



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.

Before setting out our response below we wish to confirm that this response is submitted by Gloucester Law Centre, a member of the Law Centres Federation (LCF), the umbrella body for Law Centres nationally. We have seen and fully endorse the response submitted by the LCF, to which we have contributed. To avoid excessive duplication we refer to and adopt the LCF response except where we wish to make additional points or reinforce the points it makes. We have also had sight of responses from the Housing Law Practitioners Association and the Immigration Law Practitioners Association and fully associate ourselves with and endorse the views expressed in those documents.

Q.1

These are all areas of law where specialist advice and representation is vital in enabling individuals to enforce their rights and/or to hold public bodies and departments to account. However we wish to make it clear that in supporting retention of these matters within the scope of the scheme we are not in any way affording them priority over the matters proposed to be taken out of scope.

We particularly endorse the continued funding of discrimination cases and judicial reviews.

We concur with the views expressed by the Law Centres Federation in their response to the consultation document that there is a pressing public interest in preserving this type of assistance.

We agree with the LCF that the rights underpinned by the anti-discrimination legislation (reinforcing the principle of equality and distinguishing people by merit alone) and the capacity to seek judicial intervention in public decisions, are fundamental to a democratic society. It is not enough to have the laws. It is only by enforcing those laws that individuals, corporations and public bodies will observe the rights they accord.

However as the LCF points out the retention in scope of discrimination claims raises an important issue about cross claims. As providers of specialist employment law services currently we confirm that an overwhelming number of employment discrimination claims cut across more than one cause of action. It is common for a discrimination claim to be combined with an unfair dismissal claim, and a third and/or fourth claim such as redundancy payment, breach of contract, working time or wages. They are all litigated in the same claim. In such cases surely it would be impractical for public funding to cover just the discrimination element. A solicitor would be negligent not to advise on the full range of potential claims and, as many of the claims stem from the same or related facts, it would be senseless to break the claims up and take them all separately. Even if this was done, the Tribunal would move to consolidate them. Although we are toally opposed to employment law matters being taken out of scope and deal with this more fully at the appropriate place in the consultation paper, we propose if this nevertheless goes ahead that where part of a claim remains in scope provision should be made to bring the otherwise excluded element back within scope so as to avoid the bizarre situation of an individual being able to pursue just one part of an action.

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.

We believe that this proposal has not been properly thought through, for the reasons set out by the LCF which we endorse. Whilst the proposal itself has some merit, it will only succeed in practice if legal aid remains available to the party seeking such an order.

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.

We are totally opposed to these proposals. Whilst we are not able to comment in detail on the proposals with regard to family ancillary relief cases as we do not practice in family law, we note that far more of the legal aid budget is spent on family law matters than the other areas of social welfare law. The social welfare law budget is a very small percentage of the overall budget and is under control and yet if the proposals are adopted the majority of social welfare cases will no longer be in scope. We have seen the LCF's detailed response to this question and strongly endorse and support all the points made in that response, both on the overall justifications given in the consultation paper and in relation to the specific casework areas. Of the areas proposed for removal from scope we deal with welfare benefits, housing, employment and immigration, and comment as follows:

In the case of welfare benefits, we strongly reject the suggestion that these matters are of lower objective importance, because they are essentially about financial entitlement, than other matters proposed to remain in scope. For those clients who need advice and representation in relation to challenging incorrect welfare benefits decisions these are issues of paramount importance. As the LCF rightly points out, Law Centre clients needing help with benefits issues are often at the very periphery of society. Many have emotional or mental health problems; language and communication difficulties; education or literacy limitations; and / or alcohol or substance abuse issues. Under no objective measure would these individuals ever be in a position to present their own case. Law Centres and other local not-for-profit advice agencies are often the place of last resort where those who cannot find help elsewhere and who cannot help themselves come for assistance. The consequences of such clients being unable to access help to obtain their correct entitlements can be extremely significant and costly to the public purse. They may fall behind in their rent or other debt repayments; they may be unable to properly provide for themselves or their families; they may be more likely to be inclined towards criminal or other socially unacceptable behaviour; their health and particularly their mental health and well-being may suffer and ultimately they may be forced into a situation where they are subjected to expensive legal proceedings (for possession of their property or for removal of their children). It is difficult to see any justification for suggestion, as the Green Paper does, that welfare benefits matters have no objective importance. Even were this the case, there are compelling arguments for the retention of cost-effective specialist publicly funded help given cheaply at an early stage to resolve problems which would otherwise escalate at huge cost to civil society and to the public purse. The list of suggested alternative sources of help does not bear scrutiny. Jobcentre Plus and the Benefits Enquiry Line do not provide legal advice. We understand that the Free Representation Unit, AgeUK and the Disability Allowance have all contacted the Ministry of Justice or made public statements confirming that the document gives a misleading view of what they can deliver. CPAG does not provide advice direct to clients but only a specialist helpline for advisers. Pro Bono providers cannot and will not replace the services currently available. Pro Bono schemes rely on fully resourced organisations to provide professional indemnity insurance, premises to host the service, administer it, make the appointments, receive the clients, and most importantly, to train the volunteer lawyers in the areas of law that are relevant to the clients problems. Most Law Firms do little, if any, work in the areas of poverty law. They rely on our expertise to support and

supervise their activity.

In relation to housing law whilst we note that some types of cases will remain in scope we do not agree with the removal from scope of a wide range of issues. The right to housing and to take action to defend that right or to enforce obligations of others in respect of that right is a basic human right in a civilised society and citizens should not be deprived of that right merely because of lack of means. We fully endorse the views on the LCF in their consultation response in relation to the proposals to remove large areas of housing law from scope. In particular we object to the proposed removal of legal aid for a number of areas of law in relation to private sector tenancies, for example breach of quiet enjoyment and, although not specifically referred to in the consultation document, presumably civil actions in relation to harassment and unlawful eviction. It is our experience that landlords in the private sector frequently ignore their legal obligations towards tenants and if tenants are unable to challenge this behaviour effectively the protections given in law to tenants become meaningless. The potential costs to other public authorities of allowing landlords to ride roughshod over tenants' rights should also be taken into account. We have frequently been approached by private tenants who have just that day been unlawfully evicted by a landlord who has simply changed the locks without due process of law. Using Legal Help funding we have often been able to contact the landlord and threaten legal action unless the tenants are readmitted forthwith, and have often been able to resolve the problem in this way very cost-effectively and without recourse to the courts. Without specialist intervention by solicitors who can back up threats of action with the issue of proceedings the landlord's actions would almost certainly not be effectively challenged, and the tenants may then require help and assistance from various public authorities, e.g. housing, social services, health etc at very significant cost to the public purse. As locally-based providers we are known to landlords in our area and they know that we will take action against them if they don't comply with the law. Similarly the removal from scope of homelessness reviews seems extremely shortsighted and unfair. Homelessness law is extremely complex and often poorly understood by local authority housing officers, leading to poor decisionmaking. Homeless clients are typically vulnerable and unable to cope with even simple official matters let alone complex legal issues such as are involved in homeless reviews. Early expert intervention will frequently resolve such cases in a cost-effective way, either by the local authority accepting a duty or by the client being advised that there is no merit in the case. Without such advice there is likely to be a substantial increase in homelessness appeals with all the associated costs to the public purse.

The suggested alternative sources of advice are largely illusory. Shelter has confirmed that it was not consulted by the MoJ before its name was included in the paper, and that the suggestion that it is an alternative source of advice quite simply incorrect. Shelter is funded to a very significant extent by legal aid contracts and stands to lose almost half its entire funding if the proposals go ahead. On this basis it has confirmed that it could not possibly fill the gaps left by such major cuts. The suggestion that the Local Government Ombudsman could offer assistance in any meaningful way in the face of the cuts proposed is simply laughable. Local authority in-house services are facing spending cuts and where they do still exist are not equipped to provide specialist legal advice. There are also conflict of interest issues.

Turning to employment law, the impact both on the public purse and on the individuals concerned of unresolved employment disputes is enormous and we reject the suggestion in the consultation document that such matters are not sufficiently important to merit support from legal aid because they are primarily financial in nature. As with the other areas of social welfare law already dealt with above, early effective intervention by specialist advisers can resolve issues which would otherwise become entrenched and lead to a variety of other problems. The authority of a lawyer providing advice to an employee, addressing unrealistic expectations of redress, setting out the law for employers, who are not always aware of their obligations, giving a clear explanation of the law enforcing the rules and achieving a compromise can reduce the time spent on casework. Where compromise with the employer cannot be achieved, the submission of a convincing claim from a professional source will often be sufficient to make the employer discuss, consider options, negotiate and compromise. Where there has already been job loss, re-engagement or reinstatement can be achieved. It has been suggested that ACAS can provide the shortfall in advice and reconciliation and achieve settlement, but this is not realistic and could not be achieved without a significant change in ACAS terms of reference and a very substantial increase in funding. ACAS conciliators work with Law Centre lawyers to achieve settlements, but ACAS is not permitted to advise either party on the merits of their case or relative merits of settlement. Employment law is extremely complex and any adviser, whether from ACAS or elsewhere, needs to take detailed instructions and consider very technical statutory provisions and caselaw before being able to advise competently. We would suggest that transferring responsibility for this work to ACAS would be far more expensive than the current modest legal aid spend of £4 million, particularly as this figure includes discrimination claims which will continue to be funded through the legal aid scheme. As

already mentioned in our response to Q1 it makes no sense to separate out discrimination matters from other employment law issues, as cases are rarely straightforward and often include a number of linked but distinct issues. Problems in the workplace can, if not resolved, lead to health problems such as stress and depression, debt problems, homelessness and accommodation problems, welfare benefits problems, and problems with family breakdown. We strongly reject the claim in the consultation paper that Employment Tribunals have easily accessible and user-friendly procedures. Employment law is much more extensive and complex than when employment tribunals were established. At that time we did not have all the regulation relating to employment contracts, working time, national minimum wage, family and dependants rights, maternity rights, protection for whistleblowers, rights in relation to TUPE transfers, redundancy information and consultation provisions. Even in relation to unfair dismissal which did exist in the early days of industrial tribunals, there have since then been hundreds and hundreds of cases refining the concepts relating to the substantive issues, the procedural issues and the issues relating to compensation. Far from being user-friendly, procedures in the Employment Tribunal have developed over the years to become extremely complex and technical, with strict procedural rules which the types of clients Law Centres typically advise could not possibly deal with. The consultation paper suggests that Trade Unions may be able to assist members with workplace problems, which is clearly true. What the paper overlooks however is that under the current legal aid funding regime providers are not permitted to take on cases where an alternative source of funding is available. Union members are always therefore in the first instance referred to their union for help. Only where help is unavailable or declined, or the assistance given is of poor quality (as regrettably is frequently the case) are we able to assist using legal aid. Our clients therefore are by definition from sectors which are not unionised, for example generally low-paid workers such as cleaning company employees, catering workers, hotel workers and employees of small businesses.

We also oppose the proposals to take out of scope most immigration work. In common with the other areas of social welfare law proposed to be removed from scope, failing to address immigration law matters effectively at an early stage will not mean that they go away. Far from being merely issues which result from "personal choice", there are very serious matters at stake in many immigration matters. As the Immigration Law Practitioners Association ("ILPA"), of which we are members, stated in its initial response to the consultation paper,

"Immigration and asylum support cases concern:

*whether people are allowed to join or remain with spouses, partners, children and parents;

*whether people will have to leave the country in which they have lived for years, sometimes for decades, often as a result of someone else's decision, for example a parent or former spouse or partner, including cases in which they will be leaving close family members behind.

*whether a person who has fled domestic slavery can live safely in the UK away from those who abused them.

*what happens to a person when a relationship breaks down, including as a result of domestic violence;

*what happens to children whose claims for asylum having failed, cannot be returned to their country of origin because their safety and welfare cannot be guaranteed;

*whether a person is entitled to a roof over their head and something to eat or will be left destitute homeless and hungry. This is the specific subject of asylum support decisions where the test of eligibility for support is imminent destitution.⁷ The courts have highlighted that in such cases Article 3 of the European Convention on Human Rights may be engaged."

Immigration law is extremely complex, both conceptually and procedurally, and may involve consideration of both domestic and European law. Tribunal procedure and practice in these cases is, as in the other casework areas dealt with above, both complex and formal, and no immigration lawyer would recognise the description in the consultation paper as "user-accessible". Immigration Tribunal judges have repeatedly stressed the importance of having competent representatives for both parties to enable the Tribunal to do its job. Increasing the number of unrepresented appellants appearing in Tribunals will inevitably lead to more and more adjournments, at great cost to the Tribunals Service as well as leaving appellants with prolonged uncertainty about their cases. As with the other social welfare law areas, it is likely that more cases will proceed to appeal, as there will be no experienced advisers to weed out cases with little merit at an early stage. As ILPA point out, unrepresented appellants are ill-placed to identify points of law that they can properly rely on, but equally they may seek to advance other points, requiring tribunal judges and judges to

wade through copious evidence and letters by way of pleadings only to discover that no arguable point of law is being advanced.

We note that no alternative sources of help are put forward at all for immigration advice.

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.

If the scope changes are enacted, which we sincerely hope will not be the case, then we agree that a new scheme for funding cases as described will be desirable. However we have concerns about the viability of any such scheme as it pre-supposes that there are any specialist suppliers left who would be able to deal with such cases. The proposals as regards removal from scope, combined with the single gateway proposals and the changes to financial eligibility will if enacted mean the closure of most not-for-profit specialist organisations such as Law Centres and it is unclear who will be left to take on these cases.

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.

Please see the LCF response to this question which we endorse and support.

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 believe that there are a number of probable effects, all of which are negative:

1. Many people who have justified and strong cases will not pursue them because they are intimidated by the formal nature of court and Tribunal proceedings
2. Others will pursue cases of little or no merit because they are unable to obtain advice at the outset, thus wasting time and public money
3. Even where people with strong cases do manage to engage with the process of litigation it is likely that they will not be able to prepare cases properly, thus leading to adjournments of hearings and clogging up of the courts and tribunals at much increased cost.

We endorse the submissions of the LCF in response to this question.

As the LCF rightly states, Law Centre clients are, on the whole, different to those seen by private practice solicitor firms. Many of our clients have mental health problems, learning difficulties, substance dependency

issues, language or communication difficulties and already live on the periphery of society. They are the most vulnerable; the most excluded; the least likely to be able to help themselves unassisted; and the least likely to be able to even begin to be able to litigate in person. We understand that Judges and Tribunal chairs have expressed extreme concern about the ability of courts and tribunals to cope with increased numbers of unrepresented litigants should these proposals be pursued, and we fully endorse and support those views.

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 oppose strongly the proposal to establish a single telephone gateway. Whilst we accept that telephone advice can be useful and appropriate for some clients, many of the clients we currently advise in the social welfare categories of housing and welfare benefits are less likely than the population as a whole to be able to cope with accessing services in this way. Often they are unable to understand paperwork which has been sent to them and cannot explain it over the telephone, or have mislaid it, or have language difficulties. The consultation paper rightly points out that some people find it difficult to take time out of the working day to visit a lawyer, but equally many clients insist on being seen in person, for the reasons set out above amongst others, and there are serious equal opportunity implications in the proposal. Many of our clients do not seek advice as soon as an issue arises, so by the time they do so they have amassed a large amount of paperwork and need face-to-face advice to sort through this and identify the relevant issues. The proposal states that the single gateway will provide a simple straightforward way of accessing civil legal aid access but our view is that for many it will in fact just put up further hurdles for vulnerable people already under a lot of stress who just want a local provider they know and trust and can visit in person. Many clients could not afford to ring a telephone gateway, as they only have pay-as-you-go mobile phones, or have language, education, social or other difficulties which would prevent them accessing such services. Difficulties already arise when trying to contact clients who have no credit left on their phones and cannot receive calls or retrieve messages, and these problems would be greatly amplified in a telephone-based service.

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.

For all the reasons given above we consider that telephone helplines are not appropriate for the delivery of specialist legal advice and representation. As the LCF response points out, many of our clients do not seek advice as soon as an issue arises, so by the time they do so they have amassed a large amount of paperwork and need face-to-face advice. The proposal states that the single gateway will provide a simple straightforward way of accessing civil legal aid access but our view is that for many it will in fact just put up further hurdles for vulnerable people already under a lot of stress who just want a local provider they know and trust and can visit in person. A typical law centre client may have educational or learning difficulties and also mental health or substance issues. They do not really understand the situation they find themselves and are wholly unable to properly explain the situation to an adviser. It is often only in a face-to-face meeting that the adviser can sit with the client and review the various documents and frequently un-opened letters brought by the client in a carrier bag that allows the adviser to (a) understand the nature of the case and (b) determine whether it is suitable for legal aid.

Further we believe telephone advice is not suitable for advice where a complex dispute has already arisen and there is a complex factual scenario to get to grips with. If discussions are going to be long, face to face meetings are better for taking in complex information. In many cases there has to be more than one meeting to properly discuss and investigate everything. Furthermore, complex employment law issues are generally "document heavy" and they will generally involve lots of papers, which need looking at. Often these have to be looked at without the client present, but even being able to glance at them when they are present is helpful and this is of course not possible if advice is over the telephone. Presumably clients would be

expected to forward their papers to the specialist telephone adviser who could be located anywhere in the country. Many of our clients are unable to cope with being asked to deliver or post to us a single document, and it is difficult to imagine how they will manage. It might be necessary for them to first take copies of all their papers so that when speaking with their adviser they can look at the documents being referred to. The costs of posting documents might also be prohibitive and we would anticipate many clients giving up at this stage.

It is also unclear whether properly delivered telephone specialist advice would be significantly cheaper than face-to-face advice as is claimed, as no evidence for this claim is provided.

Very importantly in our view not only will the gateway and telephone specialist advice proposals, if implemented, deny hundreds of thousands of people access to advice services, it will also destroy locally based and run not-for-profit advice centres like ours. This will undermine and in all likelihood destroy localised networks of advice agencies, community groups and charities which reach out to the most vulnerable in our society and which seek to ensure that they have access to the services they need.

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

For the reasons set out in the replies to questions 7 and 8 we consider that face-to-face advice should continue to be available as a client choice. We further consider that it would not be possible to develop any sort of clear, simple, objective and transparent test as to when a client "qualifies" for face-to-face advice, and any attempt to impose a single gateway in the manner proposed would result in more and more clients falling through the net and not receiving the advice they need. Local networks which have built up over many years will disappear and many more vulnerable people will be denied access to justice.

However if the proposals are taken forward despite the overwhelming arguments against them, then the factors to be taken into account must include complexity of the issue on which help is sought, communication difficulties (both in relation to access to phones and IT and in relation to language and illiteracy problems), vulnerability of the client and the likelihood of failing to engage with telephone services, lack of resources, cost and comparative value for money, and the client's inability to act on advice given and potential repercussions of this. It is difficult to see how an appropriate test could be developed without the scope for huge variations and inconsistency in application and resulting unfairness to clients

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

It is vital that any organisations working with CLA are specialists in their fields with a proven track record, a clear understanding of the needs of the client groups we work with and a commitment to quality. This might seem obvious and not needing to be said, but anecdotal evidence about previous private companies with contracts to supply telephone advice indicates to us that quality and service to the client were secondary to the profit motive.

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.

Please see the LCF's answer to this question with which we agree.

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.

We are opposed to this proposal which we consider would act as a further deterrent to clients who are already economically particularly vulnerable. Legal aid should not be viewed as an optional extra for clients on passporting benefits but as an essential part of the support available in a civilised society. The additional costs to the fund of a means assessment being carried out for every client in receipt of a passporting benefit would in all likelihood cancel out any gains achieved by excluding clients who currently qualify. Those clients who are excluded will not of course in most cases be in a position to pay for advice and will therefore be unable to obtain access to justice.

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.

We are most vehemently opposed to this proposal for both reasons of fundamental fairness and also because of the extreme practical problems involved in providers trying to collect these payments. Of all the proposals in the paper this is one which we find the most objectionable in its clear intention to deter those clients whose cases remain in scope (and therefore by definition are considered to be of great importance to the client and to society generally) from actually pursuing their cases. As the LCF state, "this is designed as a punitive proposal aimed at the very poorest in society". We strongly agree with the LCF's assertion that "It is intended and acknowledged to disincentivise legal aid take-up in the context of proposals which also seek to make legal aid available only for the most serious and complex of cases where it is clear, on the basis of the MoJ proposals, that individuals will not be able to resolve problems themselves or where alternatives to legal aid are unavailable – or indeed where those individuals are seeking to assert or protect fundamental human rights."

Presumably "capital" in this context includes money available at any given point in time and therefore includes regular income as well as what is generally thought of as savings. At any given point in a month a client with children who for example has just been paid, just received benefits and tax credits but not yet paid rent or living expenses could have, for a very short period, £1000 in a current account. This is however simply a snapshot in time and two weeks later there may be very little left. In these circumstances it would be unfair in the extreme to expect such a client with an urgent problem to pay £100 before receiving advice and assistance.

The problems associated with providers attempting to collect these contributions are well described in the LCF's response. An additional problem we would foresee would be where a provider charges £100 prior to giving advice that in fact on the basis of the facts as presented the client does not have a case. We would be seriously concerned at the risks to advisers charging what is a very substantial amount of money and then telling the client that the case should not be pursued.

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.

As the LCF points out in its response to this question, there is a world of difference between having capital tied up in property and being able to access that capital. For clients eligible for legal aid, who are by definition on very low income it is likely to be impossible to free up capital short of selling their property, which seems a disproportionate expectation.

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.

Please see the LCF answer to this question with which we agree.

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.

We accept that if the proposals as to capital limits are adopted some sort of waiver scheme will be necessary. However the suggested scheme will create a whole new bureaucracy and we would not be surprised if it cost more than it saved.

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.

Please see the LCF's comments

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.

The contribution levels are already in our experience too high and many clients struggle to meet them

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.

Neither - the contribution level should not be increased.

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.

We are not responding to the questions on criminal legal aid

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.

The fee levels are at the moment too low and not-for-profit organisations already struggle to deliver high quality advice within the existingscheme without subsidising LSC funding with other income. We strongly endorse all the points made by the LCF in its response to this question. As we have already stated the social welfare law part of the legal aid budget is small, not expanding and under control, and is extremely cost-effective in terms of the benefits delivered by every £1 spent. It makes no economic sense to impose such a cut which will, along with the other changes proposed, make it increasingly unlikely that not-for-profit agencies will be able to survive.

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.

Please see the LCF response to this question

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.

Please see the LCF response

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.

Please see the LCF response.

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.

Please see the LCF response

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.

Whilst we accept the need for some regulation we do not wish to see a situation where, in appropriate cases, a legally aided client should not be able to instruct the same experts as paying clients.

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.

We endorse the LCF's comments on this proposal.

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.

Neither of these models are acceptable for the reasons set out in the LCF's response

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.

Please see LCF response to this question

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

- Yes
- No

Please give reasons.

Please see LCF response to this question

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?

Please see LCF response to this question

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.

We are not persuaded that there is any advantage to such a role and endorse the LCF's comments.

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 system of standard monthly payments should be retained as these are in any event linked to cases billed but allow for slight seasonal variations and are simpler for the LSC and suppliers to manage.

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 are ready and willing to work in this way but there must be no additional costs to us and all systems must be rigorously tested with our software suppliers to avoid some of the nightmares associated with the 2007 changes.

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

Please see the LCF's response

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.

The impacts sections are poorly written and appear to be based on imperfect understanding of the difference between legal help and certificated (ie. licensed) work. On the whole the conclusions reached appear to be glibly in support of the proposals without any proper consideration of the true potential consequences of the changes. We endorse the LCF's response to this question

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

Yes No

Please give reasons.

There are some sections of the impact assessments which do clearly identify some of the potentially very serious impacts such as less fair outcomes, reduced social cohesion, increased costs for other departments etc. It is however extremely disappointing that the overall tone of the document seems to suggest that these are discounted as being the necessary side-effects of achieving the Government's overall macroeconomic objectives. The impression is given that the document pays lip-service to the negative impacts of the proposals in order to tick a box saying that an impact assessment has been carried out, without any proper evaluation. We agree with the LCF's response to this question

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

Please see the LCF's response.

About you

Full name

Chris Hill, Chair of Trustees

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
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Date

10th February

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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