

Title: Housing Legal Aid: the way forward IA No: MoJ018/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Legal Aid Agency (LAA)	Impact Assessment (IA)			
	Date: 22/11/2021			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
	Contact for enquiries: James Wrigley (james.wrigley@justice.gov.uk)			
Summary: Intervention and Options			RPC Opinion: Not Applicable	

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
N/A	N/A	N/A	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

The Housing Possession Court Duty Scheme (HPCDS) offers vital “on-the-day” emergency face-to-face advice and advocacy to anyone facing possession proceedings. Under the scheme, anyone in danger of eviction or having their property repossessed can get free legal advice and representation on the day of their hearing, regardless of their financial circumstances. The HPCDS is vitally important in ensuring access to justice and the timely resolution of legal problems but due to the ongoing incidences of providers withdrawing from contracts, the Ministry of Justice is concerned that the scheme is no longer sustainable in its current form. The Ministry of Justice also want to ensure that these schemes are delivered in a way which aligns for the way these types of cases will be heard into the future. The government is therefore consulting on proposals to ensure the long-term sustainability of the HPCDS.

What are the policy objectives of the action or intervention and the intended effects?

The overarching policy objective behind these proposals is to ensure that these services are as sustainable as possible and that there is continuity of this vital service for the clients who need it. An additional policy objective is to ensure that, in the longer-term, the delivery of this scheme aligns with the way housing possession proceedings will be heard into the future, and that the scheme is designed to ensure individuals can resolve their legal problems as early as possible, out of court where that is possible and appropriate.

What policy options have been considered, including any alternatives to regulation?

- **Option 0/do nothing:** make no changes to the current Housing Possession Court Duty Scheme (HPCDS).
- **Option 1:** Remodel the HPCDS into the Housing Loss Prevention Advice Service (HLPAS), enabling providers to offer early legal advice on social welfare law matters to individuals facing possession proceedings before they reach court, in addition to the in-court duty scheme.
- **Option 2:** Allow providers to claim an in-court duty scheme fee in addition to a Legal Help fee for follow on work
- **Option 3:** Pay providers an attendance fee equivalent to having seen two clients during a session.
- **Option 4:** Contracting for individual courts rather than larger geographic areas.
- **Option 5:** Implement all of the options 1 to 4 above (preferred option)

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Is this measure likely to impact on international trade and investment?			Yes / No		
Are any of these organisations in scope?		Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: David Wragley Date: 22/11/2021

Summary: Analysis & Evidence

Policy Option 1

Description: Reforming the HPCDS to the Housing Loss Prevention Advice Service (HLPAS), enabling providers to offer early legal advice on social welfare matters to individuals facing possession proceedings before they reach court, in addition to the in-court duty scheme.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	-		£7.1m		N/A	
Description and scale of key monetised costs by 'main affected groups'						
<ul style="list-style-type: none"> Paying providers of the HLPAS to offer early legal advice in addition to the in-court duty scheme is estimated to result in increased costs to the Legal Aid Fund of approximately £7.1m per annum. LAA implementation and ongoing processing costs are expected to be negligible. 						
Other key non-monetised costs by 'main affected groups'						
N/A						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate			£7.1m		N/A	
Description and scale of key monetised benefits by 'main affected groups'						
<ul style="list-style-type: none"> Legal aid providers of the HLPAS would receive additional remuneration where they deliver early legal advice under the scheme. They are expected to receive in total approximately £7.1m. 						
Other key non-monetised benefits by 'main affected groups'						
<ul style="list-style-type: none"> Allowing providers to claim a fee for delivering early legal advice as well as the in-court duty scheme would make delivering these services more financially viable. If the provision of early legal advice successfully resolves a proportion of cases before court, this would reduce costs for HMCTS. Implementing this option will help to maintain access to justice for individuals facing possession proceedings in England and Wales. 						
Key assumptions/sensitivities/risks					Discount rate	N/A
<ul style="list-style-type: none"> It is assumed that all HPCDS claims (based on 2019 volumes) would also receive early legal advice. In practice, we would not expect all HPCDS claims to also receive early legal advice, and we would expect some claims which receive early legal advice to be resolved before court, which would offset some of the costs. 						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 2

Description: Allow providers to claim an in-court duty scheme fee in addition to a Legal Help fee for follow on work.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate			£0.03m			
Description and scale of key monetised costs by 'main affected groups'						
<ul style="list-style-type: none"> Paying an in-court duty scheme fee in addition to any subsequent Legal Help fee is estimated to result in increased expenditure from the Legal Aid Fund of approximately £30,000 per year. LAA implementation and ongoing processing costs are expected to be negligible. 						
Other key non-monetised costs by 'main affected groups'						
N/A						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate			£0.03m			
Description and scale of key monetised benefits by 'main affected groups'						
<ul style="list-style-type: none"> Legal Aid Providers of the HPCDS/HLPAS will receive increased remuneration when a client is subsequently given Legal Help. They are expected to receive in total approximately £30,000. 						
Other key non-monetised benefits by 'main affected groups'						
<ul style="list-style-type: none"> Allowing providers to claim both the in-court duty scheme fee and the Legal Help fee would make delivering these services more financially viable for legal service providers. If allowing providers to claim both the in-court duty scheme fee and the Legal Help fee increases the availability of follow up advice and results in a more sustainable service, then this could lead to better outcomes for individuals facing possession proceedings in the courts in England and Wales. Implementing this option will help to maintain access to justice for individuals facing possession proceedings in England and Wales. 						
Key assumptions/sensitivities/risks					Discount rate	N/A
<ul style="list-style-type: none"> The financial impacts are based on HPCDS volumes in 2019, as a year unaffected by the reduction in volumes due to Covid-19. 						

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 3

Description: Pay providers an attendance fee equivalent to having seen two clients during a session.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate			£0.3m			
Description and scale of key monetised costs by 'main affected groups' <ul style="list-style-type: none"> Paying an attendance fee to providers if the number of clients at a session is low is estimated to result in increased expenditure from the Legal Aid Fund of approximately £0.3m. LAA implementation and ongoing processing costs are expected to be negligible. 						
Other key non-monetised costs by 'main affected groups' N/A						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate			£0.3m			
Description and scale of key monetised benefits by 'main affected groups' <ul style="list-style-type: none"> Legal Aid Providers of the HPCDS/HLPAS would receive increased remuneration for sessions where there are few clients. They are expected to receive in total approximately £0.3m. 						
Other key non-monetised benefits by 'main affected groups' <ul style="list-style-type: none"> Introducing an attendance fee in place of the existing nil session fee will make it more financially viable for legal service providers to deliver these services at courts with low volumes. It will be more financially viable for legal service providers to deliver these services at courts with low volumes, so individuals facing possession proceedings in those courts, likely in rural areas, will receive a better service than they do currently as this proposal will ensure sufficient provision is available. Implementing this option will help to maintain access to justice for individuals facing possession proceedings in England and Wales. 						
Key assumptions/sensitivities/risks					Discount rate	N/A
<ul style="list-style-type: none"> These financial impacts are based on HPCDS volumes in 2019, as a year unaffected by the reduction in volumes due to Covid-19. 						

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 4

Description: Contracting for individual courts rather than larger geographic areas.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

The impacts of this proposal cannot be easily monetised at this stage, as the proposal is a new approach to how these services are contracted rather than a change to how they are remunerated.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

- By contracting for individual courts, this would allow for providers with greater proximity to the court to travel with greater ease and at lower cost.
- Contracting for individual courts could also make use of local knowledge and allow providers to focus on delivering these services at courts where they are more attuned to the day-to-day running, routine and procedures of the court. This could lead to a better service for clients as they could benefit from this expertise, whilst they could also benefit from continuity of service in terms of follow up advice – for example, follow up meetings to resolve the issues which initially led to possession proceedings.
- Implementing this option will help to maintain access to justice for individuals facing possession proceedings in England and Wales.

Key assumptions/sensitivities/risks

Discount rate

N/A

N/A

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 5

Description: Implement all of options 1 to 4 above together (preferred option).

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£7.4m	

Description and scale of key monetised costs by 'main affected groups'

- Implementing all four options together, as a package, is estimated to result in increased costs to the Legal Aid Fund of approximately £7.4m per annum.
- LAA implementation and ongoing processing costs are expected to be negligible compared to the 'do nothing' option, since this work will have to be retendered in any event.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£7.4m	

Description and scale of key monetised benefits by 'main affected groups'

- Legal Aid Providers of the HPCDS/HLPAS would receive increased remuneration when they deliver this work. They are expected to receive in total approximately £7.4m.

Other key non-monetised benefits by 'main affected groups'

- Implementing these four proposals together should make these services more financially sustainable for providers to deliver.
- Implementing these four proposals should increase the availability of early legal advice and follow up advice for clients, which should lead to a more effective service and less burden on the courts.
- Implementing these four proposals should ensure access to justice for individuals facing possession proceedings in England and Wales.

Key assumptions/sensitivities/risks

Discount rate

N/A

- The financial impacts assume 2019 HPCDS volumes. In practice, there is likely to be some variation in volumes from year-to-year.

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base

A. Background

1. 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. The HPCDS plays a vital role in ensuring access to justice for these individuals and resolving these serious civil problems.
2. Given the vital role these services play in ensuring access to justice and the timely resolution of legal problems, the sustainability of the service is of paramount importance. The government is concerned that these services are not currently sustainable, evidenced by the ongoing incidence of providers pulling out of contracts. Whilst continuity of service has been maintained to date, there is a risk that gaps in service provision may appear which has the potential to have a negative impact on the clients who rely upon this vital service. In addition, the necessity of regularly re-tendering 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.
3. Alongside this, the wider landscape in which these services are operating is changing. The pandemic necessitated an immediate change in how possession proceedings were being dealt with by the court, and further changes are likely needed in how these proceedings are dealt with in the future. We want to ensure that the delivery model for these services is appropriate for these new arrangements, including ensuring the scheme is effective at resolving cases as quickly as possible. The government is therefore consulting on options for the future of the scheme to ensure its long-term sustainability.
4. In developing the options discussed in this Impact Assessment (IA), we have engaged with stakeholders to understand what is and is not working about the way these services are currently being delivered and to understand the impact of the pandemic. We will continue working closely with stakeholders as these options are refined following feedback during the consultation process.

B. Policy Rationale and Objectives

Rationale

5. The conventional economic approaches to government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operates (e.g. monopolies overcharging consumers) or there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules), where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
6. The main rationale for government intervention in this instance is one of equity and efficiency. Equity because this intervention aims to improve the sustainability of these services so they continue to be available for clients that need them. These proposed changes will also generate efficiencies by improving the effectiveness of the scheme so that cases are resolved more quickly. This will ensure a better service for clients and reduce costs later in the process (and burdens on other public services) by resolving legal issues as early as possible. The options assessed in this IA would represent a responsible and practical response to the issues emerging from the evidence gathering we have undertaken and ensure the sustainability of these services for those who need them.

Policy Objectives

7. The associated policy objective is to ensure that these services are financially viable and logistically deliverable into the future, maintaining these vital services for those clients who rely upon them.
8. In addition, beyond making these services more sustainable, the reformed service should seek to resolve housing possession issues earlier in the process, so reducing the burden on the courts where possible and leading to better outcomes for individuals facing possession proceedings.

C. Affected Stakeholder Groups, Organisations and Sectors

9. The proposals assessed in this IA are expected to directly affect the following groups:
 - Individuals facing possession proceedings in the courts in England and Wales
 - Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers
 - The Legal Aid Agency (LAA)
 - HM Courts and Tribunal Services (HMCTS)

D. Description of options considered (including status-quo)

10. To meet the policy objectives, the following options are assessed in this IA:
 - **Option 0/do nothing: the Housing Possession Court Duty Scheme (HPCDS) remains an in-court duty scheme only under existing remuneration and administration rules.**
 - **Option 1: Reforming the HPCDS to the Housing Loss Prevention Advice Service (HLPAS), enabling providers to offer early legal advice on social welfare law matters to individuals facing possession proceedings before they reach court, in addition to the in-court duty scheme.**
 - **Option 2: Allow providers to claim an in-court duty scheme fee in addition to a Legal Help fee for follow on work**
 - **Option 3: Pay providers an attendance fee equivalent to having seen two clients during a session.**
 - **Option 4: Contracting for individual courts rather than larger geographic areas.**
 - **Option 5: Implement all of the options 1 to 4 above**
11. The preferred option is Option 5: implement options 1 to 4 together as a package. This would create a new service for the delivery of legal advice and representation in housing possession proceedings.
12. Implementing the preferred option will require affirmative secondary legislation. It would also require amendments to the relevant legal aid contract and a full retender of that contract, which would be undertaken by the LAA.

Option 0: Base Case/Do nothing

13. Under the 'do nothing' or 'base case' the current HPCDS would remain unchanged.
14. Under this option, there would be no change in the current sustainability of these services, no reduction in the burden on the courts nor better outcomes for individuals facing possession proceedings.

Option 1: Reforming the HPCDS to the Housing Loss Prevention Advice Service (HLPAS), enabling providers to offer early legal advice on social welfare law matters to individuals facing possession proceedings before they reach court, in addition to the in-court duty scheme.

15. Under the current HPCDS, advice is only available at court on the day of a hearing. Under option 1, the current delivery model for these services would be reformed to introduce a new wider service: The Housing Loss Prevention Advice Service (HLPAS).
16. The HLPAS would retain the key element of the current HPCDS; the in-court duty scheme. However, it would introduce access to early legal advice in social welfare law for those facing possession proceedings.
17. Whilst providers who deliver the HLPAS would be required to continue to deliver a duty scheme at the relevant court, they would also be permitted to provide early legal advice to individuals facing possession proceedings. Under this option an individual would be eligible for this additional early legal advice where they have received a notice of a possession hearing from the court with the advice being delivered in the period between the client receiving that notice and the hearing date.

Option 2: Allow providers to claim an in-court duty scheme fee in addition to a Legal Help fee for follow on work.

18. Under the current scheme, if a provider sees a client under HPCDS and then subsequently opens a Legal Help matter, they are only allowed to claim the Legal Help fee, despite having also done some work under HPCDS. Providers have previously told us that after a court hearing a significant amount of follow up work is often necessary. Providers have also told us that the ability to claim both fees together would make the work more attractive.
19. This option would allow providers to claim a follow-on Legal Help fee in addition to any fees claimed under the HPCDS/HLPAS. We believe this would create a more effective, comprehensive service for clients and a more sustainable service for providers.

Option 3: Pay providers an attendance fee equivalent to having seen two clients during a session.

20. Under the current HPCDS model, where a provider has attended court but no clients are seen during a HPCDS session, the provider receives a 'nil-session' fee. This fee is equivalent to what the provider would have been paid had they seen just one client during the session - £75.60 excluding VAT in London and £71.55 excluding VAT outside of London. It is paid on the basis that, despite not having seen any clients, providers have attended court and made themselves available and therefore should be remunerated in some way for their time.
21. Providers have previously told us in relation to the HPCDS that it can be difficult to successfully deliver the HPCDS at courts with low volumes, because the payment for low volumes of work did not always cover the costs of delivering the service. Given that the courts with the lowest volumes of cases tend to be in rural areas, the cost of delivering the service is also likely to be higher in these areas due to travel costs.
22. This option would introduce a set attendance fee in place of the existing nil session fee, which will double the fee currently available to £151.20 excluding VAT in London and £143.10 excluding outside of London, equivalent to what a provider would receive having seen two clients under the current scheme. We propose that this fee would be payable where providers see one or two clients during a single in-court session, or if they attended court for a nil session.
23. We believe that this is a fair and equitable approach to ensure that the delivery of this service is financially viable regardless of the court in which it is delivered. Providers will no longer be penalised if they are continuing to provide an in-court duty scheme, ensuring access to justice is maintained, even when no cases are listed or defendants do not seek advice at court.

Option 4: Contracting for individual courts rather than larger geographic areas.

24. Option 4 would allow the LAA to contract for services based in individual courts rather than larger geographic areas. This would allow providers with greater proximity to the court to travel with greater ease and at lower cost. We expect that less travel as a result of contracting for individual courts would make delivery of these services more attractive for providers and lead to more providers bidding to deliver this service in the future.
25. It could also make use of local knowledge and allow providers to focus on delivering these services at a court where they are more attuned to the day-to-day running, routine and procedures. This could lead to a better service for clients as they could benefit from this, whilst they could also benefit from continuity of service in terms of follow up advice – for example, follow up meetings to resolve the issues which initially led to possession proceedings.
26. Although we believe that contracting for individual courts is a practical and pragmatic approach to ensure the sustainability of these services, we appreciate that some providers, perhaps those which are larger organisations, would still be interested in delivering these services at multiple courts. We intend for services to be tendered in a way in which prospective providers will be able to bid to deliver the service at multiple courts, if they wish.

Option 5: All of the options 1 to 4 above (preferred option).

27. Under this option all of options 1 to 4 above would be implemented together, as a package.

E. Cost & Benefit Analysis

28. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
29. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the options under consideration. The costs and benefits of each proposal are compared to option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero.
30. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
31. Where costs and benefits are monetisable we have estimated the steady state implications of the policy change, as the cases involved are relatively short and so steady state will be reached very quickly. We have not applied optimism bias in these estimates, although we note that there is uncertainty over the future volumes of the services in this IA currently. Values over £50,000 are rounded to the nearest £0.1m, while values under this are rounded to the nearest £10,000, apart from specific fee values which are quoted exactly. All figures include VAT, unless otherwise stated.
32. We have used administrative data which the LAA collects to process claims in order to identify the likely financial impact of the options considered. We have used 2019 as the reference year, as we expect that in the long run volumes are likely to return to this level although volumes continue to be suppressed because of the coronavirus pandemic at present. LAA administrative data has been sufficient to estimate the costs of the fee changes without any additional evidence, assuming no behavioural change. In relation to option 1 we have also used HMCTS data to identify an additional scenario where uptake of the new service could rise.
33. We believe this level of analysis is proportionate as, although there remains uncertainty about the pandemic recovery and actual uptake of the new service, it is unlikely that costs will rise above the higher scenario for option 1. We have considered that it is better to implement this new approach

sooner, rather than pausing to generate a new evidence base which would be based on the current unique circumstances and may not be able to guide policy making for the long term.

Option 1: Reforming the HPCDS to the Housing Loss Prevention Advice Service (HLPAS), enabling providers to offer early legal advice on social welfare matters to individuals facing possession proceedings before they reach court, in addition to the in-court duty scheme.

Methodology

34. LAA data has been used to estimate the costs and benefits of Option 1.

Volumes

35. In 2019 there were 37,700 claims under the HPCDS. This figure has been used as the expected volumes of future cases that will receive advice through the HLPAS. This assumes that the total volume of HLPAS clients will be the same as the number of HPCDS clients in 2019, and that these clients all will continue to go to the in-court service as well. In reality we expect that the HLPAS will resolve some clients issues earlier (reducing demand on in-court services), but also this new service might attract a higher proportion of individuals facing possession proceedings to seek legal aid (increasing demand on HLPAS). These opposite pressures could lead to a higher or lower overall cost, so we demonstrate a higher cost scenario in the “Risks and Assumptions” section below.

Costs

36. Under the proposed HLPAS providers who deliver early legal advice to a client facing possession proceedings would be paid a Stage One fee of £157 plus VAT while providers who deliver advice in-court to a client would be paid a Stage Two fee of £75.60 plus VAT in London and £71.55 plus VAT outside of London.

Costs of Option 1

Monetised Costs

Legal Aid Agency

37. The additional cost of providing the early advice would be the volume described in the above paragraph (37,700), paid at the proposed new housing Legal Help fee (£157 excluding VAT) each time. This option would therefore lead to an increased cost of £7.1m per year to the Legal Aid Fund in steady state, as work that was previously not remunerated by the HPCDS would now be paid under the HLPAS.

38. No implementation or administrative costs would be expected to arise in association with this option.

Benefits of Option 1

Monetised Costs

Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers

39. Providers of these services would receive an expected increase in fee income of approximately £7.1m per year, and a benefit to clients of additional legal services of the same value.

Non-monetised Costs

Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers

40. Remunerating providers for this additional early legal advice work which is not currently remunerated under the HPCDS would make delivering these services more financially viable for legal service providers.

Individuals facing possession proceedings in the courts in England and Wales

41. Individuals facing possession proceedings would be able to access legal advice earlier in the process, and on a wider range of issues, which may allow them to resolve their issue earlier and lead to better outcomes.
42. If remunerating providers for this additional work leads to a more sustainable service, then this could lead to better outcomes for individuals facing possession proceedings in the courts in England and Wales.
43. This proposal should ensure access to justice for individuals facing possession proceedings in the courts in England and Wales.

HM Courts and Tribunals Service

44. If the wider availability of early legal advice leads to possession proceedings being resolved earlier in the process then this may lead to fewer cases reaching court which could reduce costs for HM Courts and Tribunals Service as there will be fewer hearings required.

Option 2: Allow providers to claim an in-court duty scheme fee in addition to a Legal Help fee for follow on work.

Methodology

45. LAA data has been used to estimate the costs and benefits of Option 2.

Volumes

46. In 2019 approximately 270 HPCDS clients went on to receive Legal Help. This figure has been used as the expected volumes of future cases that will go on to Legal Help. Implicit in this use is the assumption that the total volume of HPCDS or HLPAS clients remains unchanged and the proportion of cases going on to Legal Help remain unchanged. It is also assumed that the distribution of London vs non-London sessions remains the same.

Costs

47. The non-London fee for HPCDS act of assistance is £71.55 excluding VAT. The London fee is £75.60 excluding VAT. This consultation proposes that these fees will remain the fee paid for the in-court duty scheme element of the proposed HLPAS. The provider will be paid the location appropriate fee for any HPCDS matter or HLPAS in-court matter that goes on to Legal Help, on top of their existing fee for the Legal Help.

Costs of Option 2

Monetised Costs

Legal Aid Agency

48. There will be an increased cost to the Legal Aid Fund as a result of this option, as work that was previously not remunerated by the HPCDS will now be paid under the HLPAS.
49. In 2019, approximately 270 HPCDS clients received Legal Help. They will be paid the location sensitive in-court fee to give an approximate option cost of £30,000.
50. It is possible that the ability to claim the Legal Help and the in-court fee may lead to a provider behavioural change increasing the proportion of cases that go on to Legal Help. This has not been quantified as the cost of this option is small and it will scale directly with the volume of clients.
51. No implementation or administrative costs would be expected to arise with this option.

Benefits of Option 2

Monetised Costs

Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers

52. Providers of these services would receive an expected increase in fee income of approximately £30,000.

Non-monetised

Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers

53. Allowing providers to claim both the in-court fee and the Legal Help fee would make delivering these services more financially viable for legal service providers. Although the amounts available are small, the ability to claim both fees will reflect more fairly payment for work done and, according to providers, make this work more attractive.

Individuals facing possession proceedings in the courts in England and Wales

54. If allowing providers to claim both the in-court fee and the Legal Help fee increases the availability of follow up advice and results in a more sustainable service, then this could lead to better outcomes for individuals facing possession proceedings in the courts in England and Wales.

55. This option should ensure access to justice for individuals facing possession proceedings in the courts in England and Wales.

Option 3: Pay providers an attendance fee equivalent to having seen two clients during a session.

Methodology

56. LAA data has been used to estimate the costs and benefits of Option 3.

Volumes

57. In 2019-20, approximately 3700 sessions involved fewer than two clients. This figure has been used as the expected volume of future sub-two client sessions. It is assumed that future years have a similar number of sessions with fewer than two clients, and that the London vs non-London distribution of these sessions remain similar.

Costs

58. The non-London fee for a Housing Possession Court Duty Scheme act of assistance is £71.55 excluding VAT. The London fee is £75.60 excluding VAT. This consultation proposes that the fees for the in-court element of the proposed Housing Loss Prevention Advice Service will be the same as these.

59. The attendance fee will be two times the location sensitive act of assistance fee. Providers would only earn more than the attendance fee if they provide an act of assistance to three clients or more.

Costs of Option 3

Monetised Costs

Legal Aid Agency

60. There would be an increased cost to the Legal Aid Fund as a result of this option, as the amount paid to providers for low client volume sessions would increase.

61. In 2019-20, approximately 3700 sessions had either zero or one client, and received a fee equal to seeing a single client but under this option would receive a fee equal to seeing two clients. They

would be paid the location sensitive attendance fee to give an approximate expected additional option cost of £0.3m.

62. There are no implementation or administrative costs associated with this option.

Benefits of Option 3

Monetised Costs

Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers

63. Providers of these services would receive an expected increase in fee income of £0.3m.

Non-monetised Costs

Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers

64. Introducing an attendance fee in place of the existing nil session fee would make it more financially viable for legal service providers to deliver these services, particularly at courts with low volumes.

Individuals facing possession proceedings in the courts in England and Wales

65. This option would be more financially viable for legal service providers to deliver these services at courts with low volumes, so individuals facing proceedings in those courts, likely in rural areas, would receive a better service than they do currently.

66. This option should ensure access to justice for individuals facing possession proceedings in the courts in England and Wales.

Option 4: Contracting for individual courts rather than larger geographic areas.

Costs of Option 4

67. This option is not expected to have a direct financial impact on its own but is intended to provide the non-monetised benefits described below.

Benefits of Option 4

Non-monetised

Housing Possession Court Duty Scheme / Housing Loss Prevention Advice Service providers

68. By contracting for individual courts, this would allow for providers with greater proximity to the court to travel with greater ease and at lower cost. We expect that less travel as a result of contracting for individual courts would make delivery of these services more attractive for providers and lead to more providers bidding to deliver these services in the future.

Individuals facing possession proceedings in the courts in England and Wales

69. Contracting for individual courts could also make use of local knowledge and allow providers to focus on delivering services at courts where they are more attuned to the day-to-day running, routine and procedures of the court. This could lead to a better service for clients as they could benefit from this expertise, whilst they could also benefit from continuity of service in terms of follow up advice – for example, follow up meetings to resolve the issues which led to possession proceedings.

70. This option should ensure access to justice for individuals facing possession proceedings in the courts in England and Wales.

Option 5: All of the options 1 to 4 above (preferred option)

71. Option 5 is the result of doing options 1 to 4 together, and so the costs and benefits are the same as those set out above when combined. The overall expected cost to the Legal Aid Fund is £7.4m per year, with an equivalent benefit to providers.

F. Risks and assumptions

72. The key assumption is that we return quickly to a steady state, from the current level of demand due to Covid-19, and that this is at the same level of uptake and proportions as in the calendar year 2019.
73. To test this assumption and demonstrate the potential financial risks we have considered a higher cost scenario where uptake of the HLPAS increases beyond the level of the current in-court service. This scenario has been generated by attempting to match the names of courts in the HPCDS data from 2019 to the volumes of possession claims in those courts – we have used a fuzzymatching technique because the HPCDS data is recorded using a free text box and so contains many variants for the same court and so the matching is not 100% accurate.
74. This exercise showed that there was wide variability in the ratio of HPCDS claims to court claims, but also suggested that the courts with the highest sustained level of this ratio saw HPCDS volumes of around 50% of mortgage court claims and 75% of tenant court claims. Using these ratios for all courts, we estimate that the additional cost of the early advice under HLPAS could rise to £17.8m. This cost is unlikely to arise immediately but illustrates the longer-term costs which could arise if this policy generates additional uptake for this new service.

G. Wider impacts

Equalities

75. The Equalities Impact Assessment can be found on page 21 of the consultation document [**Housing Legal Aid: the way forward**].
76. Section 149 of the Equality Act 2010 requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - advance equality of opportunity between people who share a protected characteristic and those who do not; and,
 - foster good relations between people who share a protected characteristic and those who do not.
77. 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, marriage and civil partnership, gender reassignment, pregnancy and maternity.
78. This is an ongoing duty, and as part of this obligation we have made an initial assessment of the impact of our proposals on people with protected characteristics. This assessment is included within the consultation document and we will publish an updated equalities assessment alongside our consultation response.

Families

79. We have no evidence to suggest that families would be disproportionately adversely affected by the proposal.

Impact on small and micro businesses

80. Housing legal aid is provided by businesses of various sizes, and these changes should have a positive impact for all size of business. Contracting for individual courts (option 4, and included in option 5) should benefit small businesses particularly as they will be able to choose how many courts they are able to ensure provision, which could be more challenging for a small business covering multiple courts.

Foreign trade impacts

81. We do not envisage any foreign trade impacts.

Better Regulation

82. This measure is out of scope of the Small Business Enterprise and Employment Act 2015 and the Ministry of Justice's Business Impact Target.

Welsh language

83. We have considered the implications for Welsh language in the development of these proposals and will publish a Welsh language version of the consultation on the government's website.

H. Monitoring and Evaluation

84. Following implementation, we will continue to monitor the impact of these changes.