



Please send your response by 12:00 noon on 14 February 2011 by email to legalaidreformmoj@justice.gsi.gov.uk, or by post to Legal Aid Reform Team, Ministry of Justice, 102 Petty France, London SW1H 9AJ.

Scope

Question 1: Do you agree with the proposals to **retain** the types of case and proceedings listed in paragraphs 4.37 to 4.144 of the consultation document within the scope of the civil and family legal aid scheme?

Yes No

Please give reasons.

[All references in this completed questionnaire to the "Response" are to the response of a sub-committee of the Judges' Council dated 11 February 2011 to consultation paper CP12/10.]

See Response paras 13-28 (civil justice) and paras 77-98 (family law).

In relation to civil justice, we support the proposals for the retention of cases and proceedings in scope, subject to suggestions we make for limiting the availability of legal aid in relation to certain categories of judicial review claim.

In relation to family justice, whilst generally supporting the proposals for the retention of cases and proceedings in scope, we make two main points: (i) the proposed definition of domestic violence to keep ancillary relief and children cases in scope is too narrow and will result in cases concerning significant issues of child protection (e.g. where sexual abuse against the child is alleged) falling out of scope, and (ii) the proposals are unclear with regard to scope for respondents, whose position ought however to be equally protected against serious allegations that may not stand up to proper forensic scrutiny.

In relation to both civil and family justice we take issue with proposal to cut back the availability of legal aid for appeals to the Court of Appeal and Supreme Court, and for references to the European Court of Justice, so that they remain in scope only where the appeal or reference arises in an area of law otherwise retained in scope.

Question 2: Do you agree with the proposal to make changes to court powers in ancillary relief cases to enable the Court to make interim lump sum orders against a party who has the means to fund the costs of representation for the other party?

Yes No

Please give reasons.

See Response para 103. The powers should also be extended to include claims made pursuant to Schedule 1 to the Children Act 1989.

Question 3: Do you agree with the proposals to **exclude** the types of case and proceedings listed in paragraphs 4.148 to 4.245 from the scope of the civil and family legal aid scheme?

Yes No

Please give reasons.

See Response paras 29-71 (civil justice) and paras 99-114 (family justice).

In those paragraphs of the Response and in the introduction at paras 6-11 we draw attention generally to (i) the huge increase in numbers of unrepresented litigants to which the proposals would give rise, with serious implications for the quality of justice and for the administration of the justice system in terms of additional costs and delays, and (ii) the ways in which the proposals would damage access to justice.

In relation to civil justice, we refer inter alia to our concerns about the exclusion of clinical negligence cases and about the proposal to remove Legal Help for a range of subject areas.

In relation to family justice, we refer inter alia to our concerns that (i) cases where significant issues of child protection are raised would not be scope, and (ii) the proposals fail properly to recognise, and would indeed put at risk, the effective case management systems that have been implemented by the family judiciary, which encourage mediation and settlement and ensure that cases with safeguarding issues are appropriately managed.

Question 4: Do you agree with the Government's proposals to introduce a new scheme for funding individual cases excluded from the proposed scope, which will only generally provide funding where the provision of some level of legal aid is necessary to meet domestic and international legal obligations (including those under the European Convention on Human Rights) or where there is a significant wider public interest in funding Legal Representation for inquest cases?

Yes No

Please give reasons.

See Response paras 55-58 and 108. We have serious reservations about the adequacy of the proposed scheme.

Question 5: Do you agree with the Government's proposal to amend the merits criteria for civil legal aid so that funding can be refused in any individual civil case which is suitable for an alternative source of funding, such as a Conditional Fee Arrangement?

Yes No

Please give reasons.

Question 6: We would welcome views or evidence on the potential impact of the proposed reforms to the scope of legal aid on litigants in person and the conduct of proceedings.

See Response paras 6-11 (introduction), paras 59-70 (civil justice) and 109-113 (family justice): we have dealt with the topic under the separate headings of civil justice and family justice in order to set out the judicial experience in each context, but our observations in the two contexts are very similar. The potential impact of the proposals on litigants in person and the conduct of proceedings is profound. The experience of the judiciary is that cases involving unrepresented parties generally take much longer, at the case management stage, at trial and in relation to appeals and further applications. There are also real concerns that, despite the great efforts made by judges to assist unrepresented parties (efforts which risk drawing the court into an inquisitorial role and creating an appearance of bias), the quality of justice in such cases may be impaired. No decision to reduce the scope of legal aid should be taken without a proper assessment of the impact of an increase in numbers of litigants in person on the administration of justice, including the additional costs and delays within the justice system.

See also Response paras 30-36 for the related concern with regard to the proposed removal from scope of Legal Help for a range of cases where it is currently available, and the consequences of this for individuals needing advice and for the tribunal system.

The Community Legal Advice Telephone Helpline

Question 7: Do you agree that the Community Legal Advice helpline should be established as the single gateway to access civil legal aid advice?

Yes No

Please give reasons.

See Response para 71 (civil justice) and para 114 (family justice).

Question 8: Do you agree that specialist advice should be offered through the Community Legal Advice helpline in all categories of law and that, in some categories, the majority of civil Legal Help clients and cases can be dealt with through this channel?

Yes No

Please give reasons.

See references under Question 7 above.

Question 9: What factors should be taken into account when devising the criteria for determining when face to face advice will be required?

Question 10: Which organisations should work strategically with Community Legal Advice and what form should this joint working take?

Question 11: Do you agree that the Legal Services Commission should offer access to paid advice services for ineligible clients through the Community Legal Advice helpline?

Yes No

Please give reasons.

Financial Eligibility

Question 12: Do you agree with the proposal that applicants for legal aid who are in receipt of passporting benefits should be subject to the same capital eligibility rules as other applicants?

Yes No

Please give reasons.

Question 13: Do you agree with the proposal that clients with £1,000 or more disposable capital should be asked to pay a £100 contribution?

Yes No

Please give reasons.

Question 14: Do you agree with the proposals to abolish the equity and pensioner capital disregards for cases other than contested property cases?

Yes No

Please give reasons.

Question 15: Do you agree with the proposals to retain the mortgage disregard, to remove the £100,000 limit, and to have a gross capital limit of £200,000 in cases other than contested property cases (with a £300,000 limit for pensioners with an assessed disposable income of £315 per month or less)?

Yes No

Please give reasons.

Question 16: Do you agree with the proposal to introduce a discretionary waiver scheme for property capital limits in certain circumstances?

Yes No

The Government would welcome views in particular on whether the conditions listed at paragraphs 5.33 to 5.37 are the appropriate circumstances for exercising such a waiver. Please give reasons.

Question 17: Do you agree with the proposals to have conditions in respect of the waiver scheme so that costs are repayable at the end of the case and, to that end, to place a charge on property similar to the existing statutory charge scheme?

Yes No

Please give reasons. The Government would welcome views in particular on the proposed interest rate scheme at paragraph 5.35 in relation to deferred charges.

Question 18: Do you agree that the property eligibility waiver should be exercised automatically for Legal Help for individuals in non-contested property cases with properties worth £200,000 or less (£300,000 in the case of pensioners with disposable income of £315 per month or less)?

Yes No

Please give reasons.

Question 19: Do you agree that we should retain the 'subject matter of the dispute' disregard for contested property cases capped at £100,000 for all levels of service?

Yes No

Please give reasons.

Question 20: Do you agree that the equity and pensioner disregards should be abolished for contested property cases?

Yes No

Please give reasons.

Question 21: Do you agree that, for contested property cases, the mortgage disregard should be retained and uncapped, and that there should be a gross capital limit of £500,000 for all clients?

Yes No

Please give reasons.

Question 22: Do you agree with the proposal to raise the levels of income-based contributions up to a maximum of 30% of monthly disposable income?

Yes No

Please give reasons.

Question 23: Which of the two proposed models at paragraphs 5.59 to 5.63 would represent the most equitable means of implementing an increase in income-based contributions? Are there other alternative models we should consider? Please give reasons.

Criminal Remuneration

Question 24: Do you agree with the proposals to:

- pay a single fixed fee of £565 for a guilty plea in an either way case which the magistrates' court has determined is suitable for summary trial; Yes No
- enhance the lower standard fee paid for cracked trials and guilty pleas under the magistrates' courts scheme in either way cases; and Yes No
- remove the separate fee for committal hearings under the Litigators' Graduated Fees Scheme to pay for the enhanced guilty plea fee? Yes No

Please give reasons.

See Response paras 125-131. Whilst we agree with the principle that the fees for an early guilty plea in either way cases determined to be suitable for summary trial should be substantially the same regardless of whether the case is heard in the magistrates' court or in the Crown Court, we disagree with the proposal to fix a single fee for such cases in the Crown Court regardless of the time when the plea is entered or whether the case counts as a cracked trial.

Question 25: Do you agree with the proposal to harmonise the fee for a cracked trial in indictable only cases, and either way cases committed by magistrates, and in particular that:

- the proposal to enhance the Litigators Graduated Fee Scheme and Advocates Graduated Fee Scheme fees for a guilty plea by 25% provides reasonable remuneration when averaged across the full range of cases; and Yes No
- access to special preparation provides reasonable enhancement for the most complex cases? Yes No

Please give reasons.

See Response paras 132-135.

Question 26: Do you agree with the Government's proposal to align fees paid for cases of murder and manslaughter with those paid for cases of rape and other serious sexual offences?

Yes No

Please give reasons.

See Response paras 136-142.

Question 27: Do you agree with the Government's proposal to remove the distinction between cases of dishonesty based on the value of the dishonest act(s) below £100,000?

Yes No

Please give reasons.

See Response paras 143-145.

Question 28: Do you agree with the Government's proposal to:

a) remove the premium paid for magistrates' courts cases in London; and

Yes No

b) reduce most 'bolt on' fees by 50%?

Yes No

Please give reasons.

See Response para 147, where, however, we express concern about the cumulative effect of cuts.

Question 29: Do you agree with the proposal to align the criteria for Very High Cost Criminal Cases for litigators so that they are consistent with those now currently in place for advocates?

Yes No

Please give reasons.

See Response para 148, where, however, we also raise our concern that the consultation paper does not grapple with the deeper problems concerning VHCCCs.

Question 30: Do you agree with the proposal to appoint an independent assessor for Very High Cost Criminal Cases?

Yes No

It would be helpful to have your views on:

- the proposed role of the assessor;
- the skills and experience that would be required for the post; and
- whether it would offer value for money.

Please give reasons.

See Response paras 149-150: our "yes" is heavily qualified, because of the potential problems concerning the role of an independent assessor.

Question 31: Do you agree with the proposal to amend one of the criteria for the appointment of two counsel by increasing the number of pages of prosecution evidence from 1,000 to 1,500 pages?

Yes No

Please give reasons.

See Response paras 151-157. The length of a case file is not a useful measure of complexity; and whilst we do not oppose the proposal, we do not think that the relevant criterion has any real meaning or that the change will have any significant effect. Our Response also addresses the wider issues raised by the consultation paper in relation to the use of leading counsel and/or multiple counsel.

Civil Remuneration

Question 32: Do you agree with the proposal to reduce all fees paid in civil and family matters by 10%, rather than undertake a more radical restructuring of civil and family legal aid fees?

Yes No

Please give reasons.

See Response para 72 (civil justice) and paras 115-119 (family justice). We do not oppose the proposed reduction, but would stress the need to maintain a pool of competent practitioners willing to undertake publicly funded work.

Question 33: Do you agree with the proposal to cap and set criteria for enhancements to hourly rates payable to solicitors in civil cases?

Yes No

If so, we would welcome views on the criteria which may be appropriate. Please give reasons.

Question 34: Do you agree with the proposal to codify the rates paid to barristers as set out in Table 5, subject to a further 10% reduction?

Yes No

Please give reasons.

Question 35: Do you agree with the proposals:

- to apply 'risk rates' to every civil non-family case where costs may be ordered against the opponent; and Yes No
- to apply 'risk rates' from the end of the investigative stage or once total costs reach £25,000, or from the beginning of cases with no investigative stage? Yes No

Please give reasons.

Question 36: The Government would also welcome views on whether there are types of civil non-family case (other than those described in paragraphs 7.22 and 7.23) for which the application of 'risk rates' would not be justifiable, for example, because there is less likelihood of cost recovery or ability to predict the outcome.

Question 37: Do you agree with the proposal to cap and set criteria for enhancements to hourly rates payable to solicitors in family cases?

Yes No

If so, we would welcome views on the criteria which may be appropriate. Please give reasons.

Question 38: Do you agree with the proposals to restrict the use of Queen's Counsel in family cases to cases where provisions similar to those in criminal cases apply?

Yes No

Please give reasons.

Expert Remuneration

Question 39: Do you agree that:

- there should be a clear structure for the fees to be paid to experts from legal aid; Yes No
- in the short term, the current benchmark hourly rates, reduced by 10%, should be codified; Yes No
- in the longer term, the structure of experts' fees should include both fixed and graduated fees and a limited number of hourly rates; Yes No
- the categorisations of fixed and graduated fees shown in Annex J are appropriate; and Yes No
- the proposed provisions for 'exceptional' cases set out at paragraph 8.16 are reasonable and practicable? Yes No

Please give reasons.

See Response para 73 (civil justice) and paras 120-121 (family justice). Any restructuring of fees for experts must ensure that a suitable pool of experts remains available to the parties and the court.

See also Response paras 158-159 (criminal justice).

Alternative Sources of Funding

Question 40: Do you think that there are any barriers to the introduction of a scheme to secure interest on client accounts?

- Yes No

Please give reasons.

Question 41: Which model do you believe would be most effective:

- Model A: under which solicitors would retain client monies in their client accounts, but would remit interest to the Government; or
- Model B: under which general client accounts would be pooled into a Government bank account?

Please give reasons.

Question 42: Do you think that a scheme to secure interest on client accounts would be most effective if it were based on a:

- A) mandatory model;
- B) voluntary opt-in model; or
- C) voluntary opt-out model?

Please give reasons.

Question 43: Do you agree with the proposal to introduce a Supplementary Legal Aid Scheme?

- Yes No

Please give reasons.

See Response para 74. The potential schemes referred to in the consultation paper, namely a Supplementary Legal Aid Scheme and a Contingent Legal Aid Fund, merit detailed further evaluation. A feasibility study is both justified and necessary.

Question 44: Do you agree that the amount recovered should be set as a percentage of general damages?

- Yes No

If so, what should the percentage be?

Governance and Administration

Question 45: The Government would welcome views on where regulators could play a more active role in quality assurance, balanced against the continuing need to have in place and demonstrate robust central financial and quality controls.

Question 46: The Government would welcome views on the administration of legal aid, and in particular:

- the application process for civil and criminal legal aid;
- applying for amendments, payments on account, etc.;
- bill submission and final settlement of legal aid claims; and
- whether the system of Standard Monthly Payments should be retained or should there be a move to payment as billed?

The application process for legal aid could be speeded up by allowing the submission of completed legal aid applications as scanned attachments to emails. This would be much quicker than relying, as at present, upon completed forms being sent by post.

Question 47: In light of the current programme of the Legal Services Commission to make greater use of electronic working, legal aid practitioners are asked to give views on their readiness to work in this way.

Question 48: Are there any other factors you think the Government should consider to improve the administration of legal aid?

Impact Assessments

Question 49: Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper?

Yes No

Please give reasons.

Question 50: Do you agree that we have correctly identified the extent of impacts under these proposals?

Yes No

Please give reasons.

See generally the passages of the Response referred to under Question 6 above, concerning the impact on the justice system of the increase in litigants in person.

For a further, specific point of concern as to the figures relied on in relation to family cases, see Response para 75(3)

Question 51: Are there forms of mitigation in relation to client impacts that we have not considered?

About you

Full name

A Sub-Committee of the Judges' Council

Job title (or capacity in which you are responding to this consultation exercise)

- ATE Insurer
- Claimant
- Claimant Lawyer
- Claims Management Company
- Consumer representative organisation
- Defendant
- Defendant Lawyer
- Government Department / Non-Departmental Public Body
- Insurer
- Judiciary
- Legal Academic
- Other – please specify

Date

10 February 2011

Company name/organisation (if applicable)

Address

Royal Courts of Justice
Strand
London

Postcode

WC2A 2LL

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