



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.

We welcome the retention of these areas of law, but have a number of concerns-

1. In asylum cases will article 3 of the European Convention on Human Rights (ECHR) cases remain in scope?
2. The definition of domestic violence should be the government one of: 'Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 18 and over, who are or have been intimate partners or family members, regardless of gender or sexuality.' Family members are defined as mother, father, son, daughter, brother, sister and grandparents whether directly related, in-laws or step-family. This includes issues of concern to black and minority ethnic (BME) communities such as so-called 'honour killings'.

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 welcome this proposal, but have concerns over whether many people would be able to apply for this unsupported. It also does not cover the many cases in which there are insufficient assets or a party will not disclose his/her assets.

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.

As a general point removing these matters from scope could be in contravention of the ECHR and the EU Charter of Fundamental Rights.

LAG makes the following points on individual areas of scope:

Debt: LAG does not accept that adequate alternative provision for debt advice exists in the not for profit and private sectors to cover the loss of legal aid for debt cases. We also believe that early intervention in such cases is essential to prevent the threat of homelessness due to housing debt. LAG is suggesting that the provision of debt advice services form part of the cross-government review of social welfare law services discussed below.

Education: Due to the repeated failures of local authorities to fulfil their obligations to children with special educational needs, it is essential that these cases stay in scope. LAG is particularly concerned about the disproportionate impact of this cut on children with disabilities.

Employment: This is a complex area of law. The provision of legal aid saves tribunal time by ensuring cases are properly pleaded and prepared. This also assists in the conciliation process. LAG believes to remove legal aid for employment tribunal cases would be a false economy and might well lead to more discrimination cases being funded under the exceptional provisions.

Housing: The paper fails to recognise that actions it proposes to take out of scope, such as those in respect of disrepair, are frequently brought as part of proceedings to counter a possession claim. It would also appear that the paper fails to recognise that actions for quiet enjoyment and trespass are used to bring claims of harassment and/or unlawful eviction. LAG does not accept that there are adequate alternative sources of help. For example, the charity Shelter is quoted by the consultation document as such, but is in fact highly dependent on income from the legal aid scheme.

Immigration: Many types of immigration case engage human rights obligations such as those under article 8 - the right to respect for family life. The removal of immigration cases from scope might well be illegal.

Welfare rights: This is a complex area of law, which is likely to be subject to reform. This will increase the demand for legal advice from the poorest and most vulnerable members of the public. The government asserts that the public will be able to obtain advice from providers in the not for profit sector, but the impact assessment acknowledges that the impact of these proposals will result in a 92 per cent cut in legal aid funding for the not for profit sector. LAG is particularly concerned that this proposed cut will have a disproportionate impact on people with an illness or disability. We would also stress the importance of obtaining early advice on benefit entitlement before problems become more serious. Failure to obtain advice on housing benefit can eventually lead to the loss of the family home, resulting in a greater cost to the state.

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.

LAG agrees in principle with this proposal, but we would like more detail on the final scheme. We would hope that there would be an opportunity to express views on this. LAG is particularly concerned that the scheme has an element of independence in the decision-making process on the cases which qualify (see section 10).

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.

We agree as long as the conditional fee arrangement is a genuine alternative in the circumstances of the case. In LAG's view, the previous system of using legal aid as a loan worked well, but we recognise that the government does not wish to return to this.

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.

This will have a significant impact especially in family cases. LAG would predict a greater number of litigants in person in the family courts which will lead to an increased demand on judicial and other court resources. There is also the general problem across civil law in both tribunals and the courts of litigants/applicants contesting weak cases or not accepting offers of settlement as they have not had the benefit of legal advice.

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.

With questions 7, 8 and 9 LAG has general concerns. Prior to making any decision on telephone services, research needs to be carried out with the users and potential users of the legal aid system across different categories of law. Too often in legal aid the design of services is determined by the policy-makers and providers of legal aid services with no regard to the users' views on the accessibility and quality of services. LAG is also against providers and policy-makers getting together to draft a prescriptive list of criteria to apply to decide what type of service a client can expect. More regard has to be given to the needs of individual clients. We do not believe that savings in the legal aid budget should be made at the cost of legal aid clients having the choice over how they access the service.

LAG believes a telephone advice service would assist people in finding appropriate sources of advice and be able to provide initial advice in cases. We also believe existing Legal Services Commission and other government funding could be reconfigured to provide such a service, but we are opposed to it being a single gateway to access legal aid services. We also believe that the service should be seen as independent from government and be branded appropriately.

The findings of LAG's recent opinion poll on legal aid services indicate that the lowest social groups, while being more likely to qualify for civil legal aid, are the least likely to use telephone advice services (Social welfare law: what is fair?, LAG, 2010, p7). A survey recently undertaken by Law Centres of their clients found that 40 per cent were reliant on pay-as-you-go mobile phones. Legal aid clients also often have problems with comprehending and acting on advice. Any telephone gateway would need to be free to phone and be supported by open-door, face-to-face services based in local communities.

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.

If the scope changes were implemented as proposed most of the cases remaining in scope would be unsuitable for telephone advice. In LAG's view, specialists need to be practitioners undertaking cases and working in telephone advice only risks a loss of skills.

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

Clients should be entitled to the choice about whether they access legal aid services on the phone or face to face. Some clients will be content, for example, to use the phone even when court proceedings are imminent to instruct their lawyer (though the lawyer might not want this!).

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

LAG would like to see better co-ordination of services both locally and nationally, but as we have stated in our general comments the reduction of legal aid services through the proposed cuts in scope will not leave a viable national service.

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.

LAG would need more detail on what is proposed here as, as stated above, the proposed scope cuts would not make such a service viable.

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.

LAG believes that clients in receipt of a passporting benefit should not be subject to any further means test. In our view the vast majority of legal aid clients have no capital and those that do often have small amounts which are essential to pay fuel bills or to cover domestic contingencies such as repairs to their home.

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.

£1,000 is too small an amount to require a contribution. Low-income households might save this amount for fuel bills, for example.

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.

We are concerned that it is unlikely that reputable lenders would agree loans against the property of low-income people for the purposes of funding cases which would otherwise be brought under the legal aid scheme. We also believe this would be costly to administrate and would off-set any savings made.

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.

£200,000 is an arbitrary figure which would exclude householders in London and the South East. Also, property valuation is not an exact science and the answer to question 14 also applies here.

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.

Most legal aid clients would meet at least one of the criteria outlined and so we would suggest that it would be appropriate to make all clients eligible for the scheme, but the charge should be set at bank base rate plus 0.5 per cent subject to a maximum of eight per cent.

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.

Subject to the above.

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.

Such a charge would not be worth the damage it would cause to access to justice or the administrative costs of collecting it.

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.

The system would work much better for clients if the means test was aligned with the benefit rules.

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.

Subject to review.

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.

This would not be in the interest of clients.

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.

Option one seems to be more equitable to low-income clients.

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.

This seems to be a reasonable set of proposals which will simplify the fee system.

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.

No comment.

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.

We agree as long as provisions on sentencing are aligned.

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.

This makes sense.

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.

LAG is unsure if London firms need a London weighting or not.

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.

No comment.

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.

No comment.

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.

No comment.

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.

This figure is arbitrary and cannot be justified. Rates could be reviewed for the areas of work which remain in scope.

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.

Complexity of the cases and the market rate would seem to be the criteria which need to be considered.

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.

No comment.

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.

No view.

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.

No view.

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.

No view.

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.

No view.

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.

This all makes sense. LAG's main concern is that the fees set are adequate for well-qualified experts.

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.

Over the last year LAG has tried to gather evidence on the amount of money which could be raised from an IOLTA. This has proved difficult. Sources within the legal professions have estimated the amount which could be raised in this way, but these estimates have varied hugely from only £6m to over £100m. Based on the experience of Australia and the United States, LAG believes a midpoint between these estimates might be a fair assessment of the funds that could be raised in this way.

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.

We disagree with both options. No money from client account interest should be remitted to the government as this would be treated as taxation income and law firms would be discouraged from donating the money (some might well opt to pay it all to their clients). We would argue that income from client account interest should be used to provide access to justice in the areas of civil law lost from scope through a non-governmental organisation such as the Access to Justice Foundation or a similar organisation.

Notwithstanding the above, we oppose Model B more than Model A, as we believe a government scheme would be expensive to run.

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.

The idea of the use of client account interest for charitable purposes has been encouraged by the government and charities for some years, but LAG is only aware of a handful of firms which donate the money.

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

- Yes No

Please give reasons.

Such a scheme could work, but risks having an inflationary impact on damages awards.

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?

This would need to be subject to further consultation.

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.

If competitive tendering is introduced the main responsibility for quality will need to continue to be the contractor. LAG also believes that the regulators would be reluctant to take on this responsibility without compensation either directly or indirectly from the government.

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?

Decisions on eligibility should be subject to an independent appeals process. LAG is concerned that without this, decisions would be challenged under article 6 of the ECHR and that there is the danger of an appearance of bias which would undermine the rule of law, especially as the Ministry of Justice would be making decisions on the funding of legal challenges to decisions in other arms of government.

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.

Not applicable.

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

LAG believes there should be better feedback from the public who use the legal aid system.

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 LAG has stated in our general comments, we do not believe it is enough just to establish that much of what is proposed will have a greater impact on protected groups as it will break international law if implemented.

No assessment has been made of the impact on outcomes for clients.

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

Yes No

Please give reasons.

See general comments.

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

See general comments.

About you

Full name

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

- ATE Insurer
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 Claimant Lawyer
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 Defendant
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Date

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