



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.

Any interference with provision of legal aid, that results in the litigant being unable to pursue a claim because he or she is ill equipped to do so, constitutes a violation of Art 6 ECHR.4.46 You will violate Art 1 P1 ECHR if you do this. Just because a public body is involved shouldn't grant them immunity by the back door. Regularly people in dispute with a local authority are in dispute over state benefits and these people are passported to legal aid. If the scope of the dispute is removed from the roster you are violating Art 6.4.52. Such a suggestion simply confirms the disregard that the UK government gives to human rights. The use of the word "serious" should be removed. ANY HR violation is actionable - and if the person litigating is of modest means then this provision would deny him access to due process. Art 6.4.62. Correct in relation to Art 8. However "immediate" is misleading as early action averts subsequent action that becomes a crisis. In any event the speed with which the LSC turns around applications is usually so slow that anything requiring immediate action is usually difficult to litigate.4.79 Where there is a direct correlation between inaction in the case of for example housing benefit grant and subsequent homelessness, this provision directly violates the applicants Art 8 rights.4.98 Untrue - where JR is bought in homelessness cases the applicant van be particularly vulnerable and ill equipped to present a JR application let alone a successful one, noting that JR is notoriously difficult to do as a LIP4.99 There is an outstanding issue of "business being barred from legal aid" as several business issues affect the personal well-being of an individual (eg where criminal proceedings could ensue or where the effect of action of CA 2006 affects a director's family). This has direct impact on his Art 8 rights. Therefore barring "business" matters is (and always has been) disingenuous.4.144 This constitutes a direct violation of Art 6 ECHR. If a case is complex it only gets more complex on appeal. It is therefore fantasy to suggest that an appellant who is funded in the lower court should not be funded in the appeal court. This is merely a device to circumvent the right of appeal. Legal aid for applications to ECtHR is provided by that court not the UK. Fortunately the same hoops to jump through are not evident

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.

The role of the court is to adjudicate and, through ancillary relief, reflect an element of responsibility of each of the parties. Such a lump sum arrangement constitutes pre-judging.

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.

4.148 CFAs merely promote (1) "ambulance chasers" and (2) litigation in general.4.153 In social security matters the Tribunal is required to be used as a court of first recourse. However in complex matters advocacy is necessary. This promotes injustice, so a discretionary provision should be available.4.172 So where does Art 1 P1 come in then? This is disingenuous4.203 The assertion that an immigrant with an interpreter would be able to represent himself as a LIP is flawed. If ever there was an argument in support of providing a LSC funding certificate it is to someone who does not understand our legal system4.215 This is such a big issue as to deserve a consultation in its own right. For the purposes of this submission the proposal is a defective argument.4.217 To someone on state benefit the description of "minor importance" is highly insulting. Where someone is living hand-to-mouth on state benefit they are inherently vulnerable. Because of the very small number of lawyers who can now offer social security support this merely exacerbates the situation. This proposal is therefore simply eroding yet further the ability of recipients of state benefit to get their benefit.4.239 Tort in relation to failure of statutory duty is something that if funding is removed gives the state carte blanche to abuse the more vulnerable in society. "False imprisonment" is a violation of Art 2 and this is one of the most serious violations. Since when has the UK derogated from this??I do not agree with the proposal to remove most family law from the scope. Very few family law cases actually end up in court and mediation has to be tried before applying for Legal Aid. Removing legal aid in this area will result in many people being unable to afford access to justice through the courts.I do not agree with the proposal to remove most debt cases from the scope. The benefits of debt advice are not in doubt – robust research has demonstrated that debt advice leads to improved financial circumstances, better health outcomes, improved relationships (especially with dependent children) and greater housing stability. Alternative sources of face-to-face advice are already over-subscribed and will not be able to absorb the extra demand caused by the removal of legal aid for debt cases, and telephone advice is not suitable for many clients, especially the most vulnerable and those who are least able to manage their affairs. I do not agree with the proposal to remove employment cases from the scope for legal aid. Removing access to legal advice will leave distressed and disadvantaged employees unable to challenge unlawful actions by employers, often leading to severe financial difficulties following the loss of employment. For many people this will lead to claims for income-replacement benefits and/or social housing, increasing the overall pressure on the public purse.I do not agree with the removal of housing issues from the scope. There is already a substantial shortfall in supply of housing advice; demand is so high because security of tenure issues, disrepair, re-housing and other housing related problems can be fundamentally damaging to an individuals or a families well-being.I do not agree with the removal of these immigration issues from scope. Many of these cases will involve issues of family and residence which are fundamental to well-being. They also fail to recognize that however 'user-friendly' the immigration appeals tribunal system aims to be, the law that governs decisions is not. The Tribunal experience is very intimidating for clients.I do not agree with the removal of welfare benefits cases from scope. The impact of low income on health and well-being are well known and include mental health, obesity and children with nutrition problems. A large body of evidence also links childhood poverty with poor educational attainment, reduced employment prospects and a much higher chance of experiencing poverty as an adult. Access to welfare benefits advice is often the only way that many vulnerable individuals and families avoid destitution, debt and severe hardship. Most alternative sources of benefits advice are generalist, not legally qualified and not at a comparable level. Both access to and standards of benefits advice will be dramatically reduced.

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.

Because the UK is notoriously bad at upholding ECHR rights and if the test is necessary to meet [ECHR] obligations and compliance is itself being scrutinised (badly) then injustice will arise.

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.

Because although a case "may be suitable" this doesn't mean that a CFA can actually be achieved. A provision should be made that if it is clear that attempts have been made to secure a CFA but these have been unsuccessful that a LSC funding certificate should be granted

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.

It is at present extremely difficult if not impossible to secure support of a lawyer who has a CLS funding contract let alone secure a funding certificate. The number of lawyers in the south east who hold funding contracts for social security matters, for example, is dreadfully low, meaning that they were all handling large numbers of cases (so therefore not very well) and this added to the difficulties. Justice is not being done. These proposals make this situation worse.

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.

I do not agree with the CLS Helpline becoming the sole gateway to access to legal aid advice. This will impose further barriers for vulnerable people trying to seek advice, and will have a greater impact on people with low levels of literacy and numeracy, disabilities, mental health issues and for people who need to come in to talk to an advisor in person because English is not their first language. The use of a single-telephone based provider also removes the benefits of the local knowledge held within advice agencies. It is unlikely a single person answering the phones will have enough knowledge and experience to answer a wide range of legal issues which may be presented, where issues are not acted on at the outset the cost of resolving them at a later stage will be increase. Far better to have face to face advice at the outset.

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.

This would dramatically reduce access to justice. Specialist advice is essential to ensure that justice is not the sole preserve of the rich.

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

in more complex matters where the lawyer needs to see correspondence

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

Volunteer organisations such as Shelter; FFT, NBTA, ASS 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.

No because eligibility for LSC funding should be expanded not reduced

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 passported benefits have no assets apart from possibly their home. The proposed change would put them at risk of losing their home, as if they are not living in rented accommodation, this is likely to be the only asset they own. This would violate their Article 8 ECHR rights.

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.

What is "disposable capital" (as distinct from "disposable cash")? And in any event the people who seek a LSC Funding Certificate are the most vulnerable in society so they should be supported not raped for what little cash they do have.

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.

Again, this would put some of the most vulnerable in society at risk of losing their home, and would violate their Article 8 rights.

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.

As above

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.

There should be no increase in income based contributions

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.

There should be no increase

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.

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.

clients who can afford to pay for advocacy can afford to not have the interest on the account; therefore it is right and proper to draw this off to part-fund the LSC. However the use of client accounts is open to abuse and so a central account should be operated.

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?

9.30 The cost of access to justice is irrelevant. Art 6 ECHR is an unqualified right.

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.

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.

As usual only scant respect has been paid to Arts 6, 8 and Art 1 P1 ECHRMy understanding that losing ones home is the gravest of issues short of death.In addition the rights of children to have access to both parents is equally one of the most important things in our society.

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

Yes No

Please give reasons.

As above

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

About you

Full name

Pamela Smith

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

Community group of marginalised, disadvantaged people at risk of homelessness

Date

09 February 2011

Company name/organisation (if applicable)

Address

Postcode

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