



Ministry  
of Justice

# Housing Legal Aid: the way forward

The government's response to its consultation on the future of the Housing Possession Court Duty scheme

This response is published on 31 May 2022

A decorative graphic in the bottom right corner consisting of a grid of light blue triangles of various sizes, some pointing up and some pointing down, creating a geometric pattern.





Ministry  
of Justice

## **Housing Legal Aid: the way forward**

The government's response to its consultation on the future of the Housing Possession Court Duty scheme

**Response to consultation carried out by the Ministry of Justice.**

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



# Contents

<b>Ministerial Foreword</b>	<b>3</b>
<b>Introduction and contact details</b>	<b>4</b>
Complaints or comments	4
<b>Executive Summary</b>	<b>5</b>
<b>Responses to the consultation and the government's conclusions</b>	<b>9</b>
<b>Equalities Impacts</b>	<b>26</b>
<b>Family Test</b>	<b>39</b>
<b>Impact Assessment, Equalities and Welsh Language</b>	<b>40</b>
Impact Assessment	40
Equalities	40
Welsh Language Impact Test	40
<b>Conclusion and next steps</b>	<b>41</b>
<b>Consultation principles</b>	<b>42</b>
<b>Annex A – List of respondents</b>	<b>43</b>



# Ministerial Foreword

Housing repossession and homelessness are two of the most serious problems that any individual could experience. A core element of support in this area is, and will remain, access to publicly funded legal advice and representation. The Housing Possession Court Duty scheme, provided by legal aid practitioners in England and Wales, offers emergency face-to-face advice and advocacy to anyone facing possession proceedings. It is crucial that delivering this important service remains sustainable.

However, many people faced with the loss of their home do not engage with the legal process at an early stage, most commonly due to not understanding the legalities involved, feeling nothing can be done to change the outcome or denial about the gravity of the situation. This, and the currently limited early advice available, means that many people attend court for possession proceedings without having previously sought legal advice or representation. Sometimes this means that cases go to court where other routes of resolution would be more appropriate.

Our proposals set out an ambitious new model for delivering these services. Our aim is to ensure that clients can access high-quality support as early in the process as possible, while ensuring the service is financially viable for providers to deliver.

The government has carefully considered the responses to the consultation and is now, in this document, publishing its policy position. We have made some adjustments to our initial proposals and suggested some additional proposals in light of the views of respondents. Taken together, these represent an effective and practical way forward.

I would like to thank all those who have taken the time to respond to the consultation and look forward to continuing constructive engagement as we move towards the next stage of our civil legal aid strategy.

**James Cartlidge MP, Parliamentary Under-Secretary of State for Justice**

# Introduction and contact details

This document is the post-consultation report for the consultation paper 'Housing Legal Aid: the way forward'.

It will cover:

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

Further copies of this report and the consultation paper can be obtained by contacting Civil and Family Legal Aid Policy at the address below:

Access to Justice  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ

**Email:** [civil.legalaid@justice.gov.uk](mailto: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.



# Executive Summary

## Introduction

1. This document sets out the government's response to its consultation 'Housing Legal Aid: the way forward' which ran from 25 November 2021 to 20 January 2022.
2. The consultation sought views on policy proposals to remodel the delivery of legal aid in housing possession cases, to ensure the sustainability of the service and to improve the breadth and quality of advice available for individuals facing the loss of their home, particularly at an early stage in the process, before they reach court.

## Background

3. The Housing Possession Court Duty schemes (HPCDS) offer "on the day" emergency face-to-face advice and advocacy to anyone facing possession proceedings in court. This means that anyone in danger of being evicted from their home or having their property repossessed can get free legal advice and representation on the day of their court hearing, regardless of their financial circumstances.
4. Given the vital role these schemes play in ensuring access to justice and the timely resolution of legal problems, the sustainability of the service is of paramount importance. Whilst continuity of service has been maintained to date, there is a risk that gaps in service provision may appear which have the potential to negatively impact on the clients who rely upon this vital service. In addition, retendering the service following the withdrawal of a provider adds to the administrative burden on the Legal Aid Agency (LAA) and does not provide value for money for the taxpayer.
5. In October 2019, the government published a consultation outlining several proposals to improve the sustainability of the HPCDS. Work on the consultation response was paused just before intended publication due to the emergence of the Covid-19 pandemic, as a result of which, possession proceedings were stayed for 90 days. Following further consideration, the Ministry of Justice (MoJ) decided that this consultation and the evidence and policy work encompassed within it should be integrated into the wider work MoJ is undertaking on the long-term sustainability of the civil legal aid market.
6. Therefore, no response to the previous consultation was published, but we have taken into account the evidence provided during the 2019 consultation when developing the proposals within this new consultation paper.

7. In the intervening period, the landscape has changed. While the moratorium on possession proceedings was essential to ensure those facing possession proceedings were protected during the pandemic, the government recognises that this moratorium has negatively impacted providers of the HPCDS with an immediate and significant reduction in volumes of court listings and, by extension, a significant impact on income.

### **Summary of consultation proposals**

8. In advance of publishing the consultation paper in November 2021, we undertook considerable engagement with key stakeholders involved in the delivery of the HPCDS and worked closely with the Master of the Rolls' Working Group for Possession Proceedings. We also carefully considered the responses to our previous consultation as well as wider reports such as the House of Commons Justice Select Committee's recent report on the future of legal aid<sup>1</sup>. This has provided further evidence as to what works well with the HPCDS, what could work better and what should change, as well as how the delivery of these schemes has been affected by the pandemic. We used this information to develop a set of proposals to ensure that delivery of the scheme is attractive to providers and continues to provide the best possible service to clients.
9. We have developed five key proposals to remodel the scheme which were subject to this consultation.
  - a. Remodelling the delivery of the HPCDS to become a new Housing Loss Prevention Advice Service (HLPAS), incorporating the existing service of advice and representation at court and also early legal advice before court.
  - b. Expanding the scope of legal aid so that HLPAS providers can offer early legal advice on social welfare law matters to individuals facing possession proceedings before they reach court.
  - c. Allowing providers to claim an HPCDS/in-court HLPAS fee in addition to a Legal Help fee for follow on work.
  - d. The introduction of a set attendance fee for all schemes, equivalent to having seen two clients during a session.
  - e. Contracting for individual courts rather than larger geographic areas.
10. The key rationale for proposing these changes is to deliver the best possible service for clients who rely upon it, allowing them to resolve their problems at the earliest possible point, while ensuring that these vital services are financially and operationally viable.

---

<sup>1</sup> <https://committees.parliament.uk/publications/6979/documents/72829/default/>

## Conclusions

11. The consultation closed on 20 January 2022, and the government received 28 responses.
12. Having analysed all the responses provided, the government will be taking forward the following proposals:
  - a. We will remodel the delivery of the HPCDS to become a new Housing Loss Prevention Advice Service (HLPAS), incorporating both the existing service of advice and representation at court but also early legal advice before court.
  - b. We will expand the scope of legal aid so that HLPAS providers can offer early legal advice on social welfare law matters to individuals who have received a notice seeking possession of their home. This will be paid at the £157 fixed fee for Legal Help, but with an escape threshold<sup>2</sup> set at three times the fixed fee.
  - c. We will contract the scheme by individual courts, with one HLPAS contract awarded for each court, to help ensure the sustainability of the HLPAS by reducing travel costs and allow providers to utilise local knowledge. The only exception to this will be where two courts have been historically bundled together to ensure a scheme has high enough volumes of work.
  - d. We will allow providers to claim for the court duty fee in addition to a Legal Help fee for follow on work.
  - e. We will introduce a set attendance fee for all schemes, replacing the existing nil session<sup>3</sup> payment paid where a provider attends court but sees no cases.
13. In light of feedback from the consultation, we will also be implementing two further measures, to ensure proposals a) and b) deliver the intended benefits. These measures are:
  - a. We will contract a panel of legal experts (previously known as specialist support contracts) to assist and upskill providers where they need further expert support on social welfare case matters.
  - b. We will pilot the grant funding of a set number of publicly funded solicitor training contracts for HLPAS providers.

---

<sup>2</sup> The threshold at which a more complex case can be paid at an hourly rate rather than under the fixed fee.

<sup>3</sup> If providers are available to advise clients in any HPCDS session (in person at court or some other off-site location or remotely) but no clients require legal assistance, providers can claim a nil session fee.

14. The full response paper sets out why the government believes this to be the most appropriate course of action and the next steps for implementing the government's policy.
15. The updated Equalities Impact Assessment can be found on page 26 of this document. The updated Impact Assessment has been published alongside this consultation response.
16. A Welsh language response paper is available upon request. To request this please contact [Civil.LegalAid@justice.gov.uk](mailto:Civil.LegalAid@justice.gov.uk).
17. A list of organisations that responded to the consultation is at Annex A.

# Responses to the consultation and the government's conclusions

18. A total of 28 responses to the consultation paper were received. The respondents included legal aid providers, representative bodies of legal aid providers, third sector organisations, local government, and individuals responding in their own capacity.
19. Alongside the consultation, we held stakeholder roundtables with practitioners and representative bodies involved in the delivery of the HPCDS. The feedback received in these sessions has also been considered when deciding the way forward.
20. The twelve questions asked in the consultation are set out below (some are grouped), followed by a summary of responses and then the government's conclusions.

**Question 1: Do you agree with our proposal to reform the way housing possession legal aid services are delivered and create the Housing Loss Prevention Advice Service, providing duty advice at court and early legal advice? Please provide reasons for your answer.**

21. We received a total of 28 responses to this question, with 10 agreeing with our proposal to reform the way housing possession legal aid services are delivered. Nearly all respondents supported the overarching intention behind the proposed approach, particularly agreeing that much more can be done to achieve full resolution before a case reaches court. 18 disagreed with the way in which we proposed to provide access to early legal advice.
22. Many welcomed the expansion of scope to allow early advice on social welfare issues, with one respondent noting that this proposal recognised “the common inter-connection of issues that require addressing in order to achieve resolution” and another stating “housing loss due to rent arrears inevitably has at its root issues with benefits and debt”. Another respondent commented, “HLPAS would present an opportunity to provide those at risk of losing their home with the help they really need, in a more sustainable way than is presently available”.
23. Several respondents thought that the new HLPAS model could assist with ensuring the defendant engages earlier with proceedings and therefore go some way to mitigating the difficulties of the “Review Date” arrangement during the pandemic (a pre-hearing review of the case by the judge).
24. However, the majority expressed concerns either about the deliverability of the new scheme for providers, particularly the early advice element, or whether the changes

would make any appreciable difference to the possession process itself. Specifically, respondents argued that the new model would be ineffective at resolving legal issues before court because of the capacity and financial viability issues faced by providers, which would make delivering a new service difficult.

25. Respondents argued that our proposal to provide for early advice before court following receipt of notice of a possession hearing from the court, under Stage One of the HLPAS, would not provide advice early enough to avoid the need for court proceedings or make a difference to the outcome. One respondent submitted the results from a survey of welfare benefits advisers they carried out. Whilst the sample size was small<sup>4</sup>, it indicated that more than half (61%) of housing benefit disputes take more than eight weeks to resolve, which would be outside the proposed timeframe. Several respondents suggested the “trigger point” for access to early advice should be brought forward to the point at which an individual receives a notice of possession being sought, rather than our original proposal for it to be at the point of the issuance of court proceedings. However, other respondents argued that even this would not be early enough to resolve all types of underlying welfare benefit issues before the possession hearing (particularly where a benefit appeal is required).
26. Some respondents raised the removal of most social welfare law from the scope of legal aid and the impact this had on the capability of the legal aid sector, arguing that the expertise to deliver this service may no longer exist. One respondent said, “some Law Centres have retained staff who can do this work because they have been funded from other sources [...] Private solicitors have not provided these services since 2013”. Another respondent suggested that there may need to be more than one way for HPCDS providers to provide the early advice “as not every organisation will be able to develop the necessary capabilities straight away or at all”. Furthermore, some respondents reported that the welfare benefit and debt advisers operating outside of the legal aid sector are so thinly dispersed that not all providers will be able to triage clients to organisations which can resolve their issue.
27. Capacity was also a concern for many respondents, with one commenting, “at present HPCDS providers can organise their staffing resources to attend court based on possession lists set in advance”, whereas Stage One comes with “an unpredictable demand”. Respondents argued that the proposed remuneration model for HLPAS would be “insufficient” to enable investment in new staff to meet this demand, and suggested that the government should be supporting providers to rebuild this capability, through upskilling existing staff and ensuring a pipeline into the profession for this area.

---

<sup>4</sup> There were 64 respondents to the survey, but only 33 answered this specific question.

28. The majority of respondents also predicted that uptake of Stage One would be low, based on their previous experience of the number of people who ordinarily seek advice before a housing possession hearing. One respondent argued that the “ease of accessing advice needs to be made paramount” and that “the difficulty in finding the provider of local advice can be a barrier”, suggesting it may be necessary for the government to take steps to raise awareness of the availability of these services, or considering changes to the prescribed notice forms to provide information to defendants on how they can access legal advice.
29. Many respondents also raised other policy issues outside of legal aid which they said were having a significant impact on the viability of delivering housing legal aid. Respondents were particularly concerned about the impact of the government’s roll-out of the Fixed Recoverable Costs (FRC) regime on housing legal aid providers, who expect significant losses of revenue under this system.

### **The government’s response to question one**

30. The government notes that the majority of respondents to the consultation agreed with the overarching intention behind the proposals of resolving cases more quickly, before court if possible, with more holistic advice, whilst at the same time introducing a new income stream for HPCDS providers. Therefore, overall, the responses to the consultation uphold the government’s view that making earlier access to advice available to people at risk of losing their home, and on a wider range of issues, will ensure a better service for clients and facilitate resolution at the earliest possible point.
31. However, the government has carefully considered the issues raised by respondents that may hamper the achievement of this objective. Therefore, we have made some modifications to the proposed delivery model of the HLPAS and are delivering some further changes to make the scheme more financially viable.
32. To increase the likelihood of resolution of housing possession cases before court, we will allow earlier provision of advice under Stage One of HLPAS. We initially proposed that the trigger point for accessing advice would be the issuing of court proceedings, but we accept this may not be early enough to improve the outcome in many cases. Therefore, the trigger point for accessing early advice will be an individual receiving notice (e.g. from their landlord, mortgagee or creditor) of possession being sought. This will give people facing possession proceedings more time to contact providers and to resolve any underlying issues (such as a welfare benefit problem), maximising the chance of their issue being resolved before the need for court.
33. The policy intention remains that this access to early legal advice should be directly linked to the possession proceeding, rather than standalone. Therefore, it is the government’s view that the earliest we can reasonably allow access to this advice is where an individual has received notice of possession. However, in addition to this, we

will be launching the Early Legal Advice Pilot (ELAP) in Manchester and Middlesbrough later this year. This will test the impact of early legal advice on housing, welfare benefits and debt at the earliest possible stage, not linked to other proceedings. The evidence gathered from this pilot will be used to determine our future strategy on legally aided early legal advice.

34. We acknowledge that not all providers will be equally positioned to deliver the wider service. Therefore, the government will implement two further measures to support providers in delivering the early advice stage of the service with the aim of supporting providers to upskill and ensuring there is a pipeline into the civil legal aid profession.
35. The first measure will introduce a contracted panel of legal experts to assist and upskill providers where they need further support in social welfare law matters. This will be modelled on the Specialist Support contracts which used to be tendered by the Legal Services Commission. The intention is that this new panel will offer services like telephone support on casework to less experienced providers, and training courses for new providers, all delivered by lawyers experienced in these social welfare areas of law. We will engage further with stakeholders on the exact details of this new service over the coming months.
36. The second measure will pilot the grant funding of legal aid training contracts to provide an additional pipeline into the housing legal aid profession. This will be a limited pilot in the first instance. We intend to grant fund a limited number of training contracts to some providers who successfully bid for a new HLPAS contract, which could be focused in areas of the country with less housing or wider social welfare law legal aid provision. This will be evaluated and, if it proves successful in attracting new people to the legal aid workforce, we will roll it out across civil legal aid more widely.
37. We will closely monitor the uptake of Stage One of HLPAS and, if necessary, also consider taking steps to raise public awareness of the advice available under the new scheme.
38. The extension of Fixed Recoverable Costs (FRC) is an important MoJ policy to control legal costs and make them more certain. However, in response to particular concerns raised about the potential impact of FRC, specifically on housing legal aid providers, the government has exceptionally decided to delay the extension of FRC to legally aided housing possession cases for two years. This will allow the market sufficient time to recover after the halt on possession proceedings during the pandemic and for the changes coming out of this consultation to deliver the intended benefits. Out of all the housing cases where costs can be recovered, it is only legally aided housing possession claims where a client is a defendant, meaning that, realistically, they have no choice but to defend a claim.



39. The government's view is that, taken together, these additional proposals address the concerns raised by respondents and will ensure the new HLPAS is effective in delivering its aims.

---

**Question two: Do you agree with our proposed approach to remunerating the HLPAS? If no, please suggest an alternative and provide supporting evidence.**

40. We received a total of 25 responses to question two, with 6 respondents agreeing and eleven respondents disagreeing with our proposed approach to remunerating the HLPAS. The remaining 8 respondents either did not take a clear stance or agreed with some aspects of the approach but not others.

41. In general, respondents welcomed the additional funding the proposals made available and were in favour of the fee for delivering the early legal advice being claimable in addition to the in-court duty fee and any follow-on work. They also agreed that this fee should be remunerated in a similar way to the existing Legal Help scheme, rather than the per client fee system used for the duty scheme.

42. However, most respondents argued that the viability of the scheme is dependent on a significant increase to the rates of payment. The majority felt that the £157 fixed fee for Stage One of HLPAS would not cover the full cost of advice, as it assumes the case is not complex and that there are no disbursements on top of the fee.

43. One respondent argued, "welfare benefits problems often arise out of a complex set of facts [...] Such cases necessitate a lengthy session with the client just to diagnose the problem and identify legal solutions". Another respondent argued that the pre-existing fixed fees (including the Legal Help fee for housing and debt matters) "have long ago ceased to bear links to the state of the market or the up-to-date costs of service delivery".

44. In addition, respondents argued that the fixed fee of £157 would not be sufficient to cover the investment required by organisations to recruit and train the additional staff needed to deliver the new service, further contributing to the capability and capacity concerns outlined by respondents in response to question one.

45. Most respondents felt that, without an escape threshold allowing more complex cases to be remunerated for the full hours worked, providers will either feel duty-bound to go beyond the requirements of a fixed fee to resolve an issue, which would be financially unsustainable for their organisations, or will face a perverse incentive to do as little work as possible.

46. Many respondents suggested uplifting the fixed fee for Legal Help, which they argued would better reflect the cost of delivering advice, and introducing an escape threshold for complex cases.
47. Some respondents suggested including compensation for travel time and expenses within the remuneration package to increase the attractiveness of schemes in rural areas and making a separate fee available if providers advise in mediation or Alternative Dispute Resolution (ADR) proceedings.

### **The government's response to question two**

48. The government maintains its position that fixed fees are the best way to remunerate this level of advice, to provide certainty of payment and administration. However, the government also recognises the concerns raised by respondents and that there will be certain exceptionally complex cases that would risk losing out under the proposals.
49. Therefore, the government has decided to modify the proposal. Whilst we intend to retain the £157 fixed fee as the main form of payment, we intend to introduce an escape threshold set at three times the value of the fixed fee (£471), for advice under Stage One of HLPAS, to ensure complex cases do not become unattractive to providers. The criteria for establishing whether a case can escape will mirror the approach currently taken for Legal Help matters under the Standard Civil Contract specification. Where work done by a provider reaches the threshold, they will be able to claim at the existing hourly rates set out in the Civil Legal Aid (Remuneration) Regulations 2013.
50. The government's view is that any significant changes to the fees proposed for this service are beyond the remit of this consultation, which is intended to consider legal aid for housing possession services alone rather than the civil legal aid fee schemes across the board. However, the Ministry of Justice continues to consider the long-term sustainability of civil legal aid.
51. As set out above, the government has also committed to piloting the grant funding of a set number of legal aid training contracts a year to support providers in training and recruiting the additional staff needed to deliver this service.
52. We have addressed the points raised about compensation for travel time and expenses in our response to question four.

**Question three: Do you agree with our proposal to introduce an attendance fee in place of the existing nil session fee? If no, please suggest an alternative and provide supporting evidence.**

53. We received 20 responses to question three, all of which agreed with the government's proposed approach.

**The government's response to question three**

54. The government will implement this proposal on a permanent basis for the new HLPAS contracts. Evidence provided as part of this consultation exercise suggests that this proposal will help improve the sustainability of the HPCDS, especially in areas where low volumes of work and fluctuating usage reduce the commercial viability of the contracts.

---

**Question four: Do you agree that this attendance fee should be equivalent to the fee if the provider had seen two clients during the session? If no, please suggest an alternative fee and provide supporting evidence.**

55. We received 22 responses to question four, with 9 agreeing with the government's proposal and 13 disagreeing.

56. Whilst most respondents welcomed the attendance fee being doubled, many did not believe that this increase would be high enough to compensate for the time spent at court, particularly once travel time was factored in.

57. Some respondents raised concerns with the rates themselves (in other words the fee paid per client seen, rather the concept of the attendance fee itself), arguing that the in-court duty fees are "too low" and not commercially viable when low numbers are attending. Several respondents argued that the proposal does not rectify the current disincentive for providers undertaking duty work rather than office work, when the latter can be billed at a higher fee.

58. One respondent argued that the level of this attendance fee assumes that, in the absence of any clients, advisers would be able to work on other client matters whilst at court. They said that a provider's ability to work effectively whilst attending court is dependent on the facilities of a particular court or hearing venue- for example, consulting rooms being available for a provider's exclusive use or reliable WIFI.

59. Several respondents argued that this increase will not go far enough in addressing the financial viability of schemes in rural areas.

60. A number of respondents suggested alternatives to the government's proposal. The most commonly suggested alternative was that the attendance fee should be equivalent to the fee for a provider who had seen three clients during a session (five

respondents) or should be replaced with an hourly fee, dependent on the number of hours spent in court and travelling rather than a set rate (four respondents).

#### **The government's response to question four**

61. The government intends to implement this proposal as consulted on. Evidence provided as part of this consultation exercise, in response to question four and question three, suggests that this proposal will help improve the sustainability of the HPCDS, especially in areas where low volumes of work and fluctuating usage reduces the commercial viability of the contracts which is the intention underpinning this proposal.
62. Whilst the Ministry of Justice recognises that further uplifting payment for attendance at court, either to the equivalent of three clients or to an hourly fee, may go further to help sustain the scheme in areas of fluctuating cases, it is important that the funding provided through these changes is proportionate and offers full value for money to the taxpayer. Likewise, regarding concerns about general rates of payment for the duty scheme (the per client fee), the government believes that the total package of measures being taken forward from this consultation will ensure the scheme is more financially viable and logistically deliverable in the future.
63. The government does not agree that the proposed attendance fee assumes providers can work on other client matters at court. The intention of the set attendance fee is to compensate providers for the time they have spent at court, recognising they cannot undertake other legal services whilst on duty.
64. The issue of travel compensation was raised at various points in responses to the consultation. In the government's 2019 consultation, we consulted on introducing reasonable costs for travel as part of a price competitive element of a provider's bid. This was met with a mixed reception from respondents, who generally disagreed with the proposed method of remunerating travel on a price competitive basis. We have not yet identified an alternative system for remunerating travel that is administratively straightforward, for both the LAA and providers, cost effective and fair. However, we will continue to explore options for remunerating travel in the future.
- 

**Question five: Do you agree with the proposal to allow providers to claim the fee for any follow up Legal Help matter in addition to any fees claimed under the HLPAS? If no, please suggest an alternative and provide supporting evidence.**

65. We received 23 responses to question five, all of which agreed with the government's proposal.
66. One respondent noted that sometimes substantial work needs to be undertaken following the hearing and that this proposal will better reflect the costs of provision

incurred by providers. Another highlighted the value in working with clients following the proceeding to ensure an agreed solution with the landlord or lender.

67. However, several respondents said that, whilst they agreed with the government's proposal to allow both fees to be claimed together, the Legal Help fee is too low and that the government should consider increasing these rates.
68. Some respondents also argued that without the same expansion in scope as proposed for Stage One of HLPAS (advice before court), take-up for follow on advice would be low and limited in effectiveness, with assistance limited to the housing issue rather than any underlying social welfare issues. In a similar vein, some respondents also raised that ongoing assistance on the housing matter would be limited to those clients with a defence and/or a counterclaim to the possession claim, at which point the work would move on to a legal aid certificate.

#### **The government's response to question five**

69. The government will implement this proposal on a permanent basis for the new HLPAS contracts. There was strong support for this proposal on the basis that allowing providers to claim the scheme fee in addition to a follow up Legal Help matter is not only fair, but also makes the service more attractive to providers by removing the previous disincentive for the provider to take on Legal Help work.
70. As set out above, the government's view is that any significant changes to the fees proposed for this service are beyond the remit of this consultation, which is intended to consider legal aid for housing possession services alone rather than the civil legal aid fee schemes across the board.
71. The policy intention behind allowing access to advice on social welfare matters is to enable early resolution of possession proceedings, providing a more holistic service for clients during this process. Whilst we recognise that there are arguments in favour of a wider expansion, our proposals ensure this wider access to advice is targeted at the highest priority cases in the first instance, namely those where an individual is at risk of losing their home, whilst remaining affordable to the taxpayer. Whilst we will not be introducing an equivalent expansion of scope for follow on work at this time, we are not ignoring this issue. As set out earlier in this document, we are shortly due to commence a pilot to test the impact of early legal advice in social welfare law, particularly focusing on whether it drives the resolution of housing problems at an earlier stage. The evaluation of this pilot will inform our future approach to the provision of legally aided early legal advice in social welfare law matters.
-

**Question six: Should the HLPAS be under a separate contract like HPCDS?**

72. We received 20 responses to question six, of which 17 agreed and 3 disagreed with the government's proposal that the HLPAS should be under a separate contract from the Standard Civil Contract, like the current HPCDS.
73. One respondent said that their reason for supporting this proposal was that "duty desk advice is a distinct type of advice service" and therefore, "providers should demonstrate an active desire and commitment to provide the service by tendering for a contract."
74. Most respondents also felt that whilst the HLPAS should be separated from the Standard Civil Contract, the two should remain connected by only allowing providers who hold the standard contract, under the Housing and Debt Category, to deliver the new scheme. One respondent believed this would "promote continuity of service for users", with another arguing that only providers with a Housing and Debt contract can provide "the full range of expert services that clients require".
75. Those who disagreed with the approach did so on the grounds of exclusivity, arguing that any provider with a Housing and Debt contract should be able to deliver the early advice element of HLPAS, without being contracted to deliver the in-court duty scheme service. One respondent expressed that to "ring fence" this work to those within the duty scheme would "exclude some very competent practitioners from assisting people".
76. Finally, one respondent argued that this proposal would "concentrate welfare benefits advice casework experience and allow expertise to develop but would restrict access and narrow the pool of providers". On the other hand, they argued that widening the pool so that all housing providers can deliver this service (without needing to hold a HLPAS contract) "would spread welfare benefits cases and therefore experience more thinly but would allow greater access". Their view was that this issue could only be overcome if welfare benefits advice is more generally available, requiring the expansion of legal aid scope beyond this set of proposals.
77. In terms of further suggestions, most respondents felt that Stage One (legal advice before court) of the HLPAS should either be contracted for separately from Stage Two (in-court duty advice and representation) or have different contractual obligations, so that providers would not be required to give early advice to everyone that approached them, regardless of capacity or relevant expertise.
78. Several respondents also suggested the reintroduction of Specialist Support contracts, to help rebuild specialist capability in social welfare advice.

### **The government's response to question six**

79. After consideration of the feedback submitted on this question, the government will contract for the HLPAS separately to the Standard Civil Contract, in the same way as the HPCDS. This means the service will be delivered by a subset of housing providers. This approach recognises that the duty scheme is a distinct type of advice service that not all housing providers would be able, or would want, to deliver.
80. Only providers who already hold a Standard Civil Contract, in the Housing and Debt category, will be eligible for the HLPAS, to ensure the scheme is delivered by providers with the appropriate skills and relevant experience. Likewise, excepting the use of agents, only providers who hold a HLPAS contract will be able to deliver early legal advice under Stage One, to help ensure continuity of service for the client (with the same provider advising them before court and at court).
81. Both stages of the HLPAS, early legal advice before court and the in-court duty scheme service, will be tendered together in a single contract. Our view is that contracting for Stage One and Stage Two of the HLPAS separately is not a viable option, due to the risk this could cause regional disparities in the level of service clients receive across the country, with people in some regions having access to both stages of legal support and others only one stage.
82. To mitigate the concern raised by respondents about provider capacity to deliver Stage One, the HLPAS contracts will allow providers to decline work under the same terms as set out under paragraph 3.51 of the Standard Civil Contract Specification, one of which is "you [the provider] do not have the capacity to take on the case or matter".
83. As set out above, we will be launching the Early Legal Advice Pilot (ELAP) in Manchester and Middlesbrough later this year. This will test the impact of early legal advice (including on social welfare matters) at the earliest possible stage, not linked to any proceedings. The evidence gathered from this pilot will be used to determine our future strategy on legally aided early advice.
84. The government has decided, in response to feedback from respondents on the value these would add, to reintroduce Specialist Support contracts. These will be tendered for alongside the new HLPAS contracts.
- 

### **Question seven: Do you agree with our proposed approach to tender for individual courts? Should there be just one HLPAS contract awarded for each court? If no, please suggest an alternative and provide supporting evidence.**

85. We received 24 responses to question seven, of which 18 agreed with the government's proposed approach and 3 respondents agreed with the proposal to

tender for individual courts, but not to award just one HLPAS contract per court. A further 3 respondents entirely disagreed with the proposed approach.

86. Respondents who welcomed this approach cited benefits such as facilitating contract holders to maintain a close working relationship with their local court, making it easier to provide follow-up advice and signpost to other local services after the court proceeding. Several respondents fed back that tendering by individual courts, rather than by geographical area, would enable local providers to bid for contracts without having to take on obligations to additional courts that would be logistically difficult for them to uphold (for example, due to travel time and cost). On only awarding one contract for each court, one respondent agreed this was the best approach as many courts do not have high enough volumes of listings to make a rota profitable or the facilities to accommodate more than one provider.
87. One of the respondents opposed to the one contract per court approach argued that, due to the trend of the consolidation of jurisdictions, it may be that some courts have too many listings for one scheme. Another disagreed on the basis that some courts conduct hearings at venues far away from the court centre and suggested that contracts should be tendered by hearing venue, rather than by county court.
88. Some respondents argued that this approach does not address the financial viability of schemes in rural areas, which have low volumes of work and are less likely to have providers in close proximity.

### **The government's response to question seven**

89. These responses have reaffirmed the government's belief that tendering for individual courts will help to ensure the sustainability of the HLPAS by reducing travel costs and allowing providers to utilise specialist knowledge of local areas close to individual courts. As is the case currently, the exception to this rule will be for instances where two courts have been bundled together into one scheme due to low volumes (for example, Bath and Bristol county courts).
90. Regarding hearing venues, the LAA contracts for HPCDS services by county court because hearing venues do not have their own listings and are only used when the listing court determines. Consequently, procuring a contract for a venue would provide no guarantee of work, as the venue may not even be used during that contract cycle.
91. Although there was a smaller majority in favour of one contract per court (compared to those in favour of tendering by court), we maintain this is a more practical approach due to the administrative difficulties and confusion allowing multiple providers for one court could cause. It would also be difficult to guarantee that one court could sustain high enough volumes throughout the course of the contract to support multiple



schemes. Allowing the use of agents will help ensure contract holders can manage capacity issues where the court they deliver at is particularly busy.

92. We therefore intend to include this proposal in the upcoming tender for the new HLPAS contracts. The government's intention is that providers will be able to bid for multiple courts as part of the tender but the number of courts they bid for will not increase their chances of success.
93. The government recognises that there may still be risks relating to low interest in some areas, and especially in rural areas. We are of the view that the proposals, along with the additional measures set out above, will work to mitigate these risks where possible.

---

**Question eight: Do you agree that ensuring providers are located in close proximity to the court where they are contracted will ensure a better service for clients?**

94. We received 25 responses to question eight, of which 17 agreed that ensuring local provision will ensure a better service for clients. A further 7 agreed but warned that this should only be where feasible and not at the expense of quality requirements, and 1 respondent disagreed with the government's position.
95. Generally, respondents felt that the key advantage of ensuring local provision was that it made it easier for clients to engage face-to-face with providers. This was viewed as crucial, not only for good service, but for client accessibility. One respondent expressed that face-to-face access was "particularly important for vulnerable clients, who make up a high proportion of the people we support who are facing possession proceedings." Others drew attention to the fact that vulnerable clients are also more likely to be digitally excluded, and therefore may only be able to access legal support in-person.
96. Other key benefits cited by respondents was a local provider having better knowledge of the court (i.e. layout, processes), ease of access to follow on advice and better signposting to other support services, with providers close to court better able to make use of local networks. One respondent said that all of this "allows for more holistic, comprehensive advice and casework".
97. Regarding local provision in Wales, one respondent advocated the importance of providers having "knowledge of the devolved housing law landscape in Wales" and being able "to offer services bilingually".
98. However, several respondents countered that it may not always be possible to have a provider close to the contracted court. One provider detailed "there are very few providers in certain parts of the country, and that in certain courts advice and representation may, in reality, be provided partly or wholly remotely as personal

attendance at court by the advice provider is uneconomic". This was echoed by another respondent who disclosed "we have for many years covered all of the courts across the county, using local agents where possible." As a result, respondents warned that being too prescriptive of the location of providers could lead to certain schemes receiving no applications.

99. Furthermore, several respondents argued that the programme of court closures has meant travel distances to court have become increasingly long for defendants and providers alike in some areas.

100. The one respondent who disagreed with this proposal did so on the basis that requiring close proximity to court could mean less experienced and skilled providers are chosen. This respondent also argued that if Stage One is intended to prevent some cases from needing to proceed, "then proximity to the court is less important".

101. Most respondents felt that whilst proximity to court should be one of the factors in assessing tender bids, remote provision should be permitted in areas where local provision is not feasible.

#### **The government's response to question eight**

102. It is clear from responses to this question that local provision is often important to ensuring the best possible service for clients. That being said, we acknowledge that having a provider in close proximity to court may not be a possibility for every scheme and should also not come at the expense of other important considerations such as quality and experience.

103. Therefore, whilst the government will give preference to providers who have an office within the procurement area of the court they are bidding for, remote provision will still be allowed in cases where local provision is not possible. Furthermore, quality requirements will continue to be the key consideration for choosing between providers when multiple bids are put forward for one scheme.

104. When it comes to HLPAS provision in Wales, we understand the importance of ensuring that, where a provider is not based in close proximity to a scheme, they possess the local knowledge required to deliver an effective service for Welsh clients.

105. In light of feedback from respondents, we will allow the use of agents in the new model, for both early advice before court (Stage One) and the in-court duty scheme (Stage Two). This should further support local provision and allow providers to operate across a wider area.

106. The decision to close any court is not taken lightly. When this does happen, it is following full public consultation and only when we are satisfied that effective access to justice can be maintained having considered journey times for court users.

---

**Question nine: Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.**

107. We received 14 responses to question nine. Of these, 4 agreed with the assumptions and conclusions outlined in the Impact Assessment and 10 disagreed. The main assumption respondents disagreed with was that the proposals would deliver the expected benefits to providers and clients.

108. Most respondents suggested that not all HPCDS clients would receive early advice under the new HLPAS as, in their experience, people often only engage with providers for the first time on the day of their hearing, even when advice is available at earlier stages. Respondents reported that it was the compulsion to attend court which currently triggers client interaction with a HPCDS provider and therefore there is likely to be low uptake of the more wide-ranging early advice under HLPAS. Therefore, they argued this would affect the costings outlined in the Impact Assessment, which assumes volumes for Stage One of HLPAS will be equivalent to that of the pre-pandemic HPCDS.

109. Another respondent questioned using 2019 volumes to inform the costings, arguing that the latest Mortgage and Landlord Possession Claim statistics indicate a general reduction in claims over time.

110. Some respondents also said that without a resourced plan for rebuilding the workforce to deliver debts and benefits advice, capacity to deliver Stage One of HLPAS would be limited, provision would be “patchy” and therefore would not provide the level of projected benefits outlined in the Impact Assessment to clients.

111. Several respondents noted that the benefit of the new HLPAS model was “questionable”, considering the investment required from organisations to set up the service and the open-ended nature of the early advice, which could in practice mean an additional loss for many organisations.

112. One respondent noted that the Impact Assessment does not address the broader issues undermining the sustainability of housing and other civil legal aid contracts. They argued that these services can only function effectively “if delivered by viable specialist housing providers as part of a properly resourced advice ecosystem”.

**Question ten: 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.**

**Question eleven: 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 give data and reasons.**

113. Question ten received 19 responses and question eleven received 14. Responses reaffirmed the picture set out in the equalities impact assessment, namely that women, ethnic minority groups and people with a disability are disproportionately represented amongst housing legal aid clients compared to the general population. Most responses acknowledged that these changes, taken together as a package, will lead to better outcomes for such individuals in England and Wales facing possession proceedings than the current approach facilitates.
114. One respondent noted that the scheme was particularly likely to benefit those who experience underlying health-related difficulties, including mental health challenges. They also raised that as 30% of HPCDS clients in 2019-2020 were disabled, service provision of the new HLPAS must be attuned to the needs of these clients, particularly around accessing the hearing venue and advice in verbal and non-verbal forms.
115. However, it was generally felt that any benefits to these groups would be dependent on the effectiveness of the new scheme which, as set out in answers to question one, was questioned by a number of respondents.
116. Several respondents argued that if the proposals have the unintended consequence of reducing service provision rather than enhancing it (if take-up is lower than the current HPCDS due to concerns about financial viability), then this will have an adverse impact on individuals with protected characteristics.
117. Another point raised was that access via digital channels is problematic for a wide range of potential service users, particularly those with disabilities. Therefore, every effort must be made to ensure the availability of face-to-face provision of legal services.
118. Finally, one respondent raised the risk that the new model may set expectations among judges and landlords that may prejudice them against defendants who did not access HLPAS advice: "It will be difficult for duty advisers to explain the limits of the service to judges, who may be critical of defendants who have not been able to act on the initial advice provided under HLPAS Stage One".

**Question twelve: 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.**

119. Twenty respondents answered this question. Respondents generally felt that the proposals, if they are successful in improving the service, will have a beneficial impact on families. Benefits specified included helping families keep their homes, improve their finances and gain access to support to improve their health and life prospects.
120. One respondent noted that it should also reduce instances where families are forced from their homes into temporary accommodation very far away from the schools of children.
121. Another respondent raised that recent reports have demonstrated that access to timely legal advice for families has reduced the burden on other statutory services such as the NHS, schools and local authorities.

---

**The government's response to questions nine, ten, eleven and twelve**

122. As set out earlier in the consultation, we are introducing additional measures to help ensure the original proposals fully deliver the intended benefits. Whilst these measures are largely focused on rebuilding capability to deliver legal advice and support in social welfare law, we will also consider ways in which the government can increase awareness of this service, particularly the availability of advice before court.
123. The government is also looking at sustainability of the legal aid market more broadly, and continues to engage with representative bodies and providers within the sector to increase understanding of the challenges providers currently face.
124. We are committed to ensuring our courts are accessible to all our users and we aim to list cases at suitable venues when there are access needs. Court and tribunal users are encouraged to get in touch before a hearing to discuss any particular adjustments they may need. Various mitigations will be explored, depending on the support required. For buildings, adjustments may include use of video-conferencing from a remote site, ensuring venues have ramps or accessible toilets, lifts able to accommodate wheelchairs, or hearing loops.
125. The Impact Assessment has been updated to reflect evidence submitted in response to questions nine, ten, eleven and twelve of the consultation. It has been published alongside this response.

# Equalities Impacts

126. This Equalities Statement considers the likely equality impacts on providers and clients from the proposals to be implemented following this consultation. The proposals seek to make HLPAS work more attractive and financially sustainable for those providers who wish to undertake it and therefore ensure access to justice for clients that rely on it.
127. For each policy we have, as far as possible and on the basis of the latest available evidence, indicated what the likely equalities impacts are in this Equality Statement. Stakeholder feedback on the equalities impacts of the proposals has been received through the consultation process, and aided in our assessment.
128. As set out in paragraphs 113-118, the insights provided by the consultation regarding the equalities impacts of the proposals are as follows:
- a. The government's understanding that people with protected characteristics are over-represented amongst clients of the scheme, compared to the general population, is accurate.
  - b. The most significant equalities issue at hand is the potential fallout for those with protected characteristics if HLPAS services were to be withdrawn due to commercially unsustainable contracts; and
  - c. Access to legal services via digital channels is problematic for a wide range of potential service users, particularly those with disabilities, and therefore face-to-face provision must be made available where possible.
129. Where necessary, these insights have been incorporated into the following equalities analysis.

## Equality duties

130. Section 149 of the Equality Act 2010 requires ministers and departments, when exercising their functions, to have 'due regard' to the need to:
- a. eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - b. advance equality of opportunity between people who share a protected characteristic and those who do not; and,
  - c. foster good relations between people who share a protected characteristic and those who do not.

131. 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.
132. This is an ongoing duty, and as part of this obligation we have assessed the impact of our proposals on people with protected characteristics.

#### Methodology to determine discrimination potential

133. 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.
134. 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

135. The primary pool of individuals affected by the proposals will be HPCDS providers and their agents, including Not for Profit providers of the HPCDS, as well as potential entrants to the market who wish to deliver the new HLPAS service. However, the proposals will also affect individuals seeking advice and representation under the new HLPAS.

#### Available data

136. HPCDS services in England and Wales are delivered through various providers. We have limited availability of information on these legal aid providers. In January and February 2015, the LAA carried out an online survey to learn more about the providers doing legal aid work<sup>5</sup>. The survey was sent to all 2,262 legal aid providers (across the entire legal aid market) to complete between 19 January and 27 February 2015. The survey was completed by 644 providers, a response rate of 28%. The survey asked about the protected characteristics of those who have ownership or managerial control of the firm (2,057 people), not the total headcount of the firms who responded (13,578).
137. This limited response rate, the age of the data, and the fact that the data spans the entire legal aid market, rather than just those delivering the HPCDS, significantly limits our ability to draw meaningful conclusions. The information gathered through this survey indicated that in the positions of managerial control, there was an over

---

<sup>5</sup> Ministry of Justice, Legal Aid Statistics in England and Wales: January to March 2015, available at: [www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015](http://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015)

representation of males, when compared to the general population, as well as an over representation within the age group 40-59.

138. More recently, the LAPG commissioned research to better understand the demographics of the legal aid profession, which was published on 31 March 2022. This research indicated that the proportion of legal aid practitioners who are from an ethnic minority background (22.6%, n=270) within the age group 40-59 (42.2%, n=507) and identify as female (60.9%, n=732) is higher than the general population. Whilst the sample size for this research was larger than the 2015 LAA survey (c. 1200 provided responses to the demographic questions), this data also spans across the entire legal aid market, rather than just those practitioners delivering the HPCDS.
139. Data on the incidence of legal problems amongst people with protected characteristics is limited. However, the government holds certain data on the demographics of people granted legal aid.
140. The clients of the HPCDS in 2019-20 (we have used 2019-20 as volumes in 2020-21 were significantly lower due to the stay on possession proceedings) were (excluding cases where the information was recorded as “unknown”)<sup>6</sup>:
- a. 60% female – above the proportion in the general population (51%<sup>7</sup>);
  - b. 27% from an ethnic minority background – above the proportion in the general population (14%<sup>8</sup>);
  - c. 30% with a disability – above the proportion in the general population (22%<sup>9</sup>);
  - d. 24% aged between 25-34 – above the proportion in the general population (14%<sup>10</sup>).
141. Below we have highlighted the equalities considerations, impacts and mitigations of the proposals the government has consulted on. In accordance with our legal duties, we will continue to monitor the equalities impacts of these proposals following their implementation.
142. During the consultation exercise we invited the views of respondents to the consultation on the likely equalities impacts of these proposals. New and useful

---

<sup>6</sup> Legal Aid Agency HPCDS client data 2019-20

<sup>7</sup> <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-and-female-populations/latest>

<sup>8</sup> <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

<sup>9</sup> <https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2019-to-2020/family-resources-survey-financial-year-2019-to-2020#disability-1>

<sup>10</sup> Calculated from ONS 2011 census data for population for each age to give figures for 25-34 age range for comparison.



information was provided by some respondents, and this is set out in the following government analysis.

### **Creation of the Housing Loss Prevention Advice Service (HLPAS)**

#### **Eliminating unlawful discrimination**

##### *Direct discrimination*

143. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to allow providers to provide additional early legal advice under the scheme, increasing defendant engagement and diverting cases away from court where possible, and the proposal will not treat anyone differently because of a protected characteristic. This proposal will ensure that individuals facing housing possession proceedings will be able to access justice.

##### *Indirect discrimination*

144. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

145. The available data indicates that females, individuals from an ethnic minority background and individuals with a disability are over represented among those who receive legal aid through the HPCDS when compared to the general population. This means that the benefits which will arise for clients as a result of this proposal – for example receiving advice to resolve their case without needing to go to court – may be disproportionately witnessed by individuals who fall into these groups.

146. The data outlined above also indicates that males may be over represented within legal aid providers in positions of managerial control, when compared to the general population, meaning that males may benefit more from any additional provider income as a result of this proposal than females.

147. Even though certain protected groups are over represented in the groups affected by the proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients with protected characteristics. We think that any particular disadvantage as a result of this proposal is justified as a proportionate means to achieve the policy aim of making the service more sustainable and more effective for clients.

#### **Advancing Equality of Opportunity**

148. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

149. As indicated above, the proposals are aimed at improving the sustainability and effectiveness of these services. It is therefore likely that providers and clients will benefit from the creation of the HLPAS. As outlined above, data indicates that males

are likely to be over represented amongst legal aid providers delivering the HPCDS; and that females, individuals from an ethnic minority background and individuals with a disability are likely to be over represented amongst clients, when compared to the general population. We consider that, overall, the proposals are likely to continue to meet the needs of clients with protected characteristics.

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

150. We recognise that clients with disabilities are likely to use the HLPAS and will continue to ensure that reasonable adjustments are made by providers and HMCTS.

### **Fostering Good Relations**

151. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

### **Harassment and Victimisation**

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

### **Contracting a panel of legal experts to assist and upskill providers where they need further expert support on social welfare case matters**

#### **Eliminating unlawful discrimination**

##### *Direct discrimination*

153. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to support providers in delivering Stage One of the scheme and make the service more financially viable by reducing training costs for providers. This will consequently ensure that there continues to be sufficient coverage across the country for HLPAS, meaning individuals are able to access justice. The proposal will not treat anyone differently because of a protected characteristic.

##### *Indirect discrimination*

154. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

155. 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.

156. The available data also indicates that females, individuals from an ethnic minority background, and individuals with a disability are over represented among those who receive legal aid through the HPCDS when compared to the general population. This

means that any benefits for clients arising for this proposal may be disproportionately witnessed by individuals who fall into these groups.

157. If this proposal achieves the policy aim of making this service more financially viable to deliver, then many clients of Not for Profit providers of the HLPAS may benefit from the increased availability of 'wrap around' advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.

158. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients with protected characteristics. We think that any benefits that particularly disadvantage a specific group as a result of this proposal is justified as a proportionate means to achieve the policy aim of a more sustainable and effective service.

### **Advancing Equality of Opportunity**

159. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

160. As indicated above, the proposals are aimed at improving the sustainability and effectiveness of the service. It is therefore likely that providers and clients will benefit from a sustained level of HLPAS delivery. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the HPCDS, and that females, individuals from an ethnic minority background and individuals with a disability are likely to be over represented amongst clients of the HPCDS when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.

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

161. We recognise that clients with disabilities are likely to use the HLPAS and will continue to ensure that reasonable adjustments are made by providers and HM Courts and Tribunals Service (HMCTS).

### **Fostering Good Relations**

162. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

### **Harassment and Victimisation**

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

## **Piloting the grant funding of a set number of publicly funded solicitor training contracts for HLPAS providers**

### **Eliminating unlawful discrimination**

#### *Direct discrimination*

164. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to allow providers to upskill their organisations and help provide a pipeline into the legal aid profession for this category of law. This will consequently ensure that there continues to be sufficient coverage across the country for the HLPAS, meaning individuals are able to access justice. The proposal will not treat anyone differently because of a protected characteristic.

#### *Indirect discrimination*

165. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

166. 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.

167. The available data also indicates that females, individuals from an ethnic minority background, and individuals with a disability are over represented among those who receive legal aid through the HPCDS when compared to the general population. This means that any benefits for clients arising for this proposal may be disproportionately witnessed by individuals who fall into these groups.

168. If this proposal achieves the policy aim of making this service more financially viable to deliver, then many clients of Not for Profit providers of the HLPAS may benefit from the increased availability of 'wrap around' advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.

169. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients with protected characteristics. We think that any benefits that particularly disadvantage a specific group as a result of this proposal is justified as a proportionate means to achieve the policy aim of a more sustainable and effective service.

### **Advancing Equality of Opportunity**

170. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

171. As indicated above, the proposals are aimed at improving the sustainability and effectiveness of the service. It is therefore likely that providers and clients will benefit from a sustained level of HLPAS delivery. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the HPCDS, and that females, individuals from an ethnic minority background and individuals with a disability are likely to be over represented amongst clients of the HPCDS when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.

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

172. We recognise that clients with disabilities are likely to use the HLPAS and will continue to ensure that reasonable adjustments are made by providers and HMCTS.

### **Fostering Good Relations**

173. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

### **Harassment and Victimisation**

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

### **The introduction of a set attendance fee for all schemes in place of the existing nil session payment**

#### **Eliminating unlawful discrimination**

##### *Direct discrimination*

175. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to make delivering this service more financially viable for providers, and therefore to make the service as a whole more sustainable and effective for clients. The proposal will not treat anyone differently based on a protected characteristic.

##### *Indirect discrimination*

176. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

177. The data outlined above indicates that males may be over represented within legal aid providers in managerial positions, when compared to the general population, meaning that males working for legal aid providers may benefit more from this higher fee than females.

178. The available data also indicates that females, individuals from an ethnic minority background, and individuals with a disability are over represented among those who receive legal aid through the HPCDS when compared to the general population. Therefore, if this proposal leads to a better service for clients by avoiding potential coverage gaps then individuals who fall into these groups – particularly those who live in more rural areas – could benefit more than the general population.
179. If this proposal achieves the policy aim of making the service more financially viable to deliver, then many clients of Not for Profit providers of the HLPAS may benefit from the increased availability of ‘wrap around’ advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.
180. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients with protected characteristics. We think that any benefits that particularly disadvantage a specific group as a result of this proposal is justified as part of the proportionate means to achieve the policy aim of a more sustainable and effective service.

### **Advancing Equality of Opportunity**

181. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
182. As indicated above, the proposals are aimed at improving the sustainability and effectiveness of this service. It is therefore likely that providers and clients will benefit from a sustained level of service as a result of these proposals. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the HPCDS, and that females, individuals from an ethnic minority background and individuals with a disability are likely to be over represented amongst clients of this service when compared to the general population. We consider that, overall, the proposals are likely to continue to meet the needs of clients with protected characteristics.

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

183. We recognise that clients with disabilities are likely to use the HLPAS and will continue to ensure that reasonable adjustments are made by providers.

### **Fostering Good Relations**

184. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

## Harassment and Victimisation

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

## **Allowing providers to claim for the HLPAS fee in addition to the follow up Legal Help fee**

### Eliminating unlawful discrimination

#### *Direct discrimination*

186. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to make delivering this service more attractive, therefore making the scheme more sustainable, more effective and ensuring continuity of service for clients. The proposal will not treat anyone differently based on a protected characteristic.

#### *Indirect discrimination*

187. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

188. 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.

189. The available data also indicates that females, individuals from an ethnic minority background, and individuals with a disability are over represented among those who receive legal aid for housing matters when compared to the general population. Therefore, if this proposal leads to a better service for clients by increasing the availability of follow up advice and ensuring the continuity of advice and representation for individuals involved in possession proceedings, individuals who fall into these groups will benefit more than the general population.

190. If this proposal achieves the policy aim of making this service more financially viable to deliver, then many clients of Not for Profit providers of the HLPAS may benefit from the increased availability of 'wrap around' advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.

191. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients with protected characteristics. We think that any benefits that particularly disadvantage a specific group as a result of this proposal is justified as part of the proportionate means to achieve the policy aim of a more sustainable and effective service.

### **Advancing Equality of Opportunity**

192. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
193. As indicated above, the proposals are aimed at improving the sustainability and effectiveness of this service. It is therefore likely that providers and clients will benefit from a sustained level of HLPAS delivery. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the HPCDS, and that females, individuals from an ethnic minority background and individuals with a disability are likely to be over represented amongst clients of the HPCDS when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.

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

194. We recognise that clients with disabilities are likely to use the HLPAS and will continue to ensure that reasonable adjustments are made by providers.

### **Fostering Good Relations**

195. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

### **Harassment and Victimisation**

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

### **Contracting for individual courts rather than larger geographical areas**

#### **Eliminating unlawful discrimination**

##### *Direct discrimination*

197. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to allow for providers to travel to court with greater ease and at lower cost, and for the schemes to be easier for providers to manage, and the proposal will not treat anyone differently because of a protected characteristic. This will also ensure that there continues to be sufficient coverage across the country for HLPAS, ensuring that individuals are able to access to justice.

##### *Indirect discrimination*

198. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.



199. The data outlined above indicates that males may be over represented within legal aid providers in managerial positions, when compared to the general population, meaning that males may benefit more from this proposal than females.
200. The available data also indicates that females, individuals from an ethnic minority background, and individuals with a disability are over represented among those who receive legal aid through the HPCDS when compared to the general population. This means that any benefits for clients arising for this proposal – for example benefiting from the local knowledge of providers as outlined in the consultation paper – may be disproportionately witnessed by individuals who fall into these groups.
201. If this proposal achieves the policy aim of making this service more financially viable to deliver, then many clients of Not for Profit providers of the HLPAS may benefit from the increased availability of ‘wrap around’ advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.
202. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients with protected characteristics. We think that any benefits that particularly disadvantage a specific group as a result of this proposal is justified as a proportionate means to achieve the policy aim of a more sustainable and effective service.

### **Advancing Equality of Opportunity**

203. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
204. As indicated above, the proposals are aimed at improving the sustainability and effectiveness of the service. It is therefore likely that providers and clients will benefit from a sustained level of HLPAS delivery. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the HPCDS, and that females, individuals from an ethnic minority background and individuals with a disability are likely to be over represented amongst clients of the HPCDS when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.

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

205. We recognise that clients with disabilities are likely to use the HLPAS and will continue to ensure that reasonable adjustments are made by providers and HMCTS.

### **Fostering Good Relations**

206. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

### **Harassment and Victimisation**

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

### **Monitoring and Evaluation**

208. We will continue to pay 'due regard' to the Public Sector Equality Duty as the proposals are implemented and will consider the most effective ways of monitoring equalities impacts.

## Family Test

209. The Family Test is an internal government challenge to departments to consider the impacts of their policies on promoting strong and stable families.
210. Evidence submitted during the consultation demonstrated that the proposals should have a beneficial impact on families- helping families to keep their home, improve their finances, gain greater access to legal support and improve health and life prospects.
211. The proposals, in so far as they address any underlying issues driving the possession proceedings, should also reduce the instances in which families are forced from their homes into temporary accommodation- which can sometimes be located far away from children's schools.

# **Impact Assessment, Equalities and Welsh Language**

## **Impact Assessment**

The Impact Assessment (IA) for these policy proposals has been updated in line with the latest data and evidence following this consultation exercise. It has been published alongside this document.

## **Equalities**

The Equalities Impact Assessment (EIA) for these policy proposals has been updated in line with the latest data and evidence following this consultation exercise. This can be found on p26 of this document.

## **Welsh Language Impact Test**

A Welsh language translation of this document is available upon request. To request this please contact [Civil.LegalAid@justice.gov.uk](mailto:Civil.LegalAid@justice.gov.uk).

## Conclusion and next steps

212. As laid out above, the Ministry of Justice will implement the policies consulted on with some minor amendments set out below. The policy changes that the government will take forward to implementation will be the following:
- a) Remodelling the delivery of the HPCDS to become a new Housing Loss Prevention Advice Service (HLPAS), incorporating both the existing service of advice and representation at court but also early legal advice before court.
  - b) Expanding the scope of legal aid so that HLPAS providers can offer early legal advice on social welfare law matters to individuals who have received a notice seeking possession of their home. This will be paid at the £157 fixed fee for Legal Help, but with an escape threshold set at three times the fixed fee.
  - c) Contracting a panel of legal experts to assist and upskill providers where they lack expertise on social welfare case matters.
  - d) Piloting the grant funding of a set number of legal aid training contracts for HLPAS providers.
  - e) Contracting by courts, rather than larger geographical areas, with one HLPAS contract awarded for each court.
  - f) Allowing providers to claim for the court duty fee in addition to a Legal Help fee for follow on work.
  - g) Introducing a set attendance fee for all schemes, replacing the existing nil session payment.
213. The evidence provided has informed this policy approach, with the aim of ensuring the sustainability of the HPCDS, and the vital service it provides to those who use it.
214. Following the publication of this consultation, the Legal Aid Agency (LAA) will draft new contracts incorporating the policy position laid out in this response. The LAA will subsequently run a procurement process for these new contracts over Summer/Autumn 2022, with the contracts set to begin in April 2023.

## Consultation principles

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

## Annex A – List of respondents

<b>We received responses on behalf of the following organisations</b>	
Association of HM District Judges	JUSTICE
Bristol Law Centre	Islington Law Centre
Central England Law Centre	Law Centres Network
Child Poverty Action Group	Legal Aid Practitioners Group
Citizen’s Advice London	Liverpool Law Society General Committee
Citizen’s Advice Woking	National Association of Welfare Rights Advisers
Citizen’s Advice Worcester	Shelter England
Civil Justice Council	Shelter Wales
Cumbria Law Centre	South West London Law Centres
Dudley Metropolitan Borough Council	Southampton City Council
Edwards Duthie Shamash Solicitors	Southwark Law Centre
Greenwich Housing Rights	Teignbridge District Council
Hadaway & Hadaway Solicitors	The Law Society
Housing Law Practitioners Association	

Thank you also to those individuals who submitted responses on their own behalf – your feedback was informative and considered throughout the consultation process.









© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from the Ministry of Justice.