



Civil Justice Council submission to the Government’s consultation on Housing Legal Aid: the way forward

January 2022

Introduction

1. The Civil Justice Council (CJC) is a public advisory body established under the Civil Procedure Act 1997. Our statutory functions include: considering how to make the civil justice system more accessible, fair and efficient; making proposals for research; and advising the Lord Chancellor and the judiciary on the development of the civil justice system.¹
2. The consultation paper sets out proposals to address the problem of the sustainability of the Housing Possession Court Duty Schemes. As the paper acknowledges, the Schemes currently provide funding for “on the day” emergency face-to-face advice and advocacy to those facing possession proceedings in court. Sustainability has been an issue for some time, with some courts and areas without any providers of Duty Advice.

Early advice

3. The Council supports the recommendation to expand the Scheme so as to enable providers to (1) offer non-means tested advice to those facing eviction from the period from receipt of a Possession Notice, and not limited, as presently, to advice only on the day of the hearing, and (2) extend the scope of such advice to cover social welfare law matters, including debt and issues with social welfare benefits which are often the underlying causes of the rent arrears which lead to possession proceedings.

¹ Civil Procedure Act 1997 6(3)

4. The value of specialist advice at an early stage is well established. The paper refers to this advice as being “a limited session”. It is understood that the provision must be proportionate, but care must be taken to ensure that the pre-court provision is not so restrictive as to limit its effectiveness.

Payments for attendance at court

5. The proposal to increase the minimum attendance fee for providers is also welcome. This measure should help to make the contracts more financially viable so as to attract more tenders.

Follow on fee for work after the hearing

6. Currently, the only substantial follow-up work that can be done for an occupier following the initial hearing is under the Legal Help scheme. This can only be provided to occupiers who are eligible, on financial grounds. Such advice and assistance is also limited by the current rules on the scope of Legal Aid which preclude providing help in relation to welfare benefit issues and debt. Currently, a provider who has advised an occupier at court under the Duty Advice Scheme can claim *either* the fixed fee for the court-based advice *or* the fee under the Legal Help Scheme. The proposal is that providers will be able to claim both the fixed fee for court-based advice (non-means tested) and also a fee under the Legal Help scheme for further work for the same client (means-tested and not extending to out of scope matters, including debt and welfare benefits).
7. This proposal is welcome, but the fact that the Legal Help work following the initial hearing will not extend to assisting with debt and welfare benefits will limit its effectiveness in preventing evictions.
8. The government’s recent call for evidence on dispute resolution is said to reflect “the overarching aim of increasing uptake of less adversarial routes to justice and resolution outside court where appropriate”. The Council supports this aim and believes that to succeed, such an approach must focus on the underlying issues which lead to court proceedings and that any new processes or rules should protect vulnerable parties. In the case of possession proceedings, the majority of claims are

triggered by rent arrears, which are usually caused by such underlying issues as benefit problems, debt, relationship breakdown and employment issues. The Council hopes that the government will consider extending the scope of legal aid generally for possession claims to ensure that these underlying issues can be addressed at an early stage. Resolving underlying issues so as to avoid court proceedings saves money in the long run.

Remuneration and sustainability

9. The paper recognises that the cost of delivery in rural areas is higher due to the travel time and the fact that rural courts often have lower volumes of cases. However, there is no consideration of remunerating travel time. Given that as a general rule travel over a certain distance is remunerated (both under legal aid regulation and in inter partes costs assessment) we would recommend the remuneration of travel time and expense, which the Council believes would make the provision of such Schemes in rural courts more attractive to providers.
10. The Council is aware that Schemes in rural courts are facing particular problems and that additional support is needed to ensure the future viability of such schemes.

The wider strategy

11. The consultation paper identifies concerns about current remuneration levels as a key consideration in providers and potential providers bidding to provide Duty Scheme services in the future. The proposals relating to Duty Advice Schemes are welcomed as a step to ensure that the Schemes are sustainable in the future. As the paper states, “this is the first step in a wider civil legal aid strategy with the aim of creating a sustainable system of provision where people can get the right advice at the right time, leading to better outcomes for all.” A focus on both early specialist advice and more realistic remuneration will be essential to achieve these goals and the Council looks forward to working with the government on the development of the strategy.