

Civil Legal Aid Consultation on the proposed transfer of the assessment of all civil legal aid bills of costs to the Legal Aid Agency

This statement, and the information detailed below, is published further to the Consultation on the proposed transfer of the assessment of all civil legal aid bills of costs to the Legal Aid Agency (“**the Consultation**”) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/959457/court-assessed-claims-consultation.pdf. It has been prepared as a response to certain requests for clarification and further information received from the Law Society by letter dated 16 March 2021 and the Bar Council by email dated 23 March 2021.

The response is being published as a statement so that all those with an interest in or views on the proposals outlined in the consultation may have the benefit of the clarifications and information provided hereunder.

Extension of time for responses

The deadline for responses to the Consultation is currently 10 April 2021. So as to ensure that all those interested have a reasonable opportunity to consider the matters set out below, that deadline is now extended to 10 May 2021. Anyone who has already submitted a response to the Consultation may amend and re-submit their response within that timeframe.

Scope of the Consultation

Question One in the Consultation is worded as follows:

‘Do you agree with our proposal to transfer the assessment of all Court Assessed Claims (as defined in paragraph 12 of this document) to the LAA? Please provide reasons for your view’

In response to a question received from the Law Society, we wish to clarify that this question includes within its scope, and invites comments upon, matters of process within the LAA which are relevant to the question of whether the assessment of Court Assessed Claims (as defined) should be transferred. For the avoidance of any doubt, we will, as part of that, consider any comments relating to the review and appeal arrangements within the LAA’s assessment process, and any observations as to how those arrangements can or should be adjusted or amended in the event that the proposed transfer were to take place.

Responses to the Consultation may, more generally, include any concerns or questions whatsoever arising in relation to the proposed transfer.

Further information and analysis

The proposal has not been the subject of a full impact assessment. However, the following information and analysis has been considered (and continues to be considered) in relation to the proposal and the rationale for it (as articulated in the

Consultation paper). We are making this information available so that it can be considered by anyone wishing to submit a response to the Consultation.

Costs and Savings

1. The table below (Table 1) details the cost to the LAA of HMCTS assessment over the last five years (the HMCTS assessment fee is the fee paid to HMCTS by the LAA).

Financial Year	Taxed Certificate Volume	HMCTS Assessment Fee
2016-17	17,651	£3,605,880
2017-18	17,016	£3,482,920
2018-19	17,106	£3,505,340
2019-20	18,027	£3,686,280
2020-21	15,981	£3,263,460

2. There is an additional cost which is the resource deployed by the LAA to check claims already assessed by HMCTS. In the document *Additional Dataset – LAA Intake and Resource and Performance* is a spreadsheet detailing the number of claims received by the LAA and the resource required to process court assessed claims for each week since April last year. Average intake volumes for the 2020/21 financial year are 498 claims per week and the average resource required to process them is 11.68 FTE (full-time equivalent). The volume of these claims increased between July and October 2020, likely caused by providers voluntarily sending claims directly to the LAA. The LAA has continued to process these claims and achieve targets within its operational budget without needing any additional resource. As explained in paragraphs 28 and 29 of the consultation paper, the LAA already invests significant resource in double-checking bills that have been assessed by HMCTS. This is due to the fact that any errors which occur in payment are attributable to the LAA as opposed to HMCTS. LAA caseworkers do thorough and detailed checks on these claims, and whilst the LAA cannot reduce or change the amounts of HMCTS assessed claims, they can refer them back or return them as an LAA rejected claim. There is, in practice, very considerable duplication of work between HMCTS and the LAA checks, and one reason for considering the proposed transfer is the expected saving in cost and speed which de-duplicating that work would entail.

3. The Bar Council asked specifically whether the resource saved by HMCTS' will be passed to the LAA so that they have additional resources to do the additional work. As mentioned above in paragraph 2 the LAA will not require any additional resource to carry out this work as they already check bills made by HMCTS.

Speed

4. We also calculated the projected impact on legal aid fund spend as a result of providers being paid more quickly as a result of a transfer to the LAA. This projected calculation was made by calculating the "pull forward" (or the impact of faster payment) to the LAA which we expected would occur because of the difference in assessment times between those claims being assessed by HMCTS and those assessed by the LAA. This was calculated using data for 2019/20 which assumed that the estimated average longer assessment process was 14 weeks by HMCTS (as explained in more detail at paragraph 8 below. To note, at the time of calculation an estimate of 14 weeks was taken which is a more cautious estimate than detailed at paragraph 8). This is not a cost to the LAA, it is a one-off impact on LAA Fund as the consequence of faster processing.
5. Detail on the second tab of the spreadsheet labelled *Additional Dataset – LAA Operation Data* contains the latest data as regards the percentage of bills paid within the LAA's target of 20 days from the date the LAA receives the bill. It includes bills which would previously have been court-assessed but have, since August 2020, been (voluntarily) submitted by providers to the LAA for assessment. We consider that it stands as evidence to indicate that the provisional and partial transfer of such bills, which has been in effect since August 2020, has not resulted in a loss of performance so far as the 20 day target is concerned, and that the LAA has the resources to maintain that performance going forward.
6. The performance is routinely shared with Representative bodies via the Case Management Operational Performance pack (commonly referred to as the Shadow Pack, provided under the heading *Additional Information - Shadow Stats Pack March 2021*)¹. The formal LAA target is to pay 90% of complete and accurate bills within 20 days. The current performance against this target is 99% YTD². There is also a 'local' or team target of 90% of all claims to be processed in 15 days. The table detailed on tab 2 of *Additional Dataset - LAA Intake and Resource and performance* shows at which point the target is achieved. In practice, this will mean that most claims are processed by the LAA within 6 days of receipt and where claims are authorised, physical payment is achieved a maximum of 9 days later.
7. It is difficult to work out the exact time it takes the HMCTS assessment process to conclude because we do not always have the exact date on which bills are sent to HMCTS for assessment. In order to analyse comparative speed as between the LAA and HMCTS, we looked at bills of comparable value - some of which were assessed by the LAA and some by HMCTS. We calculated the time of assessment of those bills to be from the date the provider last worked on the case to the date the bill was received by

¹ The LAA shadow pack is local operational information and not official statistics.

² This relates to performance to the end of December 2020. To note, as this data is usually published at the end of the year, there is usually a degree of validation that has not happened. There is potential for there to be slight differences when formally published by the LAA.

the LAA. The processing time (from bill submission to payment) at the LAA, whether the claim is assessed by LAA or HMCTS, is in addition to this time. We note that there may be some variance in start date with this method of analysis because it is for the providers to determine when the final date of work done is on any given file. However, this potential for variation in interpretation of final date exists regardless of whether the assessing body was LAA or HMCTS. Our further analysis of claims using the date of last work on file and final bill submission date for comparable claims between HMCTS and the LAA shows the following. In this analysis all claims labelled as court assessed in the LAA system would have been assessed by HMCTS.

Table 2	
Mean additional weeks taken to submit a bill where HMCTS is the assessing authority compared to when the LAA is the assessing authority	
Financial Year	(Weeks)
2016-17	15
2017-18	12
2018-19	11
2019-20	12

8. Paragraph 26 of the consultation document refers to an average of 15 weeks for Court Assessed Claims to be *paid*. The analysis above shows the time it takes from the time of the last work on file to date of submission to the LAA to be 12.5 weeks. These claims are then paid by the LAA within 20 days (as detailed in paragraph 6, above). The overall time from the date of last work on file to payment being received is approximately 15 weeks.

Appeals and assessments

9. The Law Society has asked for any documented analysis comparing assessments of civil legal aid costs which were under the jurisdiction of HMCTS with those that have been undertaken by the LAA. We do not hold any analysis covering this comparison as the LAA's client and cost management system (CCMS) is unable to distinguish between claims that are processed by HMCTS and those that are processed by the LAA. In addition, it is not possible to identify from the system what the assessment differences are as currently the cases present in the same way whether the assessment has been done by HMCTS or the LAA. Additionally, where assessments have been made by HMCTS, when they present to the LAA for payment there is no detail of any original claim or costs assessed by HMCTS recorded by the LAA.
10. The document named *Additional Information - Shadow Stats Pack March 2021* contains detailed information in relation to reviews and appeals under the LAA process. It includes data on the number of reviews and appeals there have been, the time taken to process them, and the number of reviews and appeals granted,

partially granted and rejected, both before and after the provisional, partial transfer of court-assessed claims in August 2020.

11. The Bar Council has asked questions about the identity and experience of independent costs assessors and what training will be provided. The current LAA Appeals process is set out at paragraphs 6.71-6.81 of the General Civil Contract. Independent costs assessors are experienced solicitors or cost lawyers with expertise in this field³. Along with existing expertise in the field, cost assessors will complete desk top training and will receive additional training as appropriate. Ongoing training and support is provided, for example if the LAA has a system change.
12. The Bar Council has asked whether remuneration will be available to legal aid providers in respect of work done on reviews and appeals. In the existing LAA review and appeals process there is no provision for such payments. We will however consider all responses to the consultation, including on this point, and will reflect further upon whether alternative approaches, including the provision of such remuneration, should be adopted in the event of a decision to proceed with the proposed transfer.

The position of HMCTS

13. As regards a question raised by the Law Society, the potential for HMCTS creating a system enabling the submission of files for assessment in electronic form was not originally explored with HMCTS. As an option it will depend upon whether HMCTS has the resources and ability to establish an integrated platform, across its locations and services, enabling such submissions to be filed and processed. The LAA already has such a system. This is however a point which will continue to be explored with HMCTS, as shown in the document *Additional Information - Correspondence HMCTS Legal Aid Bills 1 April 21* and will be reflected upon when considering all the responses to the Consultation.
14. The Law Society also asked for clarification of the statement in paragraph 30 of the consultation document regarding the redeployment of HMCTS resource following the original transfer in July. Following the original transfer in July 2020, the judicial resource undertaking work was redeployed to assist with court recovery. Court recovery is a Government priority in response to the Covid 19 pandemic to support administration of a fair, efficient and accessible courts and tribunal system while protecting the safety of all court and tribunal users as detailed here: <https://www.gov.uk/government/publications/court-and-tribunal-recovery-update-in-response-to-coronavirus>. Court recovery includes maximising capacity, including judicial capacity, in order to reduce the growth of work-in-hand/backlog and return to baseline (pre-Covid) work-in-hand/backlog levels⁴. The redeployment of resources following the original transfer in July 2020 was a measure taken as a direct response to the pandemic. HMCTS are aware that the outcome of the consultation could see civil legal aid bill

³ A detailed job description of an ICA can be found here: <https://www.gov.uk/guidance/apply-to-legal-aid-appeals-panel>

⁴ <https://www.gov.uk/government/news/covid-19-hmcts-publishes-civil-family-tribunals-recovery-plan>

assessment work returned to them in full, as noted in paragraph one of *Additional Information – Correspondence HMCTS Legal Aid Bills 1 April 21*. If required, judicial time could be redeployed to the assessment of legal aid bills.