrates' Court and making an income-based contribution in the Crown Court.* My calculations show that whether for single people or those helping support a family, this income is below the minimum required for an acceptable standard of living. For some family types, available income is over 20% too low to afford a minimum budget, while for others it is only very slightly too low. In all the household cases that I have looked at, however, the consequence of spending a period making monthly contributions to legal costs is to reduce available monthly income further below what is needed to afford the minimum required.
- 2) *The net available income of defendants with just enough to be required to pay for legal services, after deducting their payment towards these services.* In the Magistrates' Court, the extent of this further reduction depends on actual legal costs, all of which must be paid by the defendant. In the Crown Court, liability for legal costs is capped at a contribution equal to 90% of 'disposable income' (ie income available

after paying allowed living costs). The consequence of paying such a contribution each month, at the lowest income to which it applies, is to cause defendants and their families to fall between 40% and 53% short of being able to meet a minimum acceptable standard of living – ie having to go short of a wide range of material and social necessities during the period of payment.

- 3) *The net available income, after deducting the payment towards legal services, of Crown Court defendants on incomes well above the minimum income level at which contributions are made, but just below the upper income limit for legal aid. This shows that the maximum required contribution to applicants' legal costs can cause them to end up with inadequate monthly incomes even if they have relatively high earnings. My calculations show that those hitting this limit tend to have household earnings of between £68,000 and £78,000 a year, yet can end up with incomes between 8% and 37% lower than they need. This occurs if allowable legal costs are high enough to trigger the maximum contribution of 90% of 'disposable income'. While for many better-off defendants, legal costs will be lower than this, it is clear that not only those with very low incomes, but also those who start with modest, average or above-average incomes can be left with too little for a minimum living standard during a period in which they incur high legal costs.*

- 4) *The available income of those making income-based contributions in Crown Court cases relative to the poverty line and to the income 'safety net' defined as the level of income normally guaranteed by means-tested benefits. While the poverty line and the safety net are not evidenced measures of what people need, they represent levels that public policy regards it as undesirable that people should live below. The results show that at the minimum incomes at which contributions are made in the Crown Court, these contributions typically push incomes 20% below the relative-income poverty line. Such net incomes are still above the social safety net in some, but not in all cases. A lone parent working full time, earning above the minimum wage, who is defending a criminal case may end up with less income available than they would if they were out of work and relying on minimum benefits (in which case they would be exempt from paying legal costs).*

Introduction

1. This report considers the extent to which people defending criminal proceedings are able to cover some or all of their own legal costs when required to do so under the criminal legal aid Means Regulations (Criminal Legal Aid (Financial Resources) Regulations 2013 (SI 2013/471)).
2. The report considers this question from the point of view of “affordability”. By this I mean whether people have sufficient funds to cover such costs without this limiting their ability to meet routine living costs, in a way that society would consider to be unreasonable, because it prevents them from maintaining a “minimum standard of living”, which I define below.
3. In preparing the report, I have closely studied the provisions under the Means Regulations that determine eligibility for legal aid in relation to gross and disposable income, and the requirement for some recipients to make an income-based contribution to legal costs. I have drawn both on the Regulations themselves and on the Legal Aid Agency’s Criminal Legal Aid Manual. My report does not consider regulations related to legal aid other than those concerned with the gross and disposable income of the applicant – for example, it does not consider the merits test, or the provision for recovery of defence costs following a Crown Court conviction for those with sufficient disposable capital. The report’s analysis and findings are restricted to the effects of the income test on whether legal services can be afforded without foregoing a minimum standard of living.
4. Specifically, the report considers the income available to people whose incomes are just too high to receive any legal aid in Magistrates’ Court, and just high enough to require Crown Court legal aid applicants to be liable for an income-based contribution to legal costs. It considers such people’s available income (a term defined in Section 2.1 paragraph 3 below), both before and after paying legal costs, relative to benchmarks set by the Minimum Income Standard, a threshold that articulates what members of the public consider to be a minimum acceptable standard of living in the United Kingdom today. I also compare to this benchmark the available income after legal costs of Crown Court defendants whose incomes are higher than the minimum level at which an income-based contribution is required, but who are still eligible for legal aid. Note that throughout this analysis, which is based on the living costs and incomes of various types of household, I assume that applicants are living at home and not imprisoned on remand,

and I do not take account of any additional living costs caused by a defendant being on trial.

5. I approach this subject with a background of having studied and analysed the situation of people on low incomes, the development of poverty and related indicators, and the UK system of benefits and tax credits, over the past 20 years. I did so first as poverty advisor to the Joseph Rowntree Foundation from 1998 to 2008 and since 2008 working at the Centre for Research in Social Policy at Loughborough University, as its Director since 2012. Since 2008, I have led the research on the Minimum Income Standard described below, and have been particularly involved in working with organisations who seek to interpret this standard as a benchmark for policy and practice. Furthermore, I have conducted an equivalent analysis of the civil legal aid system to the one in this paper addressing criminal legal aid¹. Parts of the present report repeat material from the civil legal aid report, reflecting aspects of my evidence that are relevant to both systems.
6. The report is set out as follows.
7. Section 2 looks at the background to my calculations, first in terms of the main characteristics of the Means Regulations and then in terms of available benchmarks of poverty and adequate income.
8. In Section 3 I make the main calculations about the adequacy of incomes of those excluded from legal aid or required to make a contribution to it. I start by comparing the assumptions about living costs made by the legal aid means test and by the Minimum Income Standard research. I then assess how the incomes of people with various household characteristics compare to what is needed for a minimum income, at the lowest income at which they are required to contribute to legal costs, before paying any of these costs. Next, I make the same calculation based on the income available after making an income-based contribution to costs in Crown Court cases. Then I make this calculation, with legal costs deducted, for someone with a higher income but still eligible for legal aid. To help interpret the findings, I then present evidence of the consequences of living on income below the Minimum Income Standard. As supplementary information, I end this section with a summary of how disposable income thresholds compare to the relative-income 'poverty line' as well as to safety-net benefit rates, and the implications.

¹ Hirsch, D, 2018, *Priced out of Justice Means testing legal aid and making ends meet*, London: Law Society

9. Section 4 gives a brief conclusion.

2. Background

2.1 Relevant characteristics of the Means Regulations

1. The criminal Means Regulations have a number of complex features, but their key features in relation to the means-testing of income are as follows.
2. The Regulations revolve around measures of 'Gross income' and 'Disposable income'.
Gross income includes all pre-tax earnings, and most benefits other than those designed to cover housing costs and the extra cost of disability. It is adjusted for household composition, according to weightings for different categories of household members, which reduce the adjusted value of gross income for larger households, so that a larger household can have a higher gross income without exceeding the gross income limits.
3. '**Disposable income**' is calculated as unadjusted gross income minus direct taxes and housing costs (net of housing-related benefits), minus a living cost allowance adjusted for household composition using the same weightings as the gross income adjustment. Note that this gives a very particular meaning to 'disposable income': it is the amount you have left over after covering basic living costs. This contrasts to some definitions of disposable income to mean the post-tax income out of which living costs need to be covered. (This is the starting point for disposable income calculated in the civil legal aid means test, where disposable income for a single person makes no deduction for everyday living costs², albeit there is such a deduction made for the additional costs incurred by additional household members.) The importance of this is that if the living cost deduction in the criminal means test provides an accurate estimate of what people need for an adequate living standard, 'disposable income' represents money left over, all of which could potentially be spent on legal costs without compromising such a standard. Because of these multiple meanings, I use 'disposable income' in quote marks in this report to mean disposable income as defined by the criminal legal aid means test, ie net of allowable living costs. I also use a different term, **available income** to signify the (unadjusted) amount of money that a household has after paying direct taxes and housing costs, which

² The civil legal aid means test does allow for some deductions against costs including housing costs, maintenance payments and employment expenses, but these do not include the everyday living costs that are supposed to be covered by the criminal legal aid living allowance, which are listed in Section 3.1 Paragraph 2 below.

can be compared directly to benchmarks of what is needed in order to afford minimum living costs for a given household type.

4. In both Magistrates' Court and the Crown Court, a defendant qualifies for full legal aid if *either* gross annual income is below £12,475 or 'disposable income' is below £3,398, except that in the Magistrates' Court someone with gross income of £22,325 or more is excluded regardless of their 'disposable income' level.
5. If income is above both the 'disposable income' threshold and the lower gross income threshold, defendants in the Magistrates' Court are excluded from any legal aid. Under these same income conditions, those in the Crown Court remain eligible to have legal costs paid if 'disposable income' is below £37,500, but must make an income-based contribution, set at 90% of 'disposable income'. In other words, they must contribute almost all of the income left over after eligible living costs and housing costs have been subtracted from their post-tax income. More specifically, the maximum contribution involves six monthly payments, each of one twelfth of 90 percent annual 'disposable income'.
6. A final feature of the means testing system worth mentioning is that an applicant may apply to have their financial eligibility reviewed on the grounds of hardship. However, according to the Criminal Legal Aid Manual, such an application may not be made based on having costs higher than the specified living allowance in those expenditure categories that it is supposed to cover, but only where other factors may cause hardship such as indebtedness or certain unusual costs. My analysis below considers affordability for someone who only has to cover normal living costs with their current income, who would therefore not be eligible for such a hardship review, and I therefore do not take the possibility of a hardship review into account when making my calculations.

2.2 *Thresholds for assessing income adequacy, and the characteristics of the Minimum Income Standard*

1. The United Kingdom has no official answer to the question 'how much do people require to live on, at an acceptable level'?

2.1 .1 Safety net benefits

- 3 The benefits system provides a safety net minimum for pensioners (through Pension Credit) and for people of working age who meet certain work-availability conditions or are exempted from them (through benefits such as Income Support, Jobseekers' Allowance

and Employment and Support Allowance). The original means-tested benefits rates established as National Assistance after the Second World War were based on calculations made in the 1942 Beveridge report, which in turn drew on an enquiry into family spending on necessities carried out by the Ministry of Labour in 1937-38³. Since then, these original safety net levels have been updated with regard to many different factors, including: inflation rates, calculated in a variety of ways; in some cases trends in earnings; and in other cases, the amount that politicians considered to be affordable. At present, the safety net for working age households is frozen in cash terms and hence declining in real terms due to inflation, while in contrast, that for pensioners is updated at least in line with the growth in average earnings. In sum, guaranteed minimum incomes in the benefits system are today not based on any methodical assessment of what their recipients require to live on.

2.2.2 The poverty line

- 4 A commonly recognised indicator of being poverty is living in a household with below 60% of median income, adjusted for household composition. This indicator has been useful in comparing the numbers of people living on relatively low income over time and across countries. It has also had official status at times as a reference point defining the poverty-reducing ambitions of governments. From 1999 until 2016 (when the Child Poverty Act was abolished), the UK government had official targets to reduce child poverty as defined by this measure. However, it is important to understand that 60% median provides a standardised way of comparing numbers on low income, rather than constituting an evidence-based threshold of adequate income. While qualitative research on the experience of poverty⁴ shows that those who live below that level risk serious hardship, the choice of 60% rather than 50%, 70% or some other percentage of the median is entirely arbitrary. Nevertheless, in view of the common reference to 60% median income as a 'poverty line', I have made calculations later in this report comparing the available incomes of those required to contribute to this poverty line. These calculations are not my assessment of how the entitlement to legal aid relates to households' ability to meet their needs, but rather are provided for information for those who attach significance to households' ability to rise above this line.

³ Beveridge, W. (1942) *Social Security and Allied Services* – Paragraph 197.

<https://www.sochealth.co.uk/national-health-service/public-health-and-wellbeing/beveridge-report/beveridge-benefit-rates-problem-rent/>

⁴ For example Ridge, T. (2009), *Living with poverty: a review of the literature on children's and families' experiences of poverty*. London: Department for Work and Pensions. (Research Report No 594)

2.2.3 The Minimum Income Standard (MIS)

- 5 Motivated by a desire to establish a more tangible benchmark of minimum needs, researchers in the past 25 years have sought to define income requirements more directly, with reference to what things people need to buy in order to have a minimum acceptable standard of living. In the 1990s, 'budget standards' methods were developed, drawing either on expert evidence or on public consultation to construct costed lists of items on which such benchmarks could be calculated. In 2008, the two leading UK methods (from York and Loughborough Universities) were brought together into a single method called the Minimum Income Standard for the United Kingdom (MIS). This draws on detailed deliberations by groups of the member of the public about what should go into a minimum 'basket' of goods and services, informed where relevant by experts on technical aspects such as minimum nutrition and heating requirements. The items are then costed to produce overall 'budgets': cash amounts that households of different compositions need to spend as a minimum. The most useful version of these budgets excludes rent and childcare costs, since people living in different places and with access to different forms of housing and childcare must pay very different amounts for these items in order to reach a common living standard.
- 6 The MIS research, funded by the Joseph Rowntree Foundation and carried out by my Centre at Loughborough, produces annually updated budgets, regularly drawing on new research on how these requirements develop as society changes. The method and description of what is included in the lists are documented elsewhere⁵. A description of what the standard represents is encapsulated in the definition used throughout the research:

'A minimum standard of living in the UK today includes, but is more than just, food, clothes and shelter. It is about having what you need in order to have the opportunities and choices necessary to participate in society.'

⁵ For full lists of budgets, see <http://www.lboro.ac.uk/research/crsp/mis/results/> (budget lists). For a description of the MIS method, see Bradshaw, J., Middleton, S., Davis, A., Oldfield, N., Smith, N., Cusworth, L. and Williams, J., (2008) *A Minimum Income Standard for Britain: what people think*. York: Joseph Rowntree Foundation.

7 The groups of members of the public in the research are tasked with coming to agreement on what should be included in household budgets using that definition. The definition itself was arrived at through a process of public consultation.

2.2.3.1 Status and application of MIS

8 While MIS has no official status, it is increasingly coming to be used as a standard in a number of different contexts, including by public, private and voluntary sector bodies. It is used by the Living Wage Foundation to calculate the rate used to accredit Living Wage Employers, with over 4,000 employers from all sectors making a commitment to maintain this wage level. The use of MIS for this purpose was endorsed in 2016 by a Living Wage Commission comprising leading employers, trade union leaders and economists, on the basis that a living wage should 'accurately reflect the views and experiences of ordinary people [...] about what is required to fully participate in society, and how social norms and needs change over time'⁶. MIS is also used as the most systematic criterion for benevolent charities to give money to eligible individuals in financial need. About 40% of such charities responding to two separate surveys reported that they use MIS as a means-testing criterion⁷. The Scottish Government has proposed using MIS as the income threshold in its definition of fuel poverty, based on independent research which showed that the correlation between low income and the experience of financial difficulties is stronger when MIS is used as a benchmark than is the case for 'relative poverty' benchmarks based on income relative to the median⁸. The MIS benchmark has also been used as evidence in the court system, in the case of *R (UNISON) v Lord Chancellor* [2017] 3 WLR 409, in which the Supreme Court accepted the argument that the means test determining the payment of employment tribunal fees caused some people to have to choose between access to justice and maintaining a minimum acceptable standard of living as defined by MIS.

9 This widening use of MIS as an accepted minimum standard is in my judgement occurring not because it is the only possible benchmark but because it is proving a stable, usable

⁶ Living Wage Commission (2016), *Closing the Gap: Final Report of the Living Wage Commission*, London: Living Wage Foundation, p.5

⁷ Belai, J. (2013) *Changing for Good - Trusts and Foundations that give grants and other support to individuals in need*. London: Association of Charitable Organisations. Page 17; Hirsch, D. (2017), *Survey of charities' use of the Minimum Income Standard to help them assess the financial needs of individuals and households*. Loughborough: Centre for Research in Social Policy.

⁸ <http://www.gov.scot/Resource/0052/00527441.pdf>

measure, that projects a clear-cut meaning linked to social values as articulated by the population at large; and because it is the only existing threshold of low income in the UK that has these characteristics. Importantly, while it is based on qualitative judgements of small groups of citizens considering what constitutes a need, there is a large degree of commonality in the conclusions that different groups come to, both at a point in time and over a period, and a consequent stability in the level at which the standard is set. Substantial changes can generally be attributed to descriptions of how real change is taking place in society (such as the inclusion of new items related to technology). These characteristics of MIS have been validated in peer-reviewed academic journals⁹.

10 Based on the above characteristics, I consider MIS an appropriate benchmark for answering the central question in this report, and my calculations below are therefore based principally on this standard, although I also make supplementary calculations using the 60% median poverty line, and comment briefly on how available income after paying legal costs may compare to income on safety-net benefits.

2.2.3.2 Factors affecting whether people can temporarily live on a reduced MIS

11 An important issue about MIS was raised in the Unison case: is it possible for households to forego parts of the expenditures specified in the MIS budgets for temporary periods without suffering harm? In arguing that the MIS benchmark had been incorrectly applied by the appellant, the Lord Chancellor suggested that this could be the case for four categories of expenditure: clothing, personal goods and services, social and cultural participation and alcohol. The Supreme Court judgement on the case identified problems with this approach, including the fact that postponing some longer-term expenditures would not avoid them being incurred at some point and a questioning of whether it was fair for people to have to sacrifice 'ordinary and reasonable expenditure'. Based on my understanding of what comprises these MIS budgets, of how they were arrived at and on what research shows about the situation of low income families, I believe the following points are salient to the issue of whether MIS can be 'reduced' in the way proposed by the Lord Chancellor in that case.

12 Firstly, a number of items, such as furniture and items of clothing, are not purchased every week or every month, but more occasionally, and the MIS figures work out pro

⁹ For example, Davis, A., Hirsch, D. and Padley, M. (2017) 'The Minimum Income Standard as a benchmark of a 'participatory social minimum'', *Journal of Poverty and Social Justice*; Deeming, C., 2017, *Defining Minimum Income (and Living) Standards in Europe: Methodological Issues and Policy Debates*, *Social Policy and Society*, 16(1): 33-48.

rata how much would be spent on average on all such items on a weekly basis. This could potentially allow a household to spend a period not incurring such expenditures. However, to do so may have two types of harmful consequence. The first is to have to use goods after the time at which they should have been replaced. This may have relatively minor effects in the case of a chair with a wobbly leg, but more serious ones if a child has to go to school with clothes with holes in. The second effect is that where low-income households delay longer-term expenditures due to a temporary reduction in available income, they are likely to displace the difficult financial consequences to a later date rather than avoiding them. In simple terms, if you delay buying a new coat until next month, when you were due to replace your broken refrigerator, you will face a particular financial squeeze when you have to do both at once. Since having low income today is a relatively good predictor of the likelihood of having low income tomorrow, the strategy of delaying expenditures until better times arrive is a risky one.

- 13 Secondly, the inference that regular expenditures on social participation and the consumption of alcohol are discretionary rather than essential is a subjective opinion, and hence valid in its own terms, but is consistent neither with the above definition of MIS as a standard that allows people ‘...to participate in society’, nor in terms of the judgements made by the general public in this research about what items are required to fulfil this criterion. They include, for example, the ability to purchase a present for a child to take to a birthday party, and the ability of a single adult to take part regularly in sport. Alcohol plays a very minor part in this social participation, for example allowing a single man to consume three cans of lager a fortnight in the home and have a drink with a meal out once a fortnight, in both cases as part of social activity with friends. Alcohol stands out as a separately listed cost only because of the way it is separately categorised in the standard grouping of goods and services. The groups discussing necessities in the MIS research accept that not everybody will necessarily consider alcohol as essential (and some people are teetotal). However, they consider that being able to afford the occasional drink, if that is one’s preference, should be included in a budget, on the understanding that others who do not drink alcohol may incur other, equivalent costs linked to being able to entertain a visitor at a modest level. Having such options aligns with what is meant in the MIS definition of having the ‘...opportunities and choices necessary to participate in society’.
- 14 Note that the ‘social and cultural participation’ category in MIS is very broad, comprising items referred to in official data as leisure goods and services, which include: recreation, gifts and celebrations, leisure goods including computer equipment and audio-visual

equipment such as television and holidays (with MIS groups specifying the need to get away for at least a week every year for a low-cost holiday in the UK).

- 15 Thirdly, while the Lord Chancellor in the Unison case argued that personal goods and services could be foregone for a period, this would seem odd given what these items include. They comprise items related to health care and personal care. Personal care items such as toilet paper, shampoo and toothpaste are used regularly rather than on an occasional or discretionary basis. Services such as haircuts and dentistry are used less frequently but still on a regular cycle.
- 16 Finally, this issue of whether one can ‘reduce’ what is in the minimum income standard is one that is addressed within the research itself. When budgets have been put together, groups are told what they would cost in total, and are asked to reconsider whether one could economise by taking some items out. However, because the groups have built up the budgets as an integrated description of what it means to live at a minimum level, and because they have already had to argue why each item is part of this minimum, no group to date has been willing to start reducing the list of items that they have carefully constructed. In other words, *to reduce MIS starts to change its meaning*, since it is not just a disjointed list of opinions about what is essential, but comprises an overall picture of what living at an acceptable level involves
- 17 Based on these considerations, my answer to the question ‘could people do without making some purchases specified in MIS for temporary periods’ would be ‘not without a risk of having a lower living standard than the minimum specified in the MIS research’. This risk is particularly salient for people on low incomes, who have much less leeway in how they deploy their financial resources to meet their needs than better-off groups. I refer further below (Section 3.3) to evidence that those on low incomes who are “coping” are able to do so only through careful budgeting, and rarely have substantial resources to spare if income drops. This also means that they are unlikely to replace items before they feel there is a real need to do so, meaning that having to postpone such expenditures to a date later than planned is likely to have negative consequences.
- 18 An imaginary example can help illustrate how in practice the postponement of expenditures cannot be assumed to be a way of avoiding hardship for someone on limited income who incurs an additional expense. Someone who had 24 articles of clothing, each costing £15, which needed to be replaced annually, would have a monthly clothing budget of £30. If for the first six months of the year, they postponed

clothing expenditure in order to afford regular legal bills, and replaced these on a regular schedule during the second half of the year, there would be two results. The first is that clothing that is reckoned to last a year would have to be worn for 18 months, and hence be below what is considered to be an acceptable standard for a third of the time that they are owned. The second is that in the second six-month period, in order to replace the items whose purchase had been postponed, as well as the ones that would normally have been replaced at that time, the person would have to spend £60 a month (which they might not be able to afford, without going into debt). Alternatively, they could postpone the purchase of clothing that would normally have been bought in that period – with further knock-on effects for the next six-month period, and so on. In practice this would create a kind of “material indebtedness” that would be hard to clear.

3. The level and outcomes of the means test

3.1 What the means test assumes about living costs, and how this compares to MIS

1. The criminal legal aid means test is based on thresholds of gross and ‘disposable’ incomes. The gross threshold has no relationship that I can discern with assumptions about living costs, but the living allowance that is subtracted from post-tax income to produce ‘disposable income’ very explicitly assumes that applicants will need to spend a given amount on essential household outgoings. A first thing to consider, therefore, is how these assumptions compare to the figures compiled in the Minimum Income Standard research on what members of the public think households need to spend as a minimum.
2. Starting with the example of a single person, the living allowance is set at £5,676 a year, and is supposed to cover the following categories of expenditure:

Food and non-alcoholic drinks

Clothing and footwear

Housing*, fuel and power

Household goods and services

Health

Transport

Communication

Education (excluding school fees)

Water rates

Insurance premiums

Miscellaneous goods and services

3. By comparison, the 2018 MIS budgets for a single person, excluding rent and council tax, which are separately deductible in the means test, is £10,276 per year, almost twice the £5676 level of the legal aid living allowance. As shown in Table 1, MIS expenditures can be quantified under broadly the same categories as mentioned in the living allowance, although the “miscellaneous goods and services” category in the latter presumably would include a range of the separately listed categories in MIS, including in particular personal goods and services (which includes but is more than just the health category in the above list) and social participation.

Table 1: MIS annual budget for a single person, excluding rent and council tax

Food	£2,570
Alcohol	£305
Clothing	£439
Water rates	£313
Household insurances	£84
Fuel	£668
Other housing costs	£75
Household goods	£506
Household services	£356
Personal goods and services	£845
Travel	£1,933
Social and cultural	£2,181
Total	£10,276

4. For both the living allowance and the MIS budgets, variations apply to households of different types. As shown below in Table 2 (Section 3.2.2), the living allowance is either slightly above or slightly below half of the MIS living costs across different household groups.
5. It is hard to identify a precise reason for this wide difference in estimates of what people need in order to cover minimum costs, since I can find no explanation of how the living allowance has been derived, or even how it breaks down between categories. One thing that is certain however, is that the living allowance has not been consistently linked to any calculation or estimate of actual costs, since its level has not changed for a decade, despite inflation. The allowance reached its present level in 2008 (prior to which it was uprated in line with welfare benefits). Between April 2008 and July 2018, prices have

increased by just over one quarter (26%), according to the Consumer Prices Index, and the living allowance has consequently lost a quarter of its value as measured by this index of inflation. Furthermore, the research on minimum income standards suggests that the cost of a minimum standard of living has risen faster than this, for most groups by around one third, in large part due to certain necessities such as food and domestic fuel having higher than average inflation rates¹⁰. Despite a statement by the 2014 Legal Aid Agency guidance that the living allowance level is 'reviewed annually', any such review had failed to result in a higher level in the previous six years, and has not done in the four years since then.

6. Thus, the MIS research suggests that the living allowance greatly underestimates what people need as a minimum to live on; the allowance does not appear to be linked to any competing account of what this minimum is; and a household budget based on the living allowance would pay for goods and services worth a quarter less today than those that could have been purchased a decade ago.

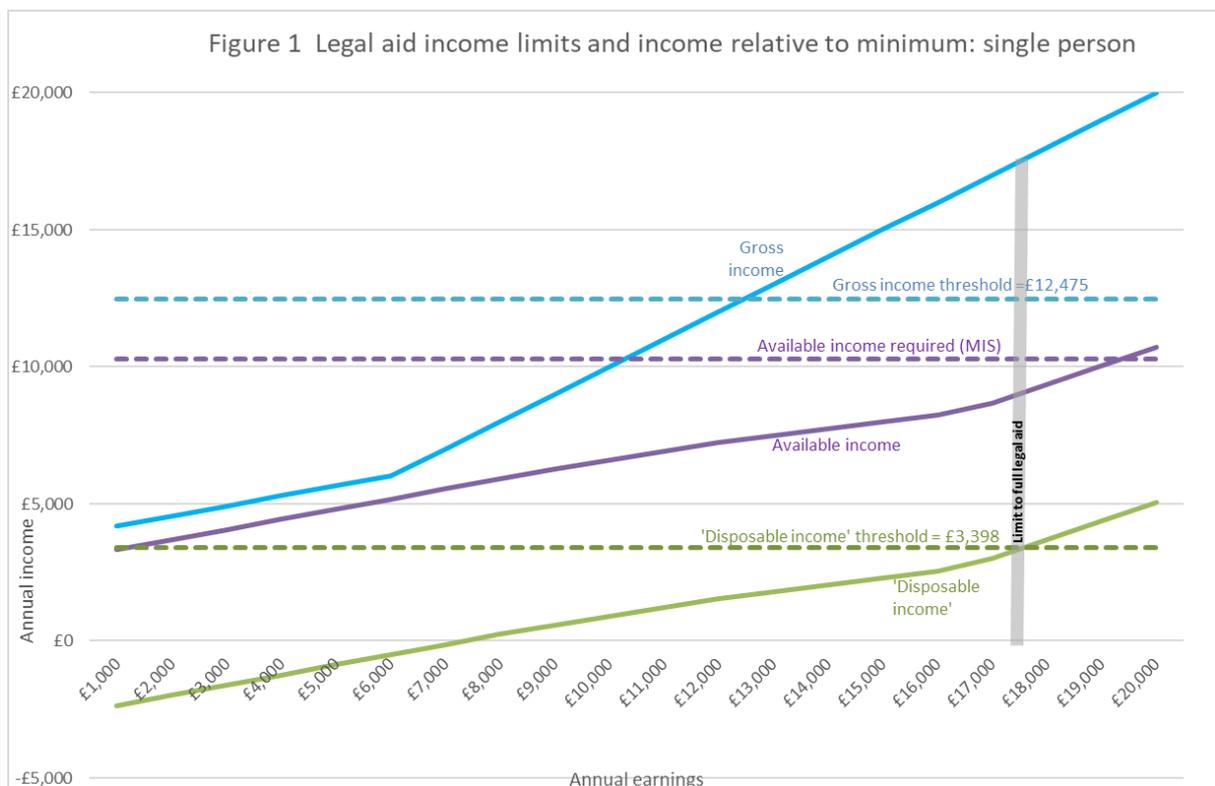
3.2. Comparison of incomes of people not getting full legal aid with what they need for a minimum living standard, before and after paying for legal costs

1. This section contains my main calculations about the outcomes of the criminal legal aid means test. It makes three calculations of income compared to MIS, for each of ten examples of household types. The full calculations are shown in the Appendix, which also states the assumptions that I have made about rent and council tax. I have also incorporated the assumption that people claim benefits and in-work credits to which they are entitled, based on their income and family makeup, and have calculated these according to the new Universal Credit system. To avoid excessive complexity, I have used relatively simple cases in which households do not have additional costs such as childcare, or receive child maintenance. While these examples therefore do not give the full range of possible outcomes, I consider them to be reasonably representative of the outcomes that the system is likely to produce, having considered the potential effect on the outcomes of varying my assumptions.

¹⁰ Davis, A., Hirsch, D., Padley, M. and Shepherd, C. (2018) *A Minimum Income Standard for the UK, 2008-2018: continuity and change*. York: Joseph Rowntree Foundation, page 40

3.2.1 The case of a single person

2. Before showing the full results for different household types, it is helpful to illustrate graphically the pattern of outcomes that occur, in the simplest case of a single person, as income rises.
3. Figure 1 starts by showing at what level of earnings a single person would be excluded from full legal aid, and how much income they have available on various earnings levels relative to minimum living costs. Note that having *either* gross income *or* 'disposable' income below the thresholds shown can give access to full legal aid, and so only those where *both* limits are breached are disqualified from legal aid in Magistrates' Court cases and required to make an income-based contribution in Crown Court cases. In the single person case shown in Figure 1, the gross income limit is breached on earnings of £12,475 (since in this case earnings will exactly equal gross income, and £12,475 is the gross income limit). The disposable income limit, however, is not breached until earnings reach £17,600, and it is above this level that applicants therefore become ineligible for full legal aid. To put this in context, £17,600 a year is about 15% above earnings working full time on the National Minimum Wage for over-25s (based on a 37.5 hour working week). Note also that at these earnings, the £22,325 gross income limit applied in the Magistrates' Court to disqualify applicants from any legal aid regardless of 'disposable income' has not been breached.



4. The 'available income' line in Figure 1 shows how much a single person on various earnings would have, after paying taxes and rent, to devote to living costs, and how this compares to the equivalent MIS threshold. It shows that on the earnings above which the means test disqualifies a single person from full legal aid, that person's available income is quite close to, but nevertheless still below, what they need for a minimum acceptable standard of living according to MIS. Specifically, it is around £1,200 a year or 12% below the MIS budget. That is to say, a single person must contribute to legal costs on an income insufficient to support the living standard described by MIS even before incurring those legal expenses.

5. Note that the assumptions made in Figure 1 about rent levels (see Appendix) influence the relationship between earnings and available/disposable income, but do not affect the shortfall in available income at the point where 'disposable income' first exceeds £3,398. This somewhat complex point can be explained by an example of a variation in the rent. The rent assumption for a single person in my main calculations is based on the lower quartile rent for a one-bedroom property in England: a modest level calculated as being the highest rent charged for the cheapest quarter of properties of this size. If I assume a lower rent than this - say the lower quartile in the cheapest English region, the North East- this would allow someone earning £17,600 a year almost exactly to afford the MIS budget after paying rent, rather than being 12% short. However, in such a case, the lower deduction for rent in the legal aid means test would bring someone on a lower wage level, £15,900 a year, above the disposable income threshold. Such a person would face an almost identical shortfall compared to MIS as the person in the example shown in Figure 1. In other words, the effects of rent variation on the 'disposable income' and 'available income' calculations are the same, and therefore cancel each other out in their impact on the available income deficit experienced by someone with just enough income to be denied full legal aid.

6. I turn now to the available income that defendants are left with *after* paying for legal costs. In the case of Magistrates' Court cases, those with disposable income above £3398 are liable for all legal costs, so their affordability will depend on the cost of the case. I am not qualified to state what the cost of defending a Magistrates' Court case is likely to be, or over what period it may be paid, but observe that average costs incurred at trial for the more minor categories of cases are of the order of £1,500 to £3,000 (Legal

Aid Agency, Criminal Legal Aid Manual, Annex 9).¹¹ This amount can be compared with the situation of the single person just above the 'disposable income' threshold, who requires minimum outgoings of about £900 a month for a minimum living standard, but can only afford to cover about £800 with their current income (the monthly equivalent of the results shown in Figure 1). Finding an extra £1,500 to £3,000 over small number of months from such an income is likely to be highly problematic.

7. In Crown Court cases, affordability can be assessed more directly, in relation to the consequences of requiring income-based contributions for those above the gross and 'disposable income' thresholds. Specifically, this requires a contribution of 90% of all 'disposable income' (and not just additional 'disposable income' above the threshold). The effect of this on available income is shown in Figure 2. This shows first that there is a sharp fall in the income available to cover living costs at the point at which the threshold for making a contribution is passed, because at that point the applicant becomes liable for a payment of 90% of £3,398, or at a rate of just over £3,000 per year. (In practice, this means £250 a month during the six months that the contribution is payable; for consistency of presentation, Figure 2 reports the annualised rate.) This sharply increases the deficit of available income relative to the MIS requirement, leaving the applicant with available income over 40% below their minimum spending needs.

¹¹ I understand these costs are at legal aid rates. I am informed by the Law Society that the costs of representation in a trial in the Magistrates' Court at private rates are likely to be £3,000 to £6,000, or substantially more if an expert report is necessary, and for a Crown Court trial of 3-4 weeks £55,000 to £70,000.



8. As well as showing the severity of this drop, Figure 2 also shows what happens for applicants who earn well above the £17,600 a year at which they start contributing to Crown Court legal services. The shallow gradient of the available income line above this earnings level represents the fact that for every additional £1,000 a year of earnings, post-tax and 'disposable' income will rise by £680 (taking account also of National Insurance Contributions), and after 90% of this has been added to the income contribution to legal costs, the amount left to spend on living costs rises by only £68 a year. As a consequence, even someone earning £71,400 a year does not have enough income to meet the Minimum Income Standard once legal costs are paid, and above this level, their income exceeds the eligibility limit for legal aid (£37,500 in 'disposable income'). It is important to note that this would only occur if legal costs exceeded the maximum contribution based on income, which in this case would be £2,800 a month and therefore nearly £17,000 over the six month period over which these charges can apply. Only in more serious cases is the maximum income contribution above £17,000 (Legal Aid Agency, Criminal Legal Aid Manual, Annex 9). Nevertheless, Figure 2 serves to illustrate that the affordability of income contributions to Crown Court costs can create an affordability issue for people on a wide range of incomes. Average pay in the UK is around £27,000 a year (ONS data, July 2018), and Figure 2 shows that people whose income is too low to cover minimum living costs after making a contribution to Crown

Court costs may have earnings ranging from two thirds of this average to well over twice average pay.

3.2.2 Variations for different household types

1. Although the application for criminal legal aid is made by an individual defendant, the means test takes account of that person's wider family circumstances. As referred to above, gross and 'disposable' income calculations take account of whether the applicant lives with a partner and/or children, regarding the applicant's income as contributing to the support of the household and not just the individual. Furthermore, a partner's income is also taken account of as making a contribution to household living costs. This corresponds to the way the Minimum Income Standard is calculated, in producing minimum living costs that reflect household composition and regard income within the household as pooled.
2. I have repeated the calculations made for the single person case (reported in section 3.2.1), for nine other types of household:
 - A couple without children
 - A couple with one child, with variations for a younger child (aged 0-1) and an older child (aged 14).
 - A couple with two children aged 4 and 8
 - A couple with three children, aged 0, 4 and 8.
 - Four lone parent examples with the same combinations of children as for the couples with children above.
3. I have chosen these age combinations to illustrate a range of aspects in which resources vary for families with different characteristics, including older children costing more and a larger family with a recently born child having lower benefit/Universal Credit entitlements than in the past. Given that the results presented below show only relatively minor variations according to these characteristics, I am also confident that my findings are not greatly affected by the choice of family examples.
4. For couples, with and without children, I have made the simplified assumption that both parents work at the same earnings level. If the earnings shown were to be distributed differently across the couple, the results would be similar, slightly affecting the earnings required to get to a given 'disposable'/available income level, but not the relationship between the two.

5. As referred to above, I have not taken any account of childcare, but since childcare costs are deductible in calculating 'disposable income', this would again affect the earnings required to reach a given level of available/'disposable' income, rather than the relationship between the two.
6. The results for these additional household types are shown in detail in the Appendix, and summarised in Table 2.
7. Table 2 starts by repeating for multiple household types the comparison of the level of the living allowance with the MIS budgets. It shows that the finding for a single person, that the living allowance is only around half of living costs as estimated in MIS, applies across family types. This suggests that the weightings for different household members used in the living cost calculation are broadly accurate, but that they are applied to an income that yields a living standard far lower than the minimum represented by MIS.
8. In the lower part of Table 2, I start by repeating the calculation of whether applicants have spare income available after covering minimum living costs at the lowest income at which they do not get legal costs fully covered. In making these calculations I found that for all cases other than the single person, this income level is determined by gross rather than by 'disposable' income. That is to say, 'disposable income' exceeds the £3,398 threshold while gross income is still below the £12,475 limit, so it is only at a higher income level when the £12,475 limit is breached that the applicant becomes ineligible for full legal aid. (This is a product of the way in which gross income is adjusted for family size.) Since liability for Crown Court income payments therefore kicks in at a higher 'disposable income' than for a single person, the "cliff edge" illustrated in Figure 2 above is more severe for couples and families. That is to say, the amount that people have to contribute when they first become liable for income contributions in the Crown Court is greater (see Appendix), up to just over £1,000 a month, rather than £250 for a single person. Note however that since this amount rises with size of family, it remains similar as a percentage of the minimum budget required. These results occur at modest household earnings levels, ranging from £12,800 for a lone parent with a baby to £14,200 for each of two earners for a couple with three children. As referred to above, this compares to £15,300 working full time on the National Minimum Wage for over-25s. Thus couples and families can become liable for legal costs even though their earnings are below a full-time minimum wage.

9. The first row of percentages in the lower part of Table 2 shows that, like a single person, all other family types looked at here lose their entitlement to full legal aid at an available income level that is below what is required to cover minimum living costs. In some cases it is only just below, so in broad terms the family can be described as just about affording a minimum living standard before incurring legal costs; in others, there is a deficit of up to nearly one quarter of required living costs. There is no single pattern determining who is closer to the minimum in these cases; the detailed results are a product of specific weighting assumptions made in the means test, compared to the specific household results of the MIS research. Broadly, then, we can say that applicants may be excluded based on means when their available income is either only just enough, or somewhat less than enough, to reach a minimum living standard that allows people to participate in society.

Table 2 – Minimum living costs and shortfalls for ten household types

Household type	Single	Couple	Couple + child aged 1	Couple + child aged 14	Couple +children aged 4 and 8	Couple +children aged 0, 4 and 8	Lone parent + child aged 1	Lone parent +child aged 14	Lone parent +children aged 4 and 8	Lone parent +children aged 0,4 and 8
Annual expenditure requirements (excluding rent, mortgage, council tax, childcare)										
a) Assumed in living allowance used to calculate 'disposable income	£5,676	£9,309	£10,160	£11,806	£13,168	£14,020	£6,527	£8,173	£9,536	£10,387
b) Identified in Minimum Income Standards research	£10,276	£17,173	£19,599	£23,048	£23,667	£27,172	£15,240	£18,689	£19,329	£22,298
c) % of MIS budget covered by living allowance	55%	54%	52%	51%	56%	52%	43%	44%	49%	47%
Percentage shortfalls: how far available income falls short of covering MIS costs, as % of budget										
a) Lowest earnings at which gross income exceeds £12,475 AND disposable income exceeds £3398, so ineligible for full legal aid. Shortfall <i>before</i> legal costs.	-12%	-21%	-10%	-16%	-1%	-10%	-17%	-24%	-8%	-15%
b) Shortfall <i>after</i> income contribution of 90% of disposable income in Crown Court cases, at earnings referred to in (a).	-41%	-43%	-44%	-46%	-40%	-45%	-53%	-53%	-46%	-50%
c) Shortfall <i>after</i> income contribution of 90% of disposable income in Crown Court cases where disposable income just below £37,500 maximum for legal aid entitlement	-8%	-24%	-29%	-33%	-29%	-35%	-33%	-36%	-31%	-37%

10. The next row of Table 2 then shows the consequence for Crown Court applicants of making an income-based contribution at the minimum income level at which they are obliged to do so. The consequences of this are shown to be severe. In all the examples shown, applicants and their families fall at least 40% short of the minimum budget, and for some categories of lone parent this rises to over 50%. In other words, the result of having to make income-based contributions on relatively low incomes leaves people with barely half, and in some cases under half, of what they need to cover minimum living costs.
11. The final row in Table 2 shows that, as for a single person, a family can be left with income short of what is needed to cover minimum living costs after paying legal bills, even if they have an average or above-average income. Indeed, in the family examples, the shortfall that can potentially result even at the maximum level of 'disposable income' for which legal aid is available is proportionately much greater than for a single person – typically around one third of the minimum required. (This is the result of the fact that adding a given amount of 'disposable income' yields the same amount in cash terms for all groups, but this represents amounts that are smaller in relation to a family's overall needs the larger the family.) The total household earnings at which the upper limit for disposable income is reached is similar across household types, ranging from a couple without children where each partner earns £34,200 (so combined earnings of £68,400) to a lone parent with three children earning £78,400.

3.3 Consequences of shortfalls compared to the Minimum Income Standard

1. The previous section has shown that households whose income is too high for one of their members to be entitled to full legal aid can, as a result of contributing towards legal costs, end up with only half as much in income available to spend on living costs as the budgets calculated for the Minimum Income Standard. Furthermore, it has found that these legal costs can create shortfalls worth at least a third of this budget even for some people on average or above-average incomes.
2. The consequences of living on such incomes will vary for different families, affected by their individual choices and the way that they prioritise resources. However, it is clear that living on a budget a third to a half below MIS will have serious consequences. For

example, the budget for social and cultural participation is typically around a fifth of the whole, meaning that even someone who spent nothing on this category would have to forego between about 20% and 40% of spending on other essentials such as food, clothing, toiletries and transport in order to live within that budget. In other words, someone who responded to having such a low budget by living a highly restricted life - in which they never socialised, went on holiday, celebrated Christmas, bought someone a birthday present, bought a computer or spent money on other things classed as leisure goods and services – would still fall some way short of affording the material essentials considered by the public to be required as a minimum.

3. In practice, households on low incomes do not cut out whole categories of expenditure as being less 'essential', but rather economise in a range of areas; sometimes this can mean foregoing material items to meet social priorities. For example, studies of families on low income (cited below) have repeatedly shown that mothers make material sacrifices in order to be able to meet the material and social needs of their children. One study found that nearly one in three parents with household income below £25,000 a year had skipped meals in order to save money¹².
4. A recent study carried out by my Centre¹³ considered the experiences of families living between 10% and 50% below the MIS level. It found that some such families felt that they were coping without undue hardship, although they were often not able to afford things that other families take for granted, such as an annual holiday, and mothers tended to neglect their own needs, such as by rarely buying themselves clothes, and admitting that always wearing old hand-me-downs from friends affected their self-esteem. Other families had to make more significant material sacrifices, such as not being able to heat their homes properly. Those living at least 25% below the MIS level were especially likely to have difficulties or face hardship. Other evidence on low income households¹⁴ shows that very few of these have money to put aside in savings. In particular, the biggest survey of deprivation in the United Kingdom, the Poverty and Social Exclusion Survey, considers what items households are unable to afford even

¹² <http://www.independent.co.uk/news/uk/home-news/nearly-a-third-of-parents-on-low-incomes-miss-a-meal-to-feed-their-children-says-report-10397107.html>

¹³ Hill, K., Davis, A., Hirsch, D. and Marshall, L. (2016) *Falling Short: the experiences of families living below the Minimum Income Standard*. York: Joseph Rowntree Foundation.

¹⁴ A wide range of studies were reviewed by Ridge, T. (2009), *Living with poverty: a review of the literature on children's and families' experiences of poverty*. London: Department for Work and Pensions. (Research Report No 594). More recent evidence included Daly, M. and Kelly, G. (2015), *Families and Poverty Everyday life on a low income*. Bristol: Policy Press

though a majority of the population thinks that you should be able to afford them. Among these 'socially perceived necessities', the three that the greatest number of households are unable to afford are: being able to pay unexpected costs, being able to save at least £20 a month for rainy days or being able to afford regular payments to a pension¹⁵.

5. I have also carried out analysis on how being a certain amount below MIS affects the probability of a household reporting that it is unable to afford such 'socially perceived necessities'. The odds of being classified as deprived on this measure are four times as great for a household at least 10-20% below the MIS level (i.e. with available income below 80-90% of the MIS budgets) as they are for people whose income is at the MIS level or above¹⁶.
6. In considering what this evidence implies for people who are only able to afford spending worth a half to a third below the MIS level due to legal costs, some caution is needed. Studies of the effects of low income typically talk to people who have low income over a long period, and the impact of this may not be the same as a temporarily low disposable income. Someone on a medium income who spends six months having to live on a very tight budget is likely to be in a better position than someone whose income has been low for some time. For example, they are more likely to be able to draw on savings, and more likely to be able to defer some purchases (such as replacing household goods) if they are confident that income will return to a level above the minimum needed, when they can clear the 'material indebtedness' referred to above (Section 2.2.3, paragraph 18). Conversely, people who are living permanently at or below the minimum level defined by MIS can be driven into serious material hardship and/or a spiral of financial indebtedness by a shock that lowers their incomes for a period. My Centre is presently following up low income families to track their experiences over time, and finds that periods of lower than normal income cause them particular problems, including running up arrears with bills, having to cut out activities for their children and a high level of family stress¹⁷. Thus, it would be fair to assume that the consequences of contributing to legal costs will be more serious for those legal aid applicants with incomes just above the qualifying thresholds, whose incomes start out just below the MIS level, than for those on average or above-average incomes whose available incomes are only being made low temporarily by legal contributions.

¹⁵ <http://www.poverty.ac.uk/pse-research/falling-below-minimum-standards>

¹⁶ Hirsch, D., Padley, M. and Valadez, L. (2016) *A Poverty Indicator Based on a Minimum Income Standard*. Loughborough: Centre for Research in Social Policy, pp32-33.

¹⁷ Hill, K. and Davis, A. (2018) *Making Ends Meet Below the Minimum Income Standard: families' experiences over time*. Centre for Research in Social Policy, Loughborough University.

3.4 Comparison with the poverty line and safety net benefits

1. As set out in Section 2.2 above, neither the 'poverty line' nor benefit levels have been derived from evidence on what people require as a minimum to cover their living costs. Nevertheless, each tells us something about what society is willing to tolerate in terms of low incomes. The number of people falling below a relative-income poverty line is used as an indicator of how many are at a living standard of which society disapproves, however arbitrarily this standard has been devised. The 'safety-net' benefits paid to bring incomes up to a minimum level represents the lowest incomes that government is currently willing to tolerate people experiencing, whether or not this is justified in terms of meeting basic needs. The following calculations therefore note how the criminal legal aid means test can affect incomes relative to these two benchmarks, without seeking to imply that payment for legal services is 'affordable' by virtue of leaving people with sufficient income to be above the poverty line or means-tested benefit levels.
2. Table 3 starts by comparing the amount deducted from income for living costs in the means test (the living allowance) to the amount attributed to each household member in deriving poverty measures. It shows that in all cases the living allowance is at least one quarter below the net income figure used to calculate poverty, and typically it is at least one third below. This does not automatically mean that people whose incomes are just high enough to exclude them from the legal aid means test are below the poverty line, since after subtracting the living allowance they are still permitted to keep 10% of 'disposable income', and this brings them just above the poverty line in some cases. However, it means that as a starting point, the provision made for living costs in the criminal legal aid means test makes assumptions about living costs that are much more stringent than those used for measuring poverty.

Table 3: Living allowance compared to the 60% median income poverty line: amount attributed to each family member

	Living allowance	60% median income (after housing costs)*	Living allowance as percentage of 60% median income
First adult	£108.85	£167.30	65%
Second adult	£69.67	£118.46	59%
Child 0-1	£16.33	£59.55	27%
2 to 4	£32.66	£59.55	55%
5 to 7	£37.01	£59.55	62%
8 to 10	£41.36	£59.55	69%
11 to 12	£44.63	£59.55	75%
13 to 15	£47.90	£113.10	42%
16 to 18	£64.22	£113.10	57%
*Adjusted from DWP's Households Below Average Income report (2018) to take account of estimated increase in incomes since latest survey (2016/17), and to include an estimate for water rates, which are deducted in housing costs but included in the means test allowance			

3. A fuller calculation of the consequence of the means test considers how much households are left with, relative to the poverty line, after making an income-based contribution to legal costs. The result is for such contributions to leave them below the poverty line, based on available income. I calculate that a single person at the minimum income for which Crown Court income contributions are imposed is left with income 19% below the poverty line (60% of median income after housing costs), a couple with two children 22% below, and a lone parent with two children 19% below, once these contributions are deducted.
4. Turning to means-tested benefits, the results vary considerably according to household type, since the generosity of benefits relative to MIS and to poverty thresholds is highly variable. A single working age adult qualifying for Jobseekers' Allowance receives only £73.10 a week after rent and a contribution to Council Tax, well under than half of what they need according to MIS. Such an individual is 'passported' onto full legal aid because they receive this benefit. A working person on pay that puts them just above the threshold for contributing to legal costs is left with £115 a week, somewhat above what they would have if they were on out of work benefits. A couple with two children also ends up somewhat above the means-tested income, on £298 compared to £266 a week. However, a lone parent with two children ends up worse off than on benefits: paying an

income contribution that leaves them with just £199, rather than £225 on benefits. In this case, an applicant who is earning £17,000 a year (more than the £15,300 earned working full time on the National Minimum Wage) ends up worse off than if they were out of work, as a result of their earnings triggering a requirement to pay a contribution to legal costs.

4. Conclusion

1. This report has shown that the criminal legal aid system may require defendants whose income is at or below a minimum level as defined by the Minimum Income Standard to pay their full legal costs in the Magistrates' Court or to make an income-based contribution to the cost of their defence in the Crown Court. After incurring these charges, their remaining income can drop to half or less of what is needed to reach this minimum living standard, to about 20% below the commonly cited poverty line and in certain cases to below the level of safety-net benefits. This is the consequence of a means test whose provisions do not appear to be linked to benchmarks of household need, and which has become more stringent by not being updated with inflation for a decade. I have also found that the earnings at which the means-testing system can result in inadequate available income range widely, from just below full-time pay on the minimum wage to well over twice average earnings. However, I conclude that the most severe consequences will be felt by households supported by people near the lower end of this range, who are less likely to have the spare resources to cope with a temporary period of very low income.

Appendix: Calculations used in this report

1. Lowest earnings that take incomes above the lower gross and disposable thresholds

	Disposable income just above £3398	Gross income just above £12475 (NB: in all these cases, disposable income also above £3398)				
		Single	Couple	Couple plus child aged 1	Couple plus child aged 14	Couple plus children aged 4 and 8
Annual wage for each adult	£17,600	£10,300	£10,700	£12,500	£13,600	£14,200
Tax	£1,150	£0	£0	£130	£350	£470
National Insurance Contributions	£1,098	£222	£270	£486	£618	£690
Post tax earnings	£15,352	£20,155	£20,859	£23,767	£25,263	£26,079
Universal Credit	£0	£0	£3,423	£2,139	£4,818	£4,304
Of which for housing	£0	£0	£3,423	£2,139	£4,818	£4,304
Child Benefit	£0	£0	£1,079	£1,079	£1,794	£2,508
"Available income": earnings after tax plus benefits	£15,352	£20,155	£25,362	£26,986	£31,875	£32,891
MIS requirement	£16,537	£23,721	£27,240	£30,688	£32,147	£35,652
Surplus/deficit compared to MIS	-£1,186	-£3,566	-£1,878	-£3,703	-£272	-£2,761
Gross income (HH adjusted)	£17,600	£12,561	£12,558	£12,538	£12,497	£12,513
Deductable	£14,185	£16,302	£14,918	£18,540	£18,768	£20,517
"Disposable income"	£3,415	£4,298	£7,562	£7,539	£10,226	£10,391
Maximum monthly contribution to legal costs, Crown Court (annualised)	£3,073	£3,868	£6,806	£6,785	£9,203	£9,352
Surplus/deficit after making contribution	-£4,259	-£7,434	-£8,683	-£10,488	-£9,476	-£12,113
Assumptions:						
Rent	£5,400	£5,400	£6,300	£6,300	£7,140	£7,140
Council tax	£861	£1,149	£1,340	£1,340	£1,340	£1,340

Lowest earnings that take incomes above the lower gross and disposable thresholds, continued

Gross income >£12475				
	Lone parent plus child aged 1	Lone parent plus child aged 14	Lone parent plus children aged 4 and 8	Lone parent plus children aged 0, 4 and 8
Annual wage for each adult	£12,800	£16,900	£17,300	£19,300
Tax	£190	£1,010	£1,090	£1,490
National Insurance Contributions	£522	£1,014	£1,062	£1,302
Post tax earnings	£12,088	£14,876	£15,148	£16,508
Universal Credit	£6,777	£5,568	£9,018	£8,161
Of which for housing	£6,300	£5,568	£7,140	£7,140
Child Benefit	£1,079	£1,079	£1,794	£2,508
"Available income": earnings after tax plus benefits	£19,944	£21,523	£25,959	£27,177
MIS requirement	£22,546	£25,995	£27,475	£30,443
Surplus/deficit compared to MIS	-£2,602	-£4,472	-£1,516	-£3,267
Gross income (HH adjusted)	£12,484	£12,486	£12,483	£12,475
Deductable	£8,245	£11,935	£12,693	£14,185
"Disposable income"	£6,111	£6,044	£8,278	£8,644
Maximum monthly contribution to legal costs, Crown Court (annualised)	£5,500	£5,440	£7,450	£7,780
Surplus/deficit after making contribution	-£8,102	-£9,911	-£8,966	-£11,046
Assumptions:				
Rent	£6,300	£6,300	£7,140	£7,140
Council tax	£1,005	£1,005	£1,005	£1,005

2. Highest earnings for which disposable income below £37,500 limit in Crown Court

	Single	Couple	Couple plus child aged 1	Couple plus child aged 14	Couple plus children aged 4 and 8	Couple plus children aged 0, 4 and 8
Annual wage for each adult	£71,400	£34,200	£34,800	£36,000	£37,100	£37,200
Tax	£16,920	£4,470	£4,590	£4,830	£5,050	£5,070
National Insurance Contributions	£5,049	£3,090	£3,162	£3,306	£3,438	£3,450
Post tax earnings	£49,431	£53,279	£54,095	£55,727	£57,223	£57,359
Universal Credit	£0	£0	£0	£0	£0	£0
Of which for housing	£0	£0	£0	£0	£0	£0
Child Benefit	£0	£0	£1,079	£1,079	£1,794	£2,508
"Available income": earnings after tax plus benefits	£49,431	£53,279	£55,175	£56,807	£59,017	£59,867
MIS requirement	£16,537	£23,721	£27,240	£30,688	£32,147	£35,652
Surplus/deficit compared to MIS	£32,893	£29,558	£27,935	£26,118	£26,870	£24,215
Gross income (HH adjusted)	£71,400	£41,707	£39,486	£35,134	£32,756	£31,137
Deductable	£33,906	£30,978	£33,305	£35,719	£38,625	£39,541
"Disposable income"	£37,494	£37,422	£37,374	£37,360	£37,368	£37,367
Maximum monthly contribution to legal costs (annualised)	£33,744	£33,680	£33,637	£33,624	£33,632	£33,631
Surplus/deficit after making contribution	-£851	-£4,122	-£5,702	-£7,506	-£6,762	-£9,415
Assumptions:						
Rent	£5,400	£5,400	£6,300	£6,300	£7,140	£7,140
Council tax	£861	£1,149	£1,340	£1,340	£1,340	£1,340

Highest earnings for which disposable income below £37,500 limit in Crown Court, continued

	Lone parent plus child aged 1	Lone parent plus child aged 14	Lone parent plus children aged 4 and 8	Lone parent plus children aged 0, 4 and 8
Annual wage for each adult	£72,600	£75,400	£78,200	£78,400
Tax	£17,400	£18,520	£19,640	£19,720
National Insurance Contributions	£5,073	£5,129	£5,185	£5,189
Post tax earnings	£50,127	£51,751	£53,375	£53,491
Universal Credit	£0	£0	£0	£0
Of which for housing	£0	£0	£0	£0
Child Benefit	£1,079	£1,079	£1,794	£2,508
"Available income": earnings after tax plus benefits	£51,206	£52,830	£55,168	£55,999
MIS requirement	£22,546	£25,995	£27,475	£30,443
Surplus/deficit compared to MIS	£28,660	£26,835	£27,694	£25,555
Gross income (HH adjusted)	£64,069	£53,111	£47,615	£44,212
Deductable	£36,306	£39,128	£42,506	£43,442
"Disposable income"	£37,373	£37,351	£37,487	£37,466
Maximum monthly contribution to legal costs (annualised)	£33,636	£33,616	£33,738	£33,720
Surplus/deficit after making contribution	-£4,976	-£6,781	-£6,045	-£8,164
Assumptions:				
Rent	£6,300	£6,300	£7,140	£7,140
Council tax	£1,005	£1,005	£1,005	£1,005