



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?

[X] Yes [] No

Please give reasons.

We believe that access to Legal aid is and has been for many years one of the jewels in the crown of the welfare state, notwithstanding the efforts of the LSC over the last ten years to gradually dismantle Legal Aid, while wasting millions on unnecessary bureaucracy. It seems a very poor and illogical argument to say that because we have the best system in the world - we should get rid of it! Obviously as a provider of free legal advice we welcome any retention of Legal aid for those who need it most.

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.

[Empty response box]

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 [X] No

Please give reasons.

We are extremely concerned about the withdrawal of most of what is being suggested. This represents a fundamental attack on one of the cornerstones of the Welfare State and is so illogical that it can only be based on an ideology of breaking up the welfare state. In relation to debt, this is being proposed at a time of rising unemployment and subsequent rise in debt levels. At the same time all other sources of funding for debt advice are disappearing. Only providing advice at a crisis point e.g. repossession goes against all good practice of proactive help. We accept that much of debt advice is not of a complex legal nature - but has radical outcomes for clients. The proposal is inaccurate and disingenuous in assuming that the Money Advice Trust provides debt advice, and that National Debtline can fill all the gaps - as its own funding is likely to reduce.

In a similar way, there is no funding anywhere for welfare benefits advice, withdrawing legal aid automatically excludes those in most financial need.

In relationship to employment advice. The government is being disingenuous to claim that the result of being dismissed unfairly or discriminated against in the workplace is of relatively low importance to a client. It also demonstrates a lack of contact with current realities, when employment is due to rise sharply as a result of other public spending cuts.

Again it is not true that there are other sources of funding. It should be noted that ETs, even though they were designed to be 'non-legalistic' and the client can self represent, there is still a need a considerable degree of advice for a client before they can self represent.

We welcome the fact that most housing issues remain within 'scope', but it seems bizarre that housing related debt is 'out of scope'

We are fundamentally opposed to the removal of social welfare law from the scope of legal aid. Even taking the most charitable view of some of the changes to the provision of welfare services in the coming years, there will be a need for legal advice so as to assist the poor and the vulnerable to challenge the inevitable mistakes that will be made in implementing these new systems.

It is however our view that the kinds of changes being proposed, like Universal Credit, are ideologically based and aimed more at rolling back the state than providing welfare.

It is therefore criminal to then withdraw legal advice and assistance just at the time when people will need to challenge what is inevitably going to be poor quality and low cost decision making.

The general theme of all the exclusions seems to be that the importance of the subject area is based solely on the complexity of the legal issues. This completely disregards the needs of the person who is seeking advice - so that anything relating to debt and benefits is considered to be of little importance - even though the outcome might be that people end up committing suicide because they cannot access free advice when they most need it.

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.

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.

We have touched on this above.

Debt and welfare benefits advice is a good example. At the same time that Legal Aid will be withdrawn for these subjects all other sources of funding for 'not for profits' will have disappeared e.g. Financial Inclusion Fund, Local Authority funding etc. At the same time there is going to be a sharp increase in unemployment and subsequent financial problems.

The government will achieve its savings at the cost of hundreds of thousands of individual people with families and dependants desperate for advice on debt, benefits, employment and all the other issues that are being excluded from 'scope' that they will not be able to access. We believe that this constitutes an attack on people who face the most need.

As a result of the proposed changes we will expect to see a rise in stress related illness, mental illness and suicides.

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.

We do not believe that all members of the public will wish to use this method to access their legal aid advice. Many people who are not particularly articulate or literate or confident for a variety of reasons about using the telephone rely on being able to access face to face advice whether it is from their High Street Solicitor. We believe that CLA has a place but, if used as a single point of entry to the legal advice system, will compromise client choice in how best to deal with the issue at hand. Referrals to specialist agencies from CLA will easily get lost. A centralised system for the control of legal advice referrals seems clunky and mitigates against any idea of a client centred/focused service.

Too many of our most vulnerable citizens are unlikely to get effective advice over the phone due to difficulties with communicating or because of cost.

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.

As above, this would exclude many people who are not confident about using the telephone to conduct complex conversations on their advice needs. The CLA helpline is a valuable component of a menu of ways of accessing legal advice.

Making this service universal would intentionally exclude many people who need advice the most.

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

The obvious factor is what real potential clients want - some will be confident to use the telephone and other electronic means and others will want to be confident that they can speak face to face with another human being. In business, this is starting to be recognised - call centres are making much more effort to provide a 'human' contact.

It would be a naïve and retrograde step for the government to over rely on non face to face advice when there is a move in other sectors away from purely impersonal means of communication

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

The Law Society - with input from Regional Law Societies

Law Centres Federation

Citizens Advice

Advice Services alliance

AdviceUK

LAPG

Other lawyer based organisations as appropriate e.g. particular legal speciality, client group

Regular meetings - virtual, online consultations etc.

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.

This will be an inappropriate use of tax payers money and will decrease the telephone resources available for free advice.

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.

Those in receipt of benefit should be passported through the capital rules on the basis that entitlement to means tested benefits shows a claimant has limited resources. If there are any savings it will more likely have to be used for serious emergencies that will have a greater impact on the claimant and their family than those whose income and capital is much higher. I do not agree that we should be discouraging people from saving for unexpected eventualities. For those without savings, emergency expenditure most often has to come from private sector lending and, increasingly, pay day or unregulated doorstep lending.

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.

For the same reasons as above.

As a free to the client service we do not agree with this. If there has to be a charge it should be lower. £1000 is a very low threshold and if this is the only savings someone has, £100 is a significant amount, especially if someone is seeking advice on debt or welfare benefits

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.

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.

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.

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.

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.

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.

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.

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.

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.

Obviously not, Even in the not for profit sector it is virtually impossible to make contracts pay at the current rates so an overall reduction of 10% would be very damaging. In effect this would be yet another way of dismantling legal aid by forcing even more providers out of business.

Any restructuring should look to providing a fair payment for work done.

The current contract does not pay as it is. A 10% reduction will likely lead to more providers closing

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.

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.

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?

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.

We do not disagree with more use of electronic working and in the Not for Profit sector we are used to doing this as long as sufficient investment in systems is provided so that they do not fall down and create greater administrative problems.

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

The administration of Legal Aid should be drastically simplified, and we welcome the fact that the LSC is being disbanded in its current form. Over the last ten years many millions of pounds have been wasted in futile initiatives and top down approaches to legal advice. In addition, the LSC has created a bizarre, labyrinthine set of layers of criteria to measure contract performance. This has created ridiculous scenarios where several highly paid staff will be spending time to reclaim 'overpayments' which sometimes amount to only a few pence.

Provision of legal aid and therefore access to justice should not be cut. It is too important that we allow the poor, the destitute and the vulnerable access to legal advice and support in order to avoid the possibility of being taken advantage of by either public or private bodies in the denial of rights or services that they are entitled to

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.

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

About you

Full name

Pete Lowen

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

Company name/organisation (if applicable)

Address

Postcode

If you would like us to acknowledge receipt of your response please tick this box (emailed responses will be acknowledged automatically).

Address to which this acknowledgement should be sent, if different from above