



Ministry
of Justice

Civil Legal Aid

The Government's response to its consultation on the proposed transfer of the assessment of all civil legal aid bills of costs to the Legal Aid Agency

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November 2021

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Introduction

This document is the Government's response to its consultation on the proposed transfer of the assessment of all Court Assessed Claims to the Legal Aid Agency.

It will cover:

- the background to the response
- a summary of the responses to the consultation
- a detailed response to the specific questions raised in the consultation
- the next steps following this consultation response

Further copies of this report and the consultation paper can be obtained by contacting The Civil Legal aid team at the address below:

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Email: civil.legalaid@justice.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

1. This document sets out the Government's response to its consultation on proposals to transfer the assessment of all Court Assessed Claims to the Legal Aid Agency, which ran from 10 February 2021 to 10 May 2021 ("the Consultation").
2. The Consultation proposed the transfer of the assessment of Court Assessed Claims to the LAA on a permanent basis. For these purposes Court Assessed Claims mean costs bills between £2,500 and £25,000 which are subject to detailed assessment where no inter partes assessment is required.
3. Prior to July 2020 such bills were assessed by HMCTS. In July 2020 in response to the impact of the Covid-19 pandemic (amongst other things), upon the ability and speed in which HMCTS could process such bills we proposed that all Court Assessed Bills be assessed by the LAA and legal aid providers had the option to send to the LAA or HMCTS. From 17 August 2020 it was mandatory to submit these bills to the LAA. Currently the position as of January 2021 is that providers may choose whether to seek assessment of such bills from either HMCTS or the LAA.
4. The Consultation outlined the Government's provisional view that transferring the assessment of these Court Assessed Claims to the LAA would lead to a number of benefits for the LAA, HMCTS, and legal aid providers. These included increasing the speed with which bills are paid (alleviating cashflow difficulties for legal aid providers), saving the duplicated costs incurred by the LAA in checking bills assessed by the Courts, and freeing up HMCTS resources so as to facilitate court recovery (which remains of paramount importance).
5. The Consultation was originally due to close on 10 April 2021 but was extended to 10 May 2021 in order to allow respondents a reasonable opportunity to consider further information published on 8 April 2021.
6. We received nine responses to the consultation. The respondents included representative bodies representing legal professionals and other organisations involved in the delivery of legal aid services. A list of the organisations who responded is noted in Annex A.
7. The Government is grateful to the organisations and individuals who took the time to respond to the consultation. This document summarises their views in relation to the three questions we asked and sets out the Government's response and policy decisions in light of those views.

Summary of the Government's Response

8. Having considered the consultation responses, the Government has reached a view that the present position, under which providers may elect either to have their bills assessed by HMCTS or the LAA, should be continued for a further period of time, so as to enable the comparative merits of each route to be monitored, and to enable further data to be collected. This is the course which the majority of consultation responses favoured.
9. The Government's present intention is to maintain the current position on an interim basis until November 2022, at which point it will consider the further information, experience and data which it has been possible to collect, and then launch a further consultation over what the medium to long term position should be in relation to such assessments.
10. The precise timeframe within which the Government revisits the present interim position will be a function of (amongst other things) the further data, information and experience which it is possible to collate and the course of the Covid-19 pandemic.
11. The Government sets out a summary of the responses received below. Notwithstanding the Government's decision to continue the existing hybrid system for a further period (the course which the vast majority of respondents advocated), it responds further to certain of the concerns raised where appropriate.

Responses to specific questions

Question One: Do you agree with our proposal to transfer the assessment of all Court Assessed Claims to the LAA? Please provide reasons for your view.

12. We received a total of nine responses to question one, with all respondents disagreeing with the Government's proposal to transfer the assessment of all court assessed claims to the LAA.
13. Eight out of the nine respondents preferred that the Government continues for now with the existing hybrid option, whereby providers are given the options to send responses either to the LAA or to HMCTS.
14. All the responses have been fully reviewed and considered. We summarise below the key themes which emerged across those responses. The summary is necessarily non-exhaustive.

Advantages of LAA Assessment

15. A number of respondents noted that the availability of an LAA assessment route had, since July 2020, resulted in an increase in the speed with which bills were being assessed and paid, which was particularly welcome at a time when provider cash flow is under pressure as a result of the Covid-19 pandemic. For example, one respondent said that *'there have been positives in being able to have claims assessed directly by the LAA. The process is a lot quicker.'*
16. The same respondent also recorded that *"recent evidence suggests that over the last 6 months there is little difference in terms of the outcomes of the assessed bills, whether assessed by the LAA or the Court"*, whilst noting that such information related to a *"relatively short period of time"*. It was also noted that the transfer would save on assessment fees paid by the LAA to HMCTS.

Impartiality

17. All respondents raised concerns in connection with the impartiality, or perceived impartiality, of the LAA as an assessor of bills. A number of respondents were concerned that the LAA as 'paying party' would be incentivised to assess bills at lower amounts than HMCTS would. For example, one respondent said in their response *"First and foremost is the concern about lack of impartiality when the assessor is also the paying party, unlike the courts which have no financial interest in the outcome of*

the assessment. This concern is heightened by a perceived ‘culture of refusal’ on the part of the LAA. Some providers who have experienced faster turnaround times by the LAA have expressed concerns about whether in the longer term the LAA can be relied upon to provide fast and impartial assessments.”

18. The potential for LAA to assess bills to lower amounts (than HMCTS would) was in turn regarded as a threat to the sustainability of the profession (see further paragraphs 37-38 of this document).
19. Preserving the option of seeking assessment from HMCTS was regarded as a means of mitigating this issue. It was said in one response that by *“retaining the option of seeking assessment from the neutral Court enables providers to have full faith in the system and will have the option of sending bills to an entirely independent and impartial assessor.”*
20. Impartiality is addressed further below under the concerns raised in relation to the appeals process.

Training and expertise

21. Some respondents expressed concerns around the training, experience or expertise of the LAA assessors, in particular in comparison with costs judges. For example, one response said that *“we are concerned that LAA caseworkers may not have the expertise, experience or the training to undertake assessments of these larger amounts, previously assessed by skilled costs judges, which will inevitably include costs accrued in defended civil proceedings and complex cases”*. Another respondent relied upon the fact that, in addition to regularly dealing with publicly funded costs, judges also have the benefit of their prior experience as a solicitor or barrister.
22. Several respondents sought clarification as to what legal training or experience LAA caseworkers would be provided with in order to enable them to carry out detailed assessments of bills between £2,500 and £25,000. One response suggested that it would *“appear wise for the LAA to seek the assistance of existing costs judges to train their staff.”*
23. Several responses considered that lack of suitable training, expertise or experience (relative or absolute) would result in delays to the assessment of bills and/or the assessment of bills in lower amounts. The latter assertion was based in particular upon the concern that without suitable experience or expertise, assessors would not understand the amount of time required of providers (and hence the costs charged) in the course of carrying out work, in particular where of a complex or high quality nature.

24. Certain respondents also feared that a transfer of Court Assessed Claims away from HMCTS on a permanent basis would, in the long term, result in an irreparable loss of experience or expertise within HMCTS (meaning that a reversal of such transfer may no longer be possible or advisable).

CCMS system

25. Whilst it was noted that there was benefit in having a system whereby providers are able to upload their bills electronically, which some respondents said often leads to timely payments, the majority of respondents felt that there were issues with CCMS itself. There were comments about the current functioning of the CCMS system. For example, one respondent asserted that *“CCMS bill reports are inadequate to enable an LAA case worker to effectively assess quantum”* as it does not capture important details, for example *“short letters and telephone calls, which can often run to 100s (40+ hours) on these larger bills, are not broken down into the numerous parties/actors present in these cases”*. One response alleged that *“CCMS, whilst improving, is not without faults and we have had to re-enter data on numerous occasions in the past. Without a fully functioning, reliable system, there is a risk that we will be required to duplicate work, without recompense”* and another response *“expressed concern about the appeals process on CCMS, noting that it is incredibly difficult to prepare an appeal on CCMS and that they are doing this on a regular basis as the LAA frequently and incorrectly reduces bills on assessment.”*

Resources; post-Covid-19 future

26. Some respondents raised concerns in relation to the LAA’s expectation that the transfer of Court Assessed Claims could be managed using existing resources, on the basis that the LAA already checks all bills assessed by HMCTS. Certain respondents considered that the process of assessing bills may be more time consuming or resource intensive than checking bills already assessed by HMCTS. For example, one respondent said that *“We predict there is likely to be a difference in practice between an LAA caseworker assessing a bill, which involves exercising a degree of judgment, compared to checking the figures of a judge’s existing assessment. We are somewhat surprised that it is thought that the two functions are so comparable that this change can be implemented without any additional resources.”*
27. Certain respondents also raised concerns as to the future capacity of the LAA to maintain the current (positive) levels of speed and performance in the assessment of bills. One respondent recorded that *“there is a concern that the practice could fall back to the historic negative position of erratic reductions in LAA assessed bill”*.
28. Many respondents emphasised the unique circumstances the courts and, the justice system more generally, currently finds itself in given the context of the pandemic.

Concern was raised that whilst the LAA have been able to carry out assessments quickly this was in atypical circumstances where volumes are lower because of the pandemic and providers may be less inclined to appeal decisions currently because of the stress on cashflow brought about by the pandemic. For example, it was said there needs to be consideration of *“what the best arrangement for assessing bills in the medium-to-long term; and what it would be right now, in the midst of Covid-19 disruption.”* The same response went on to say that the *“LAA may indeed have bill assessment capacity that HMCTS does not have right now, but we are asked to comment on its potential to deliver the service over time, with low error and appeal rates, shorter processing durations even as their caseload grows, and greater provider satisfaction. As for the promptness argument, it loses force when providers are willing to wait longer for a court assessment, for example, in highly complex or costly cases, and we think they should still retain access to this.”*

29. There was consensus amongst other respondents that the current (pandemic-related) environment in terms of court processes meant that it was the wrong time to assess what an appropriate future position would be. One response said that where their members did express a preference for the LAA assessments, the main reason was due to faster payment than that of the court. However, the same response followed this by saying that the current situation is atypical and that it would not be the right time to make a decision one way or the other, suggesting that maintaining the hybrid system for a period of time would help inform this decision.

Appeals

30. Some respondents raised concerns about the impartiality of the appeals process, since Independent Costs Assessors (“**ICAs**”) are (in the words of one respondent) *“employed by the LAA; and the LAA select which ICA will be allocated to an appeal.”*
31. Concerns were also raised about an alleged lack of transparency in the existing appeals process. One respondent said that *“The LAA as the paying party controls the process and the appeal bundles have to be sent to the LAA...Appeals are dealt with on the papers and following the appeal it is the LAA rather than the ICA who informs the provider of the outcome.”* Concerns were also raised in relation to the visibility, in certain cases, of reply submissions being made by the LAA to the ICA following receipt of appeal submissions from the provider.
32. A number of respondents considered that work done on successful appeals ought to be remunerated. This was alleged to be unfair, and to compare badly with the position in the Courts, where work on the successful appeal of an assessment is remunerated. It was also asserted that the absence of remuneration for work done on appeals has a chilling effect on appeals, even where such appeals have merit. One respondent said that in relation to smaller bills already assessed by the LAA *“providers*

sometimes let reduced assessments stand because the cost of appealing may outweigh the costs in issue, so that they would be worse off by appealing and winning than by accepting the unjustified reduction in their costs. With the extension of the LAA's remit to higher value claims the problem is also extended."

33. There were also calls for more clarity in relation to the LAA's appeal process, for example one respondent noted *"It would be helpful if there was a clear definition of what a 'dispute' is for the purposes of an appeal. If an item is allowed in full, there will plainly be no dispute."* This response goes on to detail the confusion around this issue, concluding that this should be set out clearly when the right of appeal arises, even where the LAA allows some items in full as part of a wider assessment.
34. In order to combat the issue of impartiality with both assessment process and the appeals process, many respondents suggested having an independent panel to assess claims and appeals. For example, one response suggested that if the proposed changes were made, a *"panel should be established to scrutinise LAA decision-making"* and that *"A random sample of all reduced claims should be made available to the independent panel to assess whether the correct guidance has been applied. The external panel should be comprised of costs judges, costs specialists and senior practitioners."* Another response suggested that the LAA should have a similar practice favoured by District Judges, whereby a preliminary assessment on the papers of the receiving party is conducted and a furthermore detailed assessment can be requested if the receiving party disagrees with the amounts assessed.
35. This was also noted by another response saying that there *"should be a further right of appeal from an ICA decision to a panel, including a Judge, which could be on the basis of strict criteria"* and that their members *"have expressed the view that if bill assessment is to go over to the LAA, then appeals should remain with HMCTS to have any credibility and independence with the profession."*
36. It was also noted that appeals in the court process involve an oral hearing, whereas there is no automatic right to an oral hearing before an ICA.

Sustainability

37. Concerns around the sustainability of the profession were raised by the majority of respondents. Respondents noted that they have real concern for the future of the legal aid profession if these changes were to be brought in, particularly for small providers with limited cash flows, and because of their perception of the LAA as a "harsh arbiter" without a full understanding of the complexities of individual cases. Some respondents were also concerned that the LAA could *"change its priorities and attitude at any time and that the current reasonable attitude to assessment being*

adopted may change when the option of using the court has been removed.”

38. Some respondents asserted that the proposed transfer could drive providers out of the market, for example one response said *“in current circumstances where many providers are struggling with the viability of legal aid any additional unremunerated costs could act as a disincentive for some providers to continue doing legal aid work.”*

Insufficient data

39. Some responses considered that there was not enough data to make an informed decision, both in terms of the impact of the existing transfer and how the transfer is truly performing, and the data provided in the consultation. In terms of the impact of the existing transfer, some respondents felt it was too early to make an informed decision. The same respondent said that whilst there may be benefits in the fullness of time, there is presently insufficient evidence to support that conclusion.
40. Regarding the data provided in the consultation, some respondents felt that there was insufficient evidence to know what benefit it would have for providers. For example, in a response it was noted that there is a *“lack of evidence available to demonstrate which process will be most beneficial for providers.”* Another respondent considered that whilst *“the further information provided by the MoJ does indicate that the LAA assessment process is faster than the HMCTS process”*, *“wider comparative data, such as comparative data on appeals, does not appear to be available”* and that such data could *“offer some insight into qualitative differences”*. It was also noted that data on the cost of work duplicated by the LAA where there is an HMCTS assessment was not available.
41. So far as comparative data relating to HMCTS was concerned, one respondent considered that there was insufficient data on when the bill was in fact submitted to HMCTS, which area of practice it related to and on the accuracy and quality of its assessment.
42. A number of respondents considered that continuing to operate an interim dual system whereby providers could choose where to send their Court Assessed Claims would provide further opportunity for data to be gathered so that the implications of any change could be more fully understood.

Consultation process

43. One respondent argued that the current consultation failed to adhere to the Government’s Consultation Principles. It was asserted that the LAA has already reached a decision in respect of the proposed transfer. The format of the consultation questions and the absence of a full impact assessment was also criticised.

Question Two. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views.

44. There were four responses to question two.

45. These responses were split as to whether the proposal in the consultation would negatively or positively affect groups or individuals with protected characteristics.

46. Out of the three respondents who said that the consultation response would adversely affect groups with protected characteristics, all three noted that legal aid providers could have protected characteristics and one noted that the same could be said for legal aid recipients.

47. Providers: One response noted specifically that *“legal aid firms are far more diverse than any other party of the legal aid profession in terms of all protected characteristics. This decision to remove the independent assessment of legal aid files from the SCCO will cause a significant loss in profits probably in the region of 5%, and delays in assessment of bills in the region of six months.”* This was noted in another response that said *“A disproportionately greater number of legal practitioners from BAME backgrounds practice in civil and family legal aid work, when compared to the number of BAME barristers in private practice who do no legal aid work whatsoever.”*

48. Legal aid recipients: Out of the responses, one noted that it could have an adverse effect on legal aid recipients. The response said that *“if the proposals proceed, the lay client will lose the right to have their objections heard by a completely independent, impartial and experienced Judge in a manner which is entirely transparent and open. Furthermore, the current method of challenging a bill subject to assessment by the LAA is not suitable for all legally aided clients, many of whom will be vulnerable and may have protected characteristics under the Equality Act, because it requires the submission of written objections and prevents the legally aided client from having their objections heard in person; this process may discriminate against those with protected characteristics.”*

Question Three. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are

there any mitigations the government should consider? Please provide data and reasons.

49. There were three responses to this question. Of the respondents that did reply, most of them answered “no” or that it would be hard to assess without an impact assessment, for example, one response said that *“We would have welcomed the opportunity to consider MoJ’s equality impact assessment for these proposals, but the consultation document merely makes a short, non-analytical Equalities Statement.”* Another response said *“the MoJ has not provided any information on an equalities impact assessment for us to comment on.”*
50. Of those that did feel there was more that could be done, one respondent suggested the following: *“Legal aid whole scale needs to be better paid, and paid within a reasonable time. It is unfathomable that not only will a provider be subject to at least a 5% reduction in income, but that they will be further subject a six month delay in payment of nearly a third of their income, having to repay a chunk of it due to poor assessment. Firms will simply cease to function, particularly law centres who run on bare minimum amounts, and still need to pay their staff.”* Another respondent noted that it would be hard to make a proper assessment without knowing the operational process to the proposal. They said that it would be difficult to assess whether the proposal will directly affect certain groups of individuals.

Question Four. What do you consider to be the impacts on families of these proposals? Are there any mitigations the government should consider? Please give data and reasons

51. There were four responses to question four. These responses broadly said that they did not see this proposal having an impact on families. One response noted, however, that there is a serious risk that the legal aid service available to families in less densely populated regions of the country will find it increasingly difficult to find a legal aid solicitor. This would be due to reduced remuneration and an enhancement of cases, making them potentially cease undertaking this work.
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Government Response

52. The government has carefully considered the views of respondents concerning the transfer of all Court Assessed Claims to the LAA, and has decided for now to preserve the existing hybrid system, whereby providers are given a choice between submitting a bills between £2,500 and £25,000 for assessment either by the LAA or HMCTS.
53. The hybrid system will continue, on an interim basis, until November 2022. Within that period the LAA will continue to collect data by reference to the metrics available to it, including payment times, appeal volumes, claims volumes, processing performance and reject volumes. The LAA will also explore whether it is reasonably practicable to collect data by reference to additional metrics, in particular once certain digital changes have been made to its systems in the first quarter of 2022. This additional period of time will also enable providers and interested parties to monitor and reflect upon their own comparative experiences of assessments under the LAA route vs. the HMCTS route. It should also assist in determining whether the present positive performance of the LAA in the context of the pandemic can be sustained over a longer period of time.
54. There will be a difference in data collection between HMCTS and the LAA, but where reasonably possible we will draw out comparable data to ensure that the proposal on the way forward is informed with the best data reasonably available.
55. The Government will thereafter revisit the position. It is emphasised (in the light of certain responses) that no decision has yet been made as to whether, at that stage, Court Assessed Claims should (i) be transferred on a permanent basis to the LAA; (ii) remain exclusively with HMCTS or (iii) continue to be dealt with under the present hybrid position. The Government will launch a further consultation before taking any such decision.
56. Although, in electing to continue the hybrid position for the time being, the Government's response effectively endorses the course which eight out of nine respondents called for, the Government considers that it remains appropriate to respond to certain concerns raised during the course of the consultation connected with question one. It is also emphasised that the fact that the Government has elected to continue the hybrid position for the present does not mean that any or all such concerns are accepted as well-founded.
57. So far as the impartiality of LAA caseworkers is concerned, the Government's view is that the LAA process is impartial and free from bias. The LAA does not incentivise its assessors to reduce bills on assessment, through the setting of targets as to assessment rates, or otherwise. Assessments carried out by the LAA are subject to

the same guidance as assessments carried out by HMCTS¹. In the Government's view, the impartiality of the process as a whole is further safeguarded by the availability of the appeals process (as to which see below).

58. All LAA caseworkers are subject to a comprehensive modular training package. Each work type is broken down into modules (for example, disbursements, fixed fees, enhancement) which are taught to caseworkers by a mentor and are delivered face-to-face or via Microsoft Teams. Caseworkers are then exposed to case studies, which they work through with peers and a mentor, before progressing to live claims. Each caseworker is provided with ongoing support and mentoring in addition to direct line management supervision. Team Managers and supervisors manage the caseworkers in teams and each team will have regular meetings to discuss guidance, consistency etc. They are only exposed to new work areas when competence is demonstrated in the previous workstream and the training then starts again as above. Typically, Court Assessed Claims are processed by those Senior Caseworkers who have extensive experience and expertise in bill payment and many of them have many years' experience. Senior Caseworkers are the most experienced and capable caseworkers, reflecting the complexity and expertise required in this area. They are selected through an application and interview process to demonstrate competency and ability. All Senior Caseworkers would have started as Caseworkers and technical knowledge is a requirement of the role. All caseworkers are subject to regular supervision by both supervisors and Team Managers.
59. Additionally, all work streams are overseen by the Civil Certificated Billing Improvement Group (CCBIG). CCBIG is made up of Senior Managers, Subject Matter Experts (SMEs) in civil claims (who sit above senior caseworkers in LAA staff structures) as well as Caseworkers. SMEs are a higher grade than Senior Caseworkers and have expert level knowledge of cost assessments built up over many years. The role of the group is to oversee the entire Civil Billing operation with a focus on quality, improving what we do and providing consistency and support to caseworkers when making decisions on complex cases.
60. The LAA has proactively contacted representative bodies, inviting them to visit the LAA and provide feedback and comments on how we can improve details of this training. The LAA will continue to explore how training can be further improved.
61. We recognise the challenges that respondents have outlined in regard to CCMS, however, whether the bill goes to the court or to the LAA, all providers have to upload the information to CCMS. The LAA remains committed to continuing to improve CCMS where reasonably practicable and engages with representative bodies and users to explore how it can be further improved.

¹ Costs_Assessment_Guidance_2018_-_Version_4_-_February_2021___clean_.pdf (publishing.service.gov.uk)

62. So far as resourcing is concerned, the LAA's experience to date has been that Court Assessed Claims can currently be assessed using existing resources. However, the LAA will continue to monitor resourcing and hire or deploy additional staff to that workstream if and when necessary (within the limits of the available budget at the material time), having regard to any increase in the number of claims to be assessed which may arise (whether by virtue of trends in provider choices, developments connected with the Covid-19 pandemic and its aftermath, or otherwise).
63. As to the concerns in relation to the appeals process, the Government's view is that the appeals process is impartial. The ICAs are members of the legal profession or members of the Association of Cost Lawyers who have in depth expertise in the detail of Court Assessed Claims. There is fair and transparent recruitment to appoint an ICA, and all appointments are advertised to the public. We continually welcome feedback on the recruitment process.
64. The ICAs are remunerated for the time which they spend working on appeals. Work is allocated between ICAs by reference to their availability. The Government does not regard anything within that as leaving ICAs open to allegations of bias or apparent bias.
65. The concerns in relation to the transparency of the appeals process are noted. The procedure for appeals before an ICA is set out in paragraphs 6.71 to 6.81 of the 2018 Standard Civil Contract Specification and is the subject of further provision within the Funding and Costs Appeals Review Panel Arrangements 2020². The Government is committed to improving the guidance available in relation to the appeals process, and will include within such guidance a mechanism so as to ensure that all submissions from the LAA to the ICA are (as they already should be) copied to the appellant.
66. The points raised about remuneration for appeals are also noted. The LAA will continue to review the position in advance of the next consultation. Any provision for remuneration will need to be costed and its wider budgetary implications will need to be explored.
67. The time taken to go through the appeals process remains very low, and the average time takes six days, which was outlined in the additional dataset provided by the MoJ in April 2021³. We also provide this data to representative bodies every six weeks. We will continue to monitor the number of appeals and time taken and evaluate the reasons for these trends to inform our future decision on this process.

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924655/Review_panel_arrangements_2020.pdf

³ Civil Billing Operational Performance Pack (publishing.service.gov.uk)

68. The Government will continue to work to consider the long-term sustainability of civil legal aid, recognising that we need to take a whole system approach to these important issues. We have been engaging with representative bodies and providers within the sector to increase our understanding of the challenges currently faced and work in this area is ongoing. We are considering civil legal aid broadly, looking at a range of factors, from the current remuneration rates, to the pipeline into a career in legal aid, as well as the ability of providers to offer legal aid services into the future. Specifically, in regard to Court Assessed Claims, the Government believes that transferring Court Assessed Claims to the LAA would ensure faster payments and improve cashflow for providers, aiding sustainability in the short term.
69. The Government is dedicated to ensuring that all consultations are fair, open, have a purpose, and are informative.
70. We will continue to consider the equalities impacts as we continue to maintain the hybrid process, and we will publish an equalities impact assessment alongside our subsequent consultation. We consider that the assessment of equalities impacts will benefit from the further period of data collection outlined above. The Government acknowledges that there are at present limitations to the data currently available concerning the protected characteristics of those who provide publicly funded legal services and will continue to review how further data can be collected in a reasonably practicable way. The Government would also welcome any empirical data that respondents are in a position to gather or provide in this regard.

Next Steps

71. As explained above, the LAA will continue with the present hybrid system until in or around November 2022, and will continue in the intervening period to collect data, where reasonably practicable, upon the functioning of the LAA assessment process (and any available comparative data on HMCTS assessments).

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of representative respondents

Law Centres Network

The Law Society

The Association of Cost Lawyers

Resolution

The Legal Aid Practitioners Group

The Bar Council

Garden Court Chambers

Irwin Mitchell

Annex B – Equalities Impact Statement

1. This Equalities Statement considers the likely equality impacts on legal aid providers from the proposals set out in this consultation.
2. We included two equalities questions in our consultation, and the responses broadly did not raise any additional equalities issues that needed further consideration in light of our response. This is due to this response not proposing any current change to the existing system of assessing Court Assessed Claims.
3. Of those that did respond, however, we note the concerns raised with regard to the extent of equalities data held and will work to collect further information on providers in view of these.
4. At the time of a subsequent consultation, we will conduct an additional equalities impact assessment.

Equality duties

5. Section 149 of the Equality Act 2010 requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
 - eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - advance equality of opportunity between people who share a protected characteristic and those who do not; and,
 - foster good relations between people who share a protected characteristic and those who do not.
6. Paying 'due regard' needs to be considered against the nine 'protected characteristics' under the 2010 Act. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
7. This is an ongoing duty, and we have made an initial assessment of the impact of our proposals set out in the consultation response on people with protected characteristics and we will continue to monitor the impacts.

Methodology to determine discrimination potential

8. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposals has been to identify the individuals whom the proposals would impact (the 'pool'), and then draw comparisons between the potential impacts of the proposals on those who share particular protected characteristics, with those who do not share those characteristics.
9. Guidance from the EHRC states that the pool to be considered at risk of potential indirect discrimination should be defined as those people who may be affected by the policy (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

10. The pool of individuals affected by the proposals are all civil legal aid providers in England and Wales delivering Licensed Work. Legal aid recipients also have a right to contribute as they may be impacted by the proposals.

Available data

11. Civil legal aid services in England and Wales are delivered through various providers. We have limited availability of information on the protected characteristics of these legal aid providers. In January and February 2015, the LAA carried out an online survey to learn about the providers doing legal aid work. The information gathered through this survey indicated that in the positions of managerial control, there was an over representation of males, when compared to the general population, as well as an over representation within the age group 40-59.
12. Below we have highlighted the equalities considerations, impacts and mitigations of the proposals in this consultation response. In accordance with our legal duties, we will continue to consider the equalities impacts as we continue to maintain the hybrid process, and we will publish an updated equalities assessment alongside our subsequent consultation.
13. The Government acknowledges that there are gaps in the data collected about the protected characteristics of those who provide publicly funded legal services. We would welcome any empirical data that respondents can provide covering this.

Equalities Analysis

Eliminating unlawful discrimination

Direct discrimination

14. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. In our consultation, our primary policy intention was to

ensure that legal aid providers are paid as quickly as possible for their work, and the proposal will not treat anyone differently because of a protected characteristic.

15. Now we are continuing with the hybrid model, giving legal aid providers a choice, we believe that concerns raised in the consultation response will be mitigated as all providers will have the option to send it to either HMCTS or the LAA.

Indirect discrimination

16. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.
17. The data outlined above indicates that males may be over-represented within legal aid providers, when compared to the general population, meaning that males may benefit more from this proposal than females.
18. Even though certain protected groups maybe over represented in the group affected by this response, we believe that our response to the consultation would not be indirectly discriminatory because it is not likely to result in any disadvantage for clients and providers with protected characteristics, as we are maintaining the existing system.
19. Maintaining the dual approach to the assessment of these bills will mean that concerns raised in the response will be mitigated.

Advancing Equality of Opportunity

20. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
21. As outlined above, data indicates that males are likely to be over-represented amongst legal aid providers when compared to the general population.
22. We think that any benefits that are witnessed disproportionately as a result of this response are justified as part of a proportionate means to achieve the policy aim.

Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments

23. We recognise that clients with disabilities are likely to use civil legal aid services and will continue to ensure that reasonable adjustments are made by providers.

Fostering Good Relations

24. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to this response.

Harassment and Victimisation

25. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Monitoring and Evaluation

26. We will continue to monitor the equalities impact on providers and will conduct an updated equalities impact assessment at the time of a second consultation.
27. Any final decision following an additional consultation next year will include the evidence of impact from the Equality Statement. We will continue to pay 'due regard' to the Public Sector Equality Duty as the proposal is implemented and will consider the most effective ways of monitoring equalities impacts.



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