

## CORRECTION SLIP

Title: Government Response to Legal Aid Means Test Review

Session: May 2023

CP 842

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### Correction:

Ministerial foreword – page 4 at paragraph 6

Text currently reads:

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Text should read:

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Date of correction: 14 July 2023



Ministry  
of Justice

# **Government Response to Legal Aid Means Test Review**

May 2023

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of Justice

# **Government Response to Legal Aid Means Test Review**

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of His Majesty

May 2023



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# About this consultation response

This document is the post-consultation report for the consultation paper, Legal Aid Means Test Review.

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 the Legal Aid Means Test Review team at the address below:

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

Alternative format versions of this publication can be requested from [legalaidmeanstestreview@justice.gov.uk](mailto:legalaidmeanstestreview@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.

## Ministerial foreword

Legal aid is fundamental to a fair justice system and underpins the rule of law. It levels the playing field, so that anyone can access justice and enforce their legal rights, whatever their financial circumstances.

The last time legal aid thresholds were reviewed was over a decade ago. So, it's right that we reflect on how the system operates today to make sure legal aid is fit for purpose and getting to those who need it most.

Last year we carried out a review of the legal aid means tests. These tests determine who is eligible for financial support. The review looked at means testing in the round, including the thresholds for legal aid entitlement, the eligibility arrangements for people receiving certain benefits and how the tests could be better aligned across legal aid services.

Our aim was to create a fairer system that targets legal aid to those least able to pay and the most vulnerable.

We consulted on a set of ambitious reforms, including a significant increase in income and capital thresholds for civil and criminal legal aid, so that more people in England and Wales will benefit from financial support. I'm pleased that overall, our proposals were well-received.

With an additional £25 million investment, our changes mean that over 2.5 million more people in England and Wales will be eligible for civil legal aid, and 3.5m more will be eligible for legal aid to fund their defence at the magistrates' court.

Our changes will help ease the burden on domestic abuse victims, who often find legal proceedings both traumatic and costly. Victims will now benefit from a more generous means test when applying for a protective order or other proceedings, and because domestic abuse often involves financial control, disputed assets, or assets in the control of an abusive partner will no longer be taken into account in the test.

We are removing the means test entirely for some civil cases – including legal representation for children, and for legal proceedings brought by parents whose children are facing the withdrawal of life sustaining treatment.

We will also remove the upper disposable income threshold in the Crown Court, so that anyone can access legal representation when they need it. Under the revised test, individuals who are appearing at the Crown Court will only pay privately for legal representation if they choose to.



I offer my sincere thanks to everyone who contributed to our consultation, engaged with us during the review period, and had a role in shaping these plans.

Access to justice is a basic right of any civilised society. No one's income or financial situation should stop them from enforcing their legal rights, or from defending themselves when they have been accused of a crime.

These changes will make a real difference to the way people access legal services, and for a fairer justice system, now and in the future.

**Lord Bellamy KC**

# Chapter 1: Executive summary and introduction

1. Legal aid means testing is a crucial component of the justice system, it ensures that those most in need receive help with paying their legal costs, and that those who can afford to contribute towards their legal costs do so. Access to justice is upheld when legal services are available to those in need and our proposals will result in significant changes which will improve legal aid eligibility and, in turn, promote access to justice.
2. We announced the Legal Aid Means Test Review in February 2019, as part of the Legal Support Action Plan. The review assessed the effectiveness with which the means test protects access to justice, particularly for those who are vulnerable.
3. The Ministry of Justice published the Legal Aid Means Test Review consultation on 15 March 2022. This paper reports the responses we received, any changes made to consultation proposals in light of these responses and describes the policies we will proceed to implement. The consultation closed on 7 June 2022 and the government received 126 responses.
4. Following detailed analysis of the response to the consultation, the measures we will be taking forward, to name but a few, will see: an increase to thresholds, disregards for certain compensation payments, a disregard for inaccessible capital and the removal of the means test for civil representation for children. Greater detail can be found later within this comprehensive response to the consultation.
5. As a whole, in steady state, clients will benefit annually from up to 3,000 more civil representation cases and up to 19,000 more legal help cases under the new civil legal aid means tests, and from up to 13,000 additional magistrates' court and 200 Crown Court cases under the new criminal legal aid means tests.<sup>1</sup> Once fully bedded in, we estimate that these changes will result in up to £25m of additional legal aid spending per year. Further information regarding the breakdown of this cost estimate can be found in the accompanying Impact Assessments.

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<sup>1</sup> This assumes Universal Credit (UC) has been fully rolled out by the time the new means tests are implemented. If UC has not been fully rolled out, the number of applicants for civil legal aid who will benefit could be higher until it has.

6. This has been an open and collaborative review. We are grateful for the invaluable engagement throughout the consultation period and during the course of the review from a wide range of interested parties including: legal practitioners from across the legal aid sector, third-sector organisations, the judiciary and academic specialists.

## **The structure of the response**

7. This paper describes and addresses the responses received through the Means Test Review consultation. We have not repeated the full policy rationale for each consultation proposal. Readers should refer to the consultation paper for comprehensive descriptions of the measures covered in this response.
8. Chapter 2 sets out our overarching approach to legal aid eligibility and provides the government response to consultation questions 1–12. Chapters 3, 4 and 5 concern our proposals in relation to civil legal aid. Chapter 3 covers civil income thresholds, passporting and contributions by reference to consultation questions 13–28. Chapter 4 describes our approach to civil capital thresholds, disregards and passporting by reference to consultation questions 29–39. Chapter 5 covers our proposals on immigration and asylum, under 18s and non-means tested cases as described by consultation questions 40–50.
9. Chapters 6 and 7 detail our proposals in relation to criminal legal aid. Chapter 6 sets out measures which relate to Crown Court income and capital thresholds, passporting and contributions, by reference to consultation questions 51–74. Chapter 7 covers the magistrates' court and criminal advice and assistance/advocacy assistance means tests by reference to consultation questions 75–86.
10. Chapter 8 outlines our proposals for implementation, the transition between current and revised means test, and, review post implementation. This chapter addresses consultation questions 87–109.
11. The Impact Assessments and Equalities Statement have been published online alongside this response paper.

## Consultation summary

12. As set out, we will be taking forward a wide range of changes to the legal aid means test, with the aim of ensuring fairness, efficiency, sustainability and vitally, access to justice. In some cases, we will be aligning our approach to civil and criminal legal aid more closely. These overarching measures are set out in chapter 2 and specifically cover the following proposals:
  - to use a cost of living-based approach for the civil legal aid means test, as we already do for the Crown Court and magistrates' court means test
  - to use the OECD Modified approach to adjust gross and disposable income for different household compositions
  - to disregard Council Tax from the civil legal aid means test (as for the Crown Court and magistrates' court means test), and to remove the £545 per month cap on housing costs
  - to uprate the existing work allowance for the civil legal aid means test, and to implement a similar allowance into the Crown Court and magistrates' court means test
  - to deduct priority debt and student loan repayments, and pension contributions up to 5% of earnings, from the disposable income assessment.
13. For civil legal aid, chapter 3 sets out measures for civil income thresholds, passporting and contributions, specifically:
  - a significant increase to the income thresholds, using a cost of living-based approach
  - to require recipients of Universal Credit with household earnings above £500 per month to go through an income assessment, rather than being passported as at present
  - a time cap of 24 months on the maximum length of time for which income contributions are payable
14. Chapter 4 sets out measures for civil capital thresholds, disregards and passporting, specifically:
  - increases to the disposable capital thresholds and the equity allowance
  - to disregard compensation, ex-gratia and damages payments for personal harm, and backdated benefit and child maintenance payments, from the capital assessment
  - to disregard property which is the subject matter of dispute, in the case the that individual is applying for legal aid for
  - to disregard inaccessible capital which cannot be sold or borrowed against to fund legal services
  - to exempt recipients of certain welfare benefits who are not homeowners from the capital assessment

15. Chapter 5 describes the intended measures for immigration asylum, under 18s and non-means testing. Specifically, the measures covered are: to remove the means test for civil representation for children under the age of 18 and for parents or those with parental responsibility whose children are facing the withdrawal or with-holding of life-sustaining treatment. Chapter 5 also covers the removal of the means test for legal help in relation to inquests which relate to a possible breach of ECHR rights (within the meaning of the Human Rights Act 1998) or where there is likely to be a significant wider public interest in the individual being represented at the inquest.
16. For criminal legal aid, chapter 6 sets out proposals for Crown Court income and capital thresholds, passporting and contributions, specifically proposals:
  - to increase the income thresholds for legal aid at the Crown Court and the magistrates' court, to take into account increases in the cost of living and private legal fees
  - to increase the maximum contribution period for income contributions at the Crown Court to 18 months, and implement a tiered contribution rate (40%/60%/80%)
  - to remove the upper disposable income threshold for legal aid in the Crown Court
  - to remove the current exemption from paying a capital contribution for homeowners convicted at the Crown Court who are in receipt of passporting benefits
17. Chapter 7 sets out proposals for magistrate's court, criminal advice and assistance, and advocacy assistance, specifically proposals:
  - to continue passporting all recipients of relevant means-tested benefits (including Universal Credit) through the income assessment
  - to align the criminal advice and assistance and advocacy assistance means tests with our proposed new civil legal aid means test.

## **Summary of consultation responses and the government's overall view**

18. We have considered stakeholder responses in detail and weighed our original proposals against the recommendations and concerns that came through as common themes from the responses. Overall, the responses we received confirmed the majority of our proposals had support and represented positive reform, however we have made some modifications and changes to our proposals in light of feedback. For example, whilst we are committed to raising thresholds, we will consider the threshold values prior to implementation. This is to obtain a better view of the impact of the recent inflationary period and the severity of the cost of living pressures.

19. We have also taken into account stakeholder concerns that the combination of the Universal Credit plus £500 earnings from income threshold, along with the OECD Equivalence Scale, would have an adverse impact on lone parent families when compared to couples with children. Therefore we intend to introduce a lone parent allowance. This will considerably lessen the detriment of this cohort and place them on a more even footing with others seeking legally aided advice, assistance and representation. Greater detail on these and other modifications to our proposed measures can be found later in this consultation response.
20. In addition, we have listened to stakeholder reservations about the potential adverse impacts on domestic violence victims of the Universal Credit plus £500 earnings policy. We remain resolutely committed to tackling domestic abuse and have decided to support survivors by passporting victims in receipt of Universal Credit through the means test where they are applying for protective orders. Details of this new measure are set out in this response.

## **Immediate next steps**

21. The government will be laying a Statutory Instrument in Parliament to bring into effect phase 1 of our proposals. Phase 1 will deliver the non-means tested areas of civil legal aid first. The measures will deliver non-means-testing measures for:
  - people under the age of 18 applying for civil legal representation, criminal advice and assistance, and advocacy assistance;
  - parents or those with parental responsibility facing withdrawal or denial of life-sustaining treatment for children under 18; and,
  - relatives seeking legal help in relation to an inquest where there are reasonable grounds to believe there could be a potential breach of the individual's ECHR rights; or where the provision of legal help to the individual is likely to produce significant benefits for a class of person, other than the individual and the members of the individual's family.
22. We will implement the rest of the new civil means test and contributory system next as phase 2. Phase 3 will consist of the implementation of the new criminal means tests, with the exception of the removal of Crown Court capital passporting for benefits recipients who are homeowners which we will implement as phase 4. Further detail on the implementation and the arrangements for transitioning between the current means test and the revised test can be found in chapter 8.
23. A Welsh language response paper is available upon request. To request this please contact [legalaidmeanstestreview@justice.gov.uk](mailto:legalaidmeanstestreview@justice.gov.uk).

## Chapter 2: Overarching proposals

24. As part of the Means Test Review consultation, we considered and proposed new alignments between the method of assessment used in the civil and criminal legal aid means tests. We believe there is a strong argument for developing a common approach, where possible.
25. This chapter therefore deals with the government's response to proposals that would apply across the various legal aid means tests. We did not propose total alignment and we consider that there is a strong rationale for different approaches in some aspects of the civil and criminal legal aid means tests. Our proposals for alignment broadly fell under the following areas:
  - Eligibility for legal aid
  - Equivalisation
  - Assessment of disposable income
  - Income disregards
  - Benefits passporting
  - Income contributions
26. In chapter 2 of the consultation document, we described overarching proposals in relation to work allowances and the cost-of-living allowance when assessing disposable income, and income contributions. However, as the consultation questions in relation to these proposals appeared in later chapters, we have presented our analysis of the responses in relation to these proposals later in our response. These are aligned to where the questions were set out in the consultation.
27. As a result of consultation responses which highlighted the impact of our proposals on single parent families, we have developed a new measure. The Lone Parents Allowance will be available to those seeking legal aid services who are raising children on their own. This new measure will mitigate the impact on access to legal aid for single parent families which would have resulted from the implementation of the equivalisation and benefits passporting consultation proposals.

## Eligibility for legal aid

28. One of the objectives of the Legal Aid Reform programme<sup>2</sup> launched in 2011 was that legal aid should be targeted at those who need it most. In line with our historic approach to eligibility for legal aid, we have interpreted this objective as follows.
29. First, the scope of the legal aid scheme should be targeted at the most serious cases in which legal advice and representation is justified. As well as a defined list of services within the scope of the civil and criminal legal aid schemes, there is also the ability for an individual to apply for Exceptional Case Funding (ECF), which ensures that legal aid is available where failure to provide legal services would be a breach, or risk of a breach, of an individual's human rights or retained enforceable EU law rights, or (for advocacy at an inquest) where there is a wider public interest. The Means Test Review and this consultation did not consider the scope of legal aid, or the merits test (for civil legal aid) and interests of justice test (for criminal legal aid), which were described in the Means Test Review consultation document at Chapter 1.
30. Secondly, for most types of legal aid, legal aid should be targeted at those with fewer financial resources available to them, and who are therefore unlikely to be able to pay privately for legal advice or representation.
31. However, there are some types of legal aid where we do not consider that applicants should be excluded solely on grounds of their means. These include some areas of civil and criminal legal aid (such as legal representation in 'Special Children Act' proceedings<sup>3</sup> or in front of the Mental Health Tribunal, and advice at a police station following arrest) for which there is no means test at all. There are also some areas, such as applications for protective injunctions, where legal aid is available to all applicants (assuming they pass any necessary merits or interests of justice test, and the waiver of eligibility limits is applied), but, depending on an applicant's income and/or capital, a contribution may be payable.
32. We consider that applicants with median or above median incomes should not be eligible for most means-tested areas of legal aid, as we do not consider them most in need. However, this approach does not extend to defendants at the Crown Court. Our detailed proposals for legal aid eligibility can be found in Chapters 3 (civil income thresholds), 4 (civil capital thresholds), 6 (Crown Court) and 7 (magistrates' court and criminal advice and assistance/advocacy assistance).

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<sup>2</sup> Legal Aid Reform in England and Wales: the Government Response CM 8072, Published June 2011, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228890/8072.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228890/8072.pdf)

<sup>3</sup> Special Children Act proceedings are found under part 4 and 5 of the Children Act 1989 ([legislation.gov.uk](http://legislation.gov.uk))



33. Whilst the consultation was open, the cost of living and inflation increased materially compared to the preceding years. This was a consistent theme in many of the responses. The original proposals establishing a cost-of-living allowance (COLA) were based using the Office of National Statistics (ONS) Living Costs and Food survey data as it provided a comprehensive analysis of average household spending and is used across government, including the Department for Work and Pensions (DWP) who use it to assess benefits levels. Once available, we will review the next iteration of this survey data, and will consider the thresholds prior to their implementation to ensure the means test continues to protect access to justice, and remains sustainable in the short, medium and long term, focussing finite public funds on those who are least able to pay themselves.

## Equivalisation

34. Equivalisation is the process by which income is adjusted to take account of the needs of households of different sizes. This helps ensure fairness in the way legal aid resources are allocated, as household composition can have a direct bearing on living costs, and hence whether the individual can afford to pay for or contribute towards their legal costs.
35. We consulted on standardising the approach to equivalisation across civil and criminal legal aid, replacing the different scales currently used with the OECD Modified scale. The OECD method is widely adopted internationally and used by other government departments, including the ONS and DWP. We consider this to be a significant advantage, as using this approach for legal aid means testing will support a consistent approach for individuals across means testing services provided by government.
36. It provides both a Before Housing Costs (BHC) and After Housing Costs (AHC) measure – this is important, as housing costs are a significant driver of the difference in financial needs for larger families. We proposed using the BHC metric when assessing gross income and the AHC metric when assessing disposable income, in line with the means test approach, by which housing costs are deducted from gross income and therefore not taken into account in the disposable income assessment.

## Consultation summary

37. **Question 1: do you agree with our proposal to take household composition into account in the means test by using the OECD Modified approach to equivalisation?**
38. There were 80 responses to this question: 28 (35%) agreed with the proposal, 13 (16%) disagreed and 39 (49%) answered 'maybe'. The main reason for disagreement was that the approach was overly complicated and time consuming.

Consultees were concerned that using the OECD Modified Scale would create a significant operational burden. Some responses suggested that the Minimum Income Standard would be a better approach as this allows for a higher standard of living. It was noted that there may be a need for this to be index linked in order to future proof the approach. Those who agreed generally commented that the proposal was fair and is the most appropriate approach, as it would allow adult children to be taken into account and would widen access to legal aid for clients with larger households who may currently be ineligible. This new approach will reflect that those with large households may have a higher gross income but also have higher living costs than a single person household.

### **Government response**

39. The OECD feature of the BHC and AHC measures, is an important element of fair treatment of different household sizes. Housing costs are important for larger families. Use of the AHC for the disposable income assessment will mean we can adjust the amount of income which is genuinely accessible depending on how many dependents an applicant is looking after. Lastly, we continue to believe the OECD Modified Scale to be the most appropriate method because it is widely adopted across government. Having considered the responses and noted the concerns highlighted by respondents, we believe that there are advantages of using one approach to take account of the needs of different household compositions across civil and criminal legal aid. We believe that this advantage, as well as the advantage of aligning with other government departments, outweigh the concerns raised. We therefore intend to adopt the OECD Modified Scale approach to equivalisation.

## **Lone Parents Allowance**

40. During the consultation process respondents highlighted concerns that, the combination of the OECD Modified Scale and an earnings threshold for legal aid applicants in receipt of Universal Credit (outlined below, at chapter 3, paragraphs 129–131), would have a disproportionately adverse impact on lone-parent-families when compared to couples with children.
41. Consultees raised that lone parents in receipt of Universal Credit (UC) are likely to have a higher level of income than other recipients of UC. This is a result of DWP policy to provide benefits support for single parent families when a single adult on equivalent income would not qualify. We intend to adopt the OECD Modified Scale but we accept that equivalisation applies a simple ratio, meaning living costs are simplified. For lone-parent families, this process may underestimate living costs and they may be assumed to have more disposable income than they actually do meaning they are more likely to fail the legal aid means tests or have to pay contributions.

42. We therefore intend to introduce a lone parent allowance alongside the OECD Modified Scale and earnings threshold for UC recipients that we consulted upon as part of the Means Test Review. We intend to introduce this allowance across civil and criminal legal aid means tests. We believe that this will significantly address any adverse impact on lone parents arising from our proposals.
43. This allowance will be set at 70% of an adult allowance, or £315. This is designed to recognise the additional costs a single parent family faces, when compared to a couple with children. We have arrived at this figure as a result of analysis into what measure would be needed to bring the experience of lone parents under the Means Test Review proposals in line with couples with children. Introducing this allowance will create greater parity between lone-parent families and couples with children. This is in keeping with our principle that access to legal aid should be equal for people in similar financial situations.

## **Assessment of disposable income**

### **Housing, council tax and childcare costs**

#### **Consultation summary**

44. **Question 2: do you agree that we should continue to deduct actual rent and mortgage payments and childcare costs for the civil and criminal means assessments?**
45. There were 84 responses to this question: 78 (93%) agreed, two (2%) disagreed, and 4 (5%) answered 'maybe'. The majority of respondents who agreed outlined that this proposal seemed sensible as rent and mortgage payments are non-negotiable payments that clients have to make, and using their actual costs is a logical and fair approach to means testing that reflects actual living costs. Some respondents caveated that this should look at contractually agreed rent and mortgage payments rather than actual payments made, because if a client misses a payment it will be due later on rather than being saved money. It was highlighted specifically that this proposal was welcomed as currently single households do not have their actual rent or mortgage payments deducted and that this proposal will lead to more equality in approach to means testing for those with and without children.

#### **Government response**

46. We welcome the support from the majority of consultees for our proposed approach and we have concluded that we should deduct applicants' actual rent and mortgage costs (including Council Tax), and actual childcare costs, for both civil and criminal legal aid.

47. We believe this approach is fair as there can be a significant variation in housing costs (including Council Tax) for applicants dependent upon household composition and between different regions in England and Wales. Housing costs are often the most significant cost for individuals on low incomes, and we take the view that the full amount should be recognised in order to assess income accessible for use on legal services fairly. Deducting actual housing costs will provide a more accurate assessment and recognise variations in costs in different parts of the country which may be beyond the control of an applicant.
48. Similarly, we believe that we should continue to deduct an applicants' actual childcare costs for both civil and criminal legal aid. There can be a wide variation in childcare costs dependent upon the type of provision and geographical location. We believe that applicants for legal aid should not be pushed above an income threshold as a result of the costs of childcare. We intend to implement this proposal.

## **Pension contributions**

### **Consultation summary**

49. **Question 3: do you agree with our proposal to deduct jobholder pension contributions as part of the disposable income assessments for civil and criminal legal aid?**
50. There were 78 responses to this question, 59 (76%) agreed with our proposal, 10 (13%) disagreed and 9 (11%) answered 'maybe'. The majority of respondents agreed with the proposal and commented that individuals should not be penalised for contributing towards a pension, as this is to be encouraged, and noted that these contributions are largely automated and required in order to receive employer contributions. There was further support for pension contributions to be deducted as clients often do not have access to this money before a certain age and therefore could not use it to contribute towards the cost of legal services. Whilst some that agreed with the proposal noted that this would reduce administrative burden, some who disagreed also noted that this proposal would lead to increased administrative burden. There was some concern that this burden would be so high it would make the assessment of eligibility process too time consuming and expensive to carry out. It was commented that although some individuals choose to pay high pension contributions, there are situations where this is mandatory to remain in the pension scheme so overall it should be deducted so as to not penalise individuals.

### **Government response**

51. We welcome the majority agreement from respondents that jobholder pension contributions should be deducted as part of the disposable income test for civil and criminal legal aid. We believe that the Means Test for Legal Aid should reflect the

changes in government policy since 2001 and recognise that a portion of applicants' income which is likely now to be assigned to pension savings due to automatic enrolment. As employers must automatically enrol qualifying jobholders (unless they specifically opt out) into a pension scheme, we take the view that this income is not accessible income and should not be considered as available for use on legal services. With regard to administrative burden, we recognise these concerns, but other Means Test Review measures such as the reintroduction of passporting for non-homeowners would mitigate this.

**52. Question 4: do you agree with our proposal to limit the amount of jobholder pension contributions we deduct as part of the civil and criminal means assessments to 5% of earnings?**

53. There were 76 responses to this question: 30 (39%) agreed and 46 (61%) disagreed, it was not possible to answer 'maybe' to this question. Those who agreed stated that a cap is useful to ensure that this deduction could not be abused, some agreed with there being a cap but suggested that it be based on autoenrolment percentages. Those who disagreed outlined that it would be more beneficial to deduct actual pension contributions, as many individuals contribute more than 5% into their pension. It was highlighted that certain sectors, including the public sector, have pension schemes that automatically enrol individuals to contribute more than 5% of their earnings. It was noted that this 5% limit could lead to administrative burden in order to apply it and would make the assessment of eligibility process too time consuming and too expensive to carry out. If some limit is required, it was suggested it should not be a common percentage but of a significant monetary value, such as when over £500 is being contributed per month. A recurring theme was that setting the disregard at 5% would penalise individuals for preparing for retirement, which is not in line with other government advice and schemes.

**Government response**

54. We welcome the agreement from some consultees and acknowledge the concerns raised in relation to the proposed limit of 5%. We intend to proceed with the limit, as those who elect to pay more into their pensions tend to have higher levels of disposable income. Therefore, we believe that a cap, equivalent to the income sacrifice level required in automatic enrolment, should be introduced as it will result in a consistent value for pension contribution recognised for all legal aid applicants.
55. If a maximum level were not introduced, there would be a risk that employees with more disposable income (who are able to elect to make higher value pension contributions) would be more likely to qualify for legal aid than those on lower incomes who are not able to contribute more than 5%. We take the view that introducing a standard maximum deduction for pension contributions will result in consistent and fair treatment between legal aid applicants.

56. Some respondents to the consultation raised concerns about a potential increased administrative burden that this may place on legal aid providers, applicants and the legal aid agency (LAA) during the application process. To mitigate these concerns, we will ensure that all relevant guidance documents are updated with worked examples to provide a clarity as to how to calculate pension deductions as part of any new application for legal aid.

## **Prisoner Earnings Act levy**

### **Consultation summary**

**57. Question 5: do you agree with our proposal to deduct any Prisoners' Earnings Act levy as part of the disposable income assessment for legal aid?**

58. There were 70 responses to this question: 40 (57%) agreed, eight (11%) disagreed, and 22 (32%) answered 'maybe'. Those who agreed outlined that this proposal is fair especially as this levy is not income directly available to the client and therefore cannot be used to pay for legal services. It was also stated that this proposal would cut out an unnecessary calculation for providers. It was commented that prisoners need help in accessing justice and their eligibility threshold for legal aid should be maximised, not reduced.

### **Government response**

59. We welcome the support for this proposal. The Prisoners' Earnings Act levy is a means by which the Government applies deductions and levies on the earnings of prisoners. We intend to proceed to implement a deduction of this levy as the prisoner never actually receives the money and therefore it is not available to be used to pay for legal services.
60. The Means Test Review is the first comprehensive revision of the financial assessments for legal aid since the rules were introduced, and the changes we are intending to make will be accompanied by a similarly comprehensive update of associated guidance. We acknowledge that this degree of change will require careful explanation in order for the new test to be delivered by providers. We will work carefully with the LAA and other stakeholders to ensure this guidance update provides clarity for applicants and providers.

## Treatment of debt

### Consultation summary

**61. Question 6: do you agree with the proposal to deduct agreed repayments of priority debt and student loan repayments taken directly from salary or deducted as part of the applicant's tax return as part of the disposable income assessment for civil and criminal legal aid?**

62. There were 86 responses to this question: 55 (64%) agreed, 10 (12%) disagreed, and 21 (24%) answered 'maybe'. Respondents who agreed with the proposal stated that this proposal is logical as the client has little control over these repayments, which are necessary. In addition, it was noted that this would help maximise the threshold for eligibility for students. It was noted that clients pay for legal services out of disposable income, money that has been set aside for priority debt or student loan repayment is not disposable and therefore should not be taken into consideration when calculating the client's ability to pay for legal services. It was stated that clear guidance over what debt payments would be eligible for deduction would be welcomed by providers. Some respondents suggested that all debt repayments should be deducted, not just priority debt and student loan repayments. There were concerns in relation to uncertainty over which debts will qualify as priority debts, and it was noted that there is risk that it could be complicated and time consuming for providers to do this assessment.

### Government response

63. Having considered the responses and noting the support for this proposal from the majority of consultees who answered this question, we have concluded that we should deduct agreed repayments of priority debt and student loan repayments from the disposable income assessments for civil and criminal legal aid. We continue to believe that we should not be asking applicants for legal aid to choose between paying potential legal aid contributions and paying off student loans or priority debt. By deducting these payments, we will ensure that applicants for legal aid are not found ineligible solely as a result of being pushed over the upper disposable income threshold because of income which they are required to use for repayment of priority debt.

64. We note that some respondents raised concerns that some debts can be attributed to more than one person, creating a potential risk of 'double counting' those debts. We believe that this would be identified during the application process and we will issue clear guidance, including on the definition of priority debts, for legal aid providers in advance of implementation. We therefore intend to implement this proposal.

## **Income disregards**

### **Modern Slavery Victim Care Contract (MSVCC) financial support payments**

#### **Consultation summary**

**65. Question 7: do you agree with our proposals to disregard Modern Slavery Victim Care Contract (MSVCC) financial support payments from the income assessment?**

66. There were 72 responses to this question: 59 (82%) agreed, one (1%) disagreed, and 12 (17%) answered 'maybe'. Those who agreed outlined that this proposal seemed reasonable as these funds are targeted for a purpose and therefore should not be regarded in income assessment. It was noted as well that this proposal will not impact the vast majority of cases, but for those it will impact, it is a group of definitively vulnerable people and thus there is significant benefit to going ahead with this proposal. Some respondents went further and believed that any victim of modern slavery should be completely non-means tested. Whilst others stated that just the MSVCC payment should be disregarded, they specified that this should be on a mandatory basis. There was minor concern that this may contribute to increased administrative burden, but the overwhelming majority of respondents supported the proposal in principle.

#### **Government response**

67. We welcome the support for this proposal. We remain of the view that by disregarding these payments and increasing the income thresholds, access to justice for victims will be improved. Furthermore, we consider that where these payments fit within our rationale for disregards (i.e. a payment for a specific purpose and/or to compensate for harm) they should not be considered as resources available to pay for legal services. There are a wide variety of payments which can be made under MSVCC financial support, not all of which fall within the disregard rationale. Therefore, we consider a discretionary disregard to be the most appropriate approach. In agreement with the consultation responses, we see it fit to continue with this proposal.



## **Victims of Overseas Terrorism Compensation Scheme (VOTCS)**

### **Consultation summary**

**68. Question 8: do you agree with our proposals to disregard Victims of Overseas Terrorism Compensation Scheme (VOTCS) payments from the income assessment?**

69. There were 72 responses to this question: 58 (81%) agreed, one respondent (1%) disagreed, and 13 (18%) answered 'maybe'. The majority of respondents supported the proposal and expressed that victims should not be expected to use these funds to pay for legal services. Some respondents who supported the proposal noted that there would be increased benefit if this disregard was mandatory rather than discretionary, partly because it would lead to less administrative burden but also because the payments are to compensate for harm and in no circumstances should be used to fund legal service costs.

### **Government response**

70. We intend to introduce this disregard on a discretionary basis for the disposable income tests in civil and criminal legal aid. The VOTCS provides for a mixture of payments for compensation for harm as well as payments for loss of earnings. We consider it fair to disregard payments made under this scheme which are compensation for harm. As described above in relation to MSVCC financial support payments, there are a wide range of payment types available under the VOTSC scheme. We believe that only payments which compensate for harm, and not (for example) payments for loss of earnings, should be disregarded. We believe that payments for loss of earnings are analogous to income and should be taken into consideration as part of the disposable income assessment.

## **Back to Work Bonus**

### **Consultation summary**

**71. Question 9: do you agree with our proposal to remove Back to Work Bonus payments from the civil and criminal income disregards regulations?**

72. There were 70 responses to this question: 42 (60%) agreed, 13 (19%) disagreed, and 15 (21%) answered 'maybe'. The majority of respondents agreed, primarily commenting that this was because the scheme has ended and there have been no new payments since 2004 and are therefore unlikely to arise, so it is sensible to remove this payment from our civil and criminal income disregards regulations. Those who disagreed commented that this does not incentivise people to return to work, and that this proposal would remove incentives for individuals on low income

and long-term unemployment – however it was not clear if these respondents understood that the scheme had ended in 2004.

### **Government response**

73. As described in the consultation, the scheme was abolished on 25 October 2004, so these payments no longer feature in applicants' income and are not relevant to means assessments. As a result, this element of the means test is no longer required, and we believe that removing it will improve clarity for applicants. Therefore, in agreement with the majority of consultation respondents, we intend to continue with this proposal as consulted.

## **Housing benefit**

### **Consultation summary**

**74. Question 10: do you agree with our proposal to remove housing benefit payments from the civil and criminal income disregards regulations?**

75. There were 77 responses to this question: 21 (27%) agreed, 44 (57%) disagreed, and 12 (16%) answered 'maybe'. Those who agreed commented that this proposal would make it equitable with those not receiving housing benefit, it was noted that these benefits are an income benefit, which is a form of income, and therefore should be taken into account. Those who disagreed had concerns that this proposal will have a disproportionate negative impact on people living in more expensive parts of the country, where housing costs are the highest. It was also noted that housing benefit is disregarded from gross income for civil, Crown and Magistrates court means tests – so it would be inconsistent to remove it here. It was highlighted that individuals in receipt of housing benefit are unable to afford to live in their accommodation without it, and therefore should not be expected to spend this money on legal services.

### **Government response**

76. We have carefully considered the responses to the consultation and have noted the concerns raised by respondents. However, we consider that there is no need for housing benefit to be disregarded under the new means tests, as our proposed approach to the gross income assessment has been designed to recognise actual housing costs. This will mean that where people live in expensive parts of the country this will be fully recognised and the amounts that they spend on rent and mortgages will be deducted.
77. We consider it fairer to consider housing benefit as income for the purposes of the gross income test but to deduct the applicant's actual housing costs as part of the disposable income assessment. This approach is more generous than deducting housing benefit, as some people may pay more towards their housing than they

receive in UC income for housing. By introducing a deduction for the full amount of income which needs to be spent by an applicant on their housing, we will more accurately assess applicants' income. If we maintained the housing benefit deduction instead of deducting actual costs, any housing costs beyond the value of housing benefit allowed would not be captured in the deduction or disregarded. This would reduce eligibility for legal aid and not reflect income genuinely available for legal services. This approach will also treat those in receipt of housing benefit in the same way as applicants who do not receive housing benefit.

## Benefits passporting<sup>4</sup>

### Consultation summary

**78. Question 11: do you agree that we should continue to passport any remaining recipients of income-based Jobseeker's Allowance, income-related Employment Support Allowance and Income Support through the income element of the civil and criminal means tests?**

79. There were 79 responses to this question: 77 (97%) agreed, two respondents (3%) disagreed, and zero respondents answered 'maybe'. The vast majority of respondents supported this proposal and commented that these benefits are being phased out and recipients are highly likely to qualify via the income test, and this proposal will reduce administrative time and cost. It was noted that this proposal will impact a small number of individuals due to the roll out of UC. The majority of respondents commented that this proposal was supported because there is no justification to change the system. The small number of respondents who disagreed had concerns that individuals who have fraudulently claimed benefits such as UC, may also fraudulently claim legal aid, and that the government should passport capital based Jobseeker's Allowance and Employment Support Allowance for income.

### Government response

80. We welcome the support for this proposal. Jobseeker's Allowance, income-related Employment Support Allowance and Income Support are legacy benefits which will eventually be replaced by UC. We intend to continue passporting any remaining recipients of these benefits through the income element of the civil and criminal means tests. Analysis suggests that most individuals in receipt of the benefits

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<sup>4</sup> Passporting is where if the legal aid applicant (is directly or indirectly in receipt of certain means-tested benefits (where the applicant is included in the original benefit claim), they are deemed to pass the income part of the means test for civil and criminal legal aid without going through a full means assessment. Individuals who are not passported may still access legal aid if they pass the full means test. We consulted on whether to continue to passport all applicants in receipt of legacy benefits and Guarantee Credit element of Pension Credit for civil and crime.

referred to in these questions would qualify for non-contributory legal aid under the proposed means test. We therefore believe that changing our policy on passporting recipients of these benefits for potentially a short period of time would create an unnecessary administrative burden. We intend to implement this proposal and keep this policy as it is.

**81. Question 12: do you agree that we should continue to passport recipients of the Guarantee element of Pension Credit through the income element of the civil and criminal means tests?**

82. There were 75 responses to this question: 74 (99%) agreed, zero respondents disagreed, and one respondent (1%) answered maybe. The proposal was supported as it would ensure there was not duplication in efforts by means testing individuals again. In addition, it was believed that those on subsistence benefits should not be subject to a further interrogation of their means, therefore the continuation of this proposal is preferred. If these individuals were not passported it was commented that this would increase the administrative burden on providers of assessing eligibility for legal aid.

**Government response**

83. We welcome the significant support for this proposal. All recipients of legacy benefits (including income-based Jobseeker's Allowance, income-related Employment Support Allowance and Income Support) will eventually be transferred to UC. We intend to continue passporting any remaining recipients of these benefits through the income element of the civil and criminal means tests. Changing our policy on passporting recipients of these benefits for potentially a short period until these benefits are replaced by UC would create an unnecessary administrative burden. In any case, there is a long history of passporting these benefits, and individuals in receipt of them have to be on a low income and would be likely to be on levels of income which mean they would pass our new income tests. Recipients of the Guarantee Credit element of Pension Credit are currently passported through the income assessment for civil and criminal legal aid. Our analysis suggests that most individuals in receipt of Guarantee Credit, would qualify for non-contributory legal aid under the proposed means test and it is for this reason we propose to continue passporting this benefit. This approach also makes administrative sense for both providers and the LAA.

## Chapter 3: Civil income thresholds, passporting and contributions

84. In developing the changes to civil income thresholds, we have aimed to balance the needs of those requiring legal aid to secure access to justice with affordability for the taxpayer and administrative cost-effectiveness for the Legal Aid Agency (LAA) and providers. When setting the new income thresholds, our approach has been to allow for spending on essential living costs. Alongside this, we have developed an updated approach to income passporting and contributions for civil legal aid. The proposals we intend to implement are consistent with the objective that legal aid should be targeted at those who need it most, as well as with the Means Test Review strategic objectives outlined in the introduction.

### Proposed changes to gross income thresholds

#### Upper gross income threshold

##### Consultation summary

**85. Question 13: do you agree with our proposal to raise the gross income threshold for civil legal aid for a single person to £34,950 per year?**

86. There were 82 total responses to this question: 56 respondents (68%) supported the proposal, 6 respondents (8%) disagreed, and 20 responses (24%) replied 'maybe'. It was commented that this proposal would increase accessibility of civil legal aid and would assist more people in passing the income test. There was some concern that this assessment did not sufficiently consider or protect against the rising cost of living.

##### Government response

87. The support for this proposal is welcomed, and in light of this, we have decided to increase the gross income threshold for civil legal aid for a single person. We believe our proposed increase from £31,884 to £34,950 is fair as it is based on the median gross annual income of an individual as published by the Office for National Statistics (ONS) for FY 2019/20. It remains our view that those with above median household incomes should not be eligible for most forms of means-tested legal aid. This is to ensure that we are able to direct resources towards those who are not able to pay for legal services.

88. We recognise the concerns raised in relation to the additional financial pressures which have impacted household finances since we published the consultation, as a result of the inflation increases and the cost of living pressures. As described in chapter 2, we intend to consider the threshold values prior to implementation once the 2021/22 ONS survey data is available. We are mindful that the threshold values implemented, as far as possible, should ensure the means test continues to protect access to justice and remains sustainable in the short, medium and long term, whilst focussing finite public funds on those who are least able to pay themselves. This is in order that the post-implementation review of the means test (described in chapter 8) can properly assess the efficacy of the revised assessments and how the changed rules are operating in relation to each other.

## **Lower gross income threshold for controlled work**

### **Consultation summary**

89. **Question 14: do you agree with our proposal to introduce a lower gross income threshold for civil legal help cases, with the threshold set at £946 per month?**
90. Out of the total 77 responses to this question: 40 respondents (52%) agreed with the proposal, 12 respondents (16%) disagreed, and 25 respondents (32%) answered 'maybe'. Those who agreed did so as this proposal will reduce unnecessary administrative burden. The proposal was welcomed on the grounds that where gross income already falls below the disposable income limit, there is no need to undertake a full means assessment. However, some had concerns about the specific figure of £946 per month and felt that this may need updating to reflect the current cost of living pressures.

### **Government response**

91. We have concluded that the introduction of a lower gross income threshold for civil legal help cases is justified and welcome the response from consultees that this will help to reduce the administrative burden, as we set out in the consultation paper.
92. We recognise that setting the value of the threshold at £946 per month has given rise to concerns about whether this is a realistic figure given ongoing financial pressures for individuals and households. As stated in the consultation paper (see paragraph 167), the lower gross income threshold is intended to be set at the same level as the proposed (upper) disposable income threshold for civil controlled work.
93. We will review the level of this threshold prior to implementation, and as part of that process will consider the most recently available ONS data. The outcome of a review will be subject to the budgetary options available to the government at the time. In any case, the introduction of a new lower gross income threshold will make access to justice swifter for applicants on the lowest incomes.

## **Proposed changes to disposable income assessment and thresholds**

### **Housing costs**

#### **Consultation summary**

**94. Question 15: do you agree with our proposal to remove the £545 monthly cap on allowable housing costs for applicants for civil legal aid with no partner or children?**

95. There were 85 total responses to this question: 76 respondents (89%) agreed with our proposal 5 respondents (6%) disagreed with the proposal; and 4 respondents (5%) answered 'maybe'. Those who agreed commented that this proposal makes the assessment more equitable, more reflective of real life and will allow more people to access civil legal aid. Respondents commented that this proposal will ensure that individuals are not penalised for living alone and will make it so more people can access civil legal aid, including vulnerable groups. It was noted that this proposal was logical and sensible as housing costs are essential payments and are often above the cap amount. It was commented that this cap did not represent the median cost for a studio or one bedroom flat, and therefore removing the cap allows a more representative view of housing costs when assessing eligibility for legal aid.

**96. Question 16: do you agree with our proposal to deduct actual Council Tax as part of the civil means assessment?**

97. Out of the 84 responses to this question: 70 respondents (83%) agreed, 8 respondents (10%) disagreed with the proposal and 6 (7%) answered maybe. Those who agreed highlighted that this proposal was necessary as this will better reflect household expenditure as Council Tax is a necessary expense that individuals do not have control over and therefore cannot redirect the money towards funding legal services. It was also noted that this proposal was welcomed as Council Tax is not only a necessary expenditure, but often a significant bill for clients. It was commented that the choice to deduct actual payments will more accurately represent real life expenditure of individuals. However, there was some concern expressed that this may lead to increased administrative burden, as this deduction may be too time consuming, and may lead to complications in the ability of some clients to provide proof of payment and history.

#### **Government response**

98. We welcome the majority support from consultees for the approach set out in Questions 15 and 16 and we will implement both measures in full. By removing the £545 monthly cap on housing costs for applicants with no partner or children as well

as taking actual council tax into account, we will provide a fair and more accurate assessment of the individual's disposable income by reflecting their true housing costs. These proposals complement our planned approach to deduct actual housing and childcare costs from the income assessments (described in chapter 2, paragraphs 44–45). We have devised this approach in order to provide an accurate assessment of the income which applicants have available to contribute to legal services.

## **Proposed additional deductions**

### **Consultation summary**

#### **99. Question 17: do you agree with our proposal to increase the work allowance in the civil legal aid means test to £66 per month?**

100. There were 80 responses to this question: 56 respondents (70%) agreed with the proposal, 4 respondents (5%) disagreed, and 20 respondents (25%) answered maybe. For those who answered 'maybe' or disagreed, many mentioned that they agreed with the proposal to increase the work allowance but that the £66 figure was not sufficient enough to cover commuting costs in current day cost of living estimates.

### **Government response**

101. We have noted the overall support from consultees for an increase of the proposed work allowance from £45 to £66. As set out in the consultation, this allowance accounts for work travel costs and any other work-related costs. We believe this allowance should be retained and updated as it supports wider government policy to encourage work and ensure that working-age adults are better off in rather than out of work.

102. We have taken account of reservations that ongoing financial pressures for individuals and families means that the proposed allowance of £66 per month may understate work-related travel costs. We will consider the allowance level in advance of its implementation. However, this element of spending is not captured in the ONS Living Costs and Food Survey data as highlighted in our consultation paper. We previously relied on a 2019 Lloyds/YouGov report on average monthly work travel costs to inform our thinking in this area. Therefore, any re-consideration of the level of the work allowance would be subject to the availability of quantitative research into average monthly work travel costs.



## **Proposed Cost of Living Allowance and lower disposable income threshold**

### **Consultation summary**

#### **103. Question 18: do you agree with our proposal to use a Cost of Living Allowance drawing on essential household spending as the basis of our proposed lower income threshold?**

104. There were 77 total responses to this question, 44 respondents (55%) agreed with the proposal, six respondents (8%) disagreed, and 27 respondents (35%) answered maybe. Of those 27 respondents, we found that responses varied significantly, some leaning towards supporting the proposal (with conditions) and others remaining undecided on the proposal. Common themes included that the proposal needed simplifying as it was impractical to assess or apply, many also added that standard of living needed to be taken into account. Two respondents also mentioned that they disagreed with 'non-essential' areas.

#### **105. Question 19: do you agree with our proposal to set the Cost of Living Allowance at £622 per month for an individual?**

106. There were 73 total responses to this question: 27 respondents (37%) agreed with the proposal, 11 respondents (15%) disagreed, and 35 respondents (48%) answered 'maybe'. The main themes of these responses were that the rising cost of living needs to be taken into account with up-to-date figures to reflect recent increases in living costs. Though many supported an increase to the current thresholds and noted that the new figure of £622 is a significant increase, many disagreed with the approach taken to determine this value. They asserted that socially acceptable living standards need to be taken into account, and that the approach should include annual uprating.

### **Government response**

107. We will implement the proposed Cost of Living Allowance and use this as the basis of the lower disposable income threshold. As we set out in the consultation paper, through the ONS Living Costs and Food Survey, we can identify those categories of essential spending and household expenditure central to the proposed Cost of Living Allowance (COLA). These categories are very broad and extend beyond day-to-day spending to include, for example, household items or services paid for less frequently, such as insurance and white goods.

108. There is a responsibility to target legal aid financial support towards those most in need. We do not believe it is reasonable to make funding available to all. We maintain our position set out in the consultation paper that it fair to take the amounts spent on each of these categories by the lower 50% of the population (by income) to set the amount for the proposed allowance.

109. We welcome the majority support from consultees to the methodology underpinning the COLA. However, we understand concerns that we have relied on data from the 2019/20 ONS survey which pre-dated the current cost of living pressures; and we note that consultees have argued that the proposed COLA of £622 per month for a single adult may no longer be representative of the likely household costs now faced by individuals and families. Therefore, we will consider the proposed level of the COLA prior to implementation, and as part of that process will consider the most recently available ONS data. This is covered in more detail in chapter 2, paragraph 33.

## **Upper disposable income threshold**

### **Consultation summary**

#### **110. Question 20: do you agree with our proposal to use median household spending as the basis for the proposed upper income threshold?**

111. There were 73 responses to this question, 31 respondents (42%) agreed with the proposal, 16 respondents (22%) disagreed, and 26 respondents (35%) answered 'maybe'. Many respondents who disagreed favoured instead reliance on the Minimum Income Standard (MIS) which identifies the level of income required to achieve an acceptable standard of living sufficient to meet key material needs and to participate effectively in society (research into the MIS is carried out by Loughborough University and funded by the Joseph Rowntree Foundation). Respondents argued that the MIS would be a more reliable metric rather than depending on what individuals and households currently spend.

#### **112. Question 21: do you agree with our proposal to set the upper disposable income threshold at £946 per month for an individual?**

113. There were 72 total responses to this question: 43 respondents (60%) agreed with the proposal, 8 (11%) disagreed and 21 (29%) answered 'maybe'. Whilst the majority of responses both supported the principle of an increase, and the specific figure of £946, many responses to this question echoed thematic respondent concerns within this chapter regarding the impact of the inflationary changes and the values of the proposed increases.

### **Government response**

114. We are persuaded that reliance on median household spending, as identified by the ONS, provides a sound basis on which to set the proposed upper disposable income threshold. We welcome the broad endorsement of consultees for this approach.

115. However, we acknowledge consultees' concerns about ongoing financial pressures, notably inflation and the cost of living pressures, on the level of the upper disposable

income threshold of £946 per month. As described, we will consider this threshold ahead of implementation to ensure the means test continues to protect access to justice, and remains sustainable in the short, medium, and long term. Later in 2023 the ONS data sets covering FY 2021/22 will be available to help inform this process.

116. We also note the responses which state that the cost of living should be based on the MIS as this focuses on the income level that households require to achieve an acceptable standard of living and to participate actively in society, rather than relying on what households currently spend.
117. As described in the consultation (paragraphs 174–176, and Annex C), we have set our Cost of Living Allowance (COLA) in a manner that goes beyond essential expenditure to include spending on restaurant, café and takeaways meals. As such, recipients of non-contributory civil legal aid should be able to afford some level of wider social participation.
118. To create a fair approach to means assessments we need to implement a model which is based around typical spending for households. We consider that a standardised approach is appropriate, in order to account for the fact that households with higher incomes can afford to spend more on their standard of living and recreational activities. This informed our decision to adopt the COLA approach. Therefore, we will implement these measures as consulted.
119. In comparing the MIS with our proposed COLA, one of the chief criticisms focuses on the extent to which single parent families may be disadvantaged under our approach. The decision to adopt a lone parent allowance within our new means test should substantially address those concerns.

## **Allowances for dependents**

### **Consultation summary**

**120. Question 22: do you agree with our proposal to set allowances for dependents at £448 per month for each adult and child aged 14 or over, and £211 for each child under 14?**

121. There were 79 responses to this question, 28 respondents (35%) agreed with the proposal, 33 respondents (41%) disagreed, and 18 (23%) answered maybe. Respondents who agreed commented that this proposal was welcomed and was a simpler approach that was necessary to ensure access to justice in the future. There were some comments that suggested that these allowances should be index linked and will require another eligibility calculator for providers. Those who disagreed added that they believed that the proposed rates for under 14s were too low, and that the proposal would have a disproportionate adverse impact on lone parent families. It

was suggested that parents can face high costs to support young children, and some respondents believed that both figures were not reflective of current costs. It was noted that the proposed method of equivalisation underestimates the needs of children, which could have an adverse impact on the ability for individuals to access justice. There was specific note of the disparity between the figures for children under 14 and those over and doubt as to whether this lower figure is representative of the costs to raise a young child; another recurring theme was the costs associated with infants.

### **Government response**

122. We have concluded that it is valid to fix the dependents' allowance for adults and children in the way we have set out. In relying on the OECD Modified After Housing Costs equivalisation metric, the cost of living allowance for an additional adult or child over 14 will be 72% of the allowance for a single adult; for a child under 14, the corresponding allowance will be 34% of that for a single adult. Therefore, we intend to adopt this measure as part of the new means test.
123. We recognise that consultees have been concerned that the proposed level of the allowance may be too low as a result of recent financial pressures on households and families. We note that the value is based on a proportion of the COLA for a single adult. This will mean that dependents' allowance values would increase in line with any future increases to the COLA. In advance of implementation, we will consider the level of the proposed COLA which is currently set at £622 per month for a single adult; any future adjustment to this figure would automatically trigger an adjustment to the proposed level of the dependents' allowances. We will also introduce an eligibility calculator to support the revised means tests.
124. We have listened to concerns about the adverse impact of our policy proposals on lone parent families (including in respect of the dependents' allowances). Our decision to implement a new lone parent allowance as a central feature of the new means test will significantly address these concerns (see chapter 2, paragraphs 40–43).

## **Income disregards**

### **Approach to means assessment for applicants receiving temporary support**

#### **Consultation summary**

#### **125. Question 23: do you agree with our proposal to not take into account the means of anyone providing temporary assistance to the applicant in the civil legal aid means assessment?**

126. There were 81 responses to this question. 64 (79%) agreed with the proposal, 7 (9%) disagreed and 10 respondents (12%) answered 'maybe'. Those who supported the proposal commented that it seemed sensible and fair, as individuals often rely upon temporary assistance when leaving households, or when fleeing domestic abuse. It was noted that it is often complicated when proving the source of contributions from family and friends, this proposal will alleviate this complexity and will maximise eligibility for legal aid. Further support for the proposal suggested that it would ensure people are not discouraged from providing temporary assistance and that individuals providing temporary assistance do not subsequently feel compelled to give that support indefinitely and, potentially, to their own detriment. Respondents who disagreed raised concerns about possible difficulties in defining 'temporary', and how clients would be able to prove that support is temporary.

#### **Government response**

127. We welcome the majority support for this proposal which we will implement as set out. As we made clear in the consultation paper, the legal aid means test takes into account not only the resources of the individual applying for legal aid but also those of their partner, and of anyone else who is substantially maintaining the applicant. Our policy will ensure that individuals do not risk being refused legal aid on account of support and resources provided on a temporary basis and to which the applicant does not have access (ahead of implementation, we will also issue supporting guidance about what constitutes 'temporary assistance'). In implementing this policy, we will align the approach of the civil legal aid means test with that for criminal legal aid.

## Benefits passporting

128. Applicants in receipt of passporting benefits are passported through the income means assessment for all types of civil and criminal legal aid and the capital means assessment for criminal legal aid at the Crown Court and for criminal advocacy assistance. When Universal Credit (UC) was introduced, it was agreed that for legal aid purposes it would be a passporting benefit on an interim basis, whilst further work took place on a longer-term solution. UC replaced six other benefits, not all of which were previously passported benefits.

## Universal Credit (UC) as a passporting benefit

### Consultation summary

**129. Question 24: do you agree with our proposal to implement a £500 earnings threshold for applicants in receipt of UC who are currently passported through the income assessment for civil legal aid?**

130. We received 96 responses to this question: 6 (6%) agreed with our proposal, 84 respondents (88%) disagreed, and 6 (6%) responded with 'maybe'.

131. Those in favour of this proposal, felt it was a fair approach that would allow for parity between UC and non-UC recipients. It was also noted that this threshold would allow providers to ensure that clients are eligible for legal aid, even if they are in receipt of UC. However, there was extensive concern that this proposal would create an additional administrative burden, as it would be onerous and time consuming for providers to work this out. It was also noted that there needed to be further clarity on what this threshold would comprise of, and what sort of income it covered, especially as additional income from earnings for UC recipients is likely to vary from month to month, causing the calculations and proof to be complex. Some respondents worried that the £500 threshold may discourage UC recipients from working. Many respondents added that those in receipt of UC are in the lowest income category and are likely to be eligible for legal aid. Many commented that the passporting system works well currently and adding in this threshold is unnecessary and would cause the current system to work less efficiently.

**132. Question 25: what administrative impacts do you anticipate our proposal to implement a £500 earnings threshold for applicants in receipt of UC will have for providers and applicants?**

133. This question was an open question allowing respondents to share any additional or wider thoughts and did not ask for yes/no/maybe responses. There were 91 responses to this question. The main themes covered in these responses were that a more complex assessment system may result in clients disengaging in the mediation

process, and that there will be increased administrative burden for providers and for applicants; leading to an increase in bureaucracy as the most time-consuming component of means assessment is in respect of income. This process is streamlined by customers who are in receipt of UC being able to provide proof of their UC amount, which can be done easily and remotely. There was concern that changing the system to one where assessment of bank statements is required will prove time consuming and complicate the process.

**134. Question 26: do you have any suggestions for ameliorating any administrative burden that our proposal to implement a £500 earnings threshold for applicants in receipt of UC (if enacted) may cause for providers and applicants?**

135. This question was an open question and did not ask for yes/no/maybe responses. We received 89 responses to this question. Some suggestions to mitigate the administrative burden arising from the proposal included designing a simplified method to assess individuals on the amount of UC they receive. Some respondents also suggested increased payment per case to providers that recognises the additional time and complexity needed for the assessment. The majority of respondents used this question as an opportunity to express their disapproval of the proposal and that it should not be carried forward.

**Government response**

136. We have reflected carefully on our proposals in light of the disagreement expressed by many consultees on this issue. However, we remain of the view that introducing the proposed £500 earnings threshold for UC recipients who are currently passported through the income assessment for civil legal aid is the correct policy position to adopt.

137. Our rationale for this approach reflects our desire to ensure fairness between UC and non-UC recipients, to ensure consistency of outcome once a legal aid application is submitted. Currently, UC may be awarded to individuals with much higher incomes than our existing eligibility thresholds whilst other groups, such as students and pensioners, are ineligible for UC altogether.

138. In reviewing our proposed policy, we have also undertaken further analysis of the adverse impact that a UC earnings threshold of £500 would have for lone parents. Taking account of the representations made by consultees on this issue, we have decided to implement a new lone parent allowance, details of which are set out in chapter 2 (see paragraphs 40–43).

139. We believe that setting the earnings threshold at £500 per month will strike a fair balance so that we passport as many individuals as possible for reasons of operational efficiency whilst reducing the proportion of passported individuals who, if

assessed under the new means test, would be ineligible for non-contributory legal aid. Our policy to introduce a monthly earnings threshold of £500, allied to the new lone parent allowance, would result in less than 1% of individuals being passported when they would otherwise be ineligible for non-contributory civil legal aid under the new means test. In contrast, if we maintained a policy of passporting all UC recipients through the civil legal aid means assessment, 17% of this cohort would be ineligible for non-contributory legal aid under the new means test.

140. We are aware that earnings from income will fluctuate, and established approaches to this issue already exist in the sphere of means testing. We identified in our consultation paper that our proposed policy would generate an additional administrative burden for civil legal aid practitioners and the consultation responses attest to concern in this area. We note that any additional administrative burdens need to be seen across the suite of our proposed reforms and not solely through the UC policy; we believe that policy decisions we have made elsewhere, for example in relation to non-means tested areas, may help in mitigating the additional administrative burden for providers. But we accept that these may not completely offset the impact.
141. That said, we do acknowledge the pressures that the civil legal aid provider market is currently facing. Whilst data sharing restrictions means that providers are unable to access the DWP benefit tracker, we will re-introduce the eligibility calculator and the Legal Aid Agency (LAA) are currently piloting this tool robustly with practitioners ahead of implementation. We have also launched a Review of Civil Legal Aid that is considering the wider sustainability of the civil legal aid market (Civil Legal Aid Review – GOV.UK ([www.gov.uk](http://www.gov.uk)) <https://www.gov.uk/guidance/civil-legal-aid-review>). This will feed into the wider review of the means test in 3–5 years from implementation, as detailed in chapter 8.

## **Universal Credit (UC) as a passporting benefit: victims of domestic abuse**

142. In addition to our approach to lone parents, we also identified a potential adverse impact upon victims of domestic abuse who are in receipt of UC that are seeking protective orders. These court orders can limit an abuser's contact with their partner and/or children and are critical to the safety of domestic abuse victims and their families.
143. Currently, where an individual is applying for an injunction or other order for protection, the LAA have the discretion to apply an eligibility waiver. This means that applicants may be eligible for legal aid even if they have income or capital above the



thresholds in the means test. However, victims may be required to pay a financial contribution towards their legal costs following the grant of an order.

144. Although the decision as to whether an applicant needs to pay contributions is made after legal aid is granted, meaning that victims of domestic abuse will never be denied legal aid for protective orders, we accept that payment of contributions may place additional pressure on domestic abuse victims receiving UC that are leaving their partners.
145. We are committed to tackling domestic abuse. In response to the consultation, stakeholders raised the vulnerabilities of domestic abuse victims, and some felt that survivors of abuse should not have to undergo a means test. We are keen to ensure that the changes to means testing effected by this review bring benefit to victims of domestic violence, especially where they are seeking legal assistance to help protect them from their abusers. Therefore, on consideration of the consultation responses, we have decided to passport victims of domestic abuse on UC through the means test where they are applying for protective orders. This will ensure that victims who are in receipt of UC will continue to have access to legal representation, regardless of their financial situation, without needing to pay any contributions, providing victims with legal protection to prevent further harm.
146. We are also implementing a number of other changes as a result of the Means Test Review, which will benefit victims of domestic abuse more widely. For instance, we are increasing income thresholds; introducing a lone parent allowance; providing more generous disregards for assets that are unavailable due to abusive relationships, such as increased equity disregards; removing disputed matters from the means test assessment; and introducing provisions to identify inaccessible capital and remove it from the means test. These changes will benefit all individuals, in particular victims of domestic abuse. We have also already introduced changes beyond the Means Test Review that will benefit victims of domestic abuse, such as removing the cap on the amount of mortgage debt that can be deducted from a property's value and granting legal aid for Domestic Abuse Protection Orders and Domestic Abuse Protection Notices.
147. We will also continue to give further thought to how means testing processes for legal aid can be delivered in a manner which ensures support for victims of domestic abuse. We will publish an update on this policy area within the next six months.

## **Income contributions**

### **Payment period for civil legal aid**

#### **Consultation summary**

148. We consulted on introducing a time cap on income contribution payment periods of 24 months in civil legal aid, however, we did not include a question in relation to this. This maximum is set to a timeframe to reflect the average duration of a case. If the individual's case concludes within the time cap, then, as at present, no further income contributions will be required from the date the case finishes. For more details, please see paragraphs 211–217 of the consultation.

#### **Government response**

149. We will introduce a 24-month maximum period for payment of income contributions; we wish to stress that if the case concludes within the 24-month maximum period, income contributions would cease from that earlier date. We believe that by fixing a payment period we will improve access to justice. For civil certificated work, 20% of all offers for contributory legal aid in 2018/19 and 2019/20 were not accepted. Stakeholders have suggested that non-acceptance is linked to the perceived unaffordability of monthly income contributions for an uncertain period. Drawing on nearly 11,000 cases that concluded pre-pandemic (these covered the calendar years 2017, 2018 and 2019), we identified an average mean case duration of 23 months (case duration is measured from the point that the certificate is granted to conclusion of the case). We want to give applicants certainty about the financial commitment they are accepting and will proceed to implement this policy proposal as set out.

### **Tiered contribution model for civil legal aid**

#### **Consultation summary**

**150. Question 27: do you agree with our proposal to use a tiered model approach (40%/60%/80%) to determine the monthly income contribution?**

151. There were 68 responses to this question: 12 respondents (18%) agreed with the proposal, 18 (26%) disagreed and 38 (56%) answered 'maybe'. The majority of respondents noted that the proposed system was fair, but there was concern that the affordability of these bands needs to be considered within the context of cost of living increases, and that in the future these thresholds are regularly reviewed to ensure they are appropriate for contemporary economic climate. There was some concern that this proposal further complicates an already complex testing system.

## **Government response**

152. We acknowledge that some respondents did not support this proposal and many respondents raised concerns. Whilst we recognise that the proposed tiered model (40%/60%/80%) is steeper than the existing model (35%/45%/70%), it should be viewed in the context of our wider changes. In particular, the proposed increases to disposable income thresholds which will see contributions being sought from those on higher incomes, we believe that a steeper tapering of the individual tiers is justified
153. We will implement this measure as we believe that it fits with our overarching rationale that those who can afford to contribute to their legal aid should do so. We consider that these slightly increased contribution rates will be affordable in the context of our increased income thresholds. The contribution rates will consist of three bands of £108 each, distributed evenly between the proposed lower and higher disposable income thresholds. The new income contributions rates per month are as follows:
- Band A (40%): applies to disposable income between £622 and £730
  - Band B (60%): applies to disposable income between £730 and £838
  - Band C (80%): applies to disposable income between £838 and £946
154. We believe that the progressive structure of our proposed approach allows the contribution to be calculated in the fairest way.

## **Minimum monthly income contribution for civil legal aid**

### **Consultation summary**

#### **155. Question 28: do you agree with our proposals for setting a minimum monthly income contribution of £20?**

156. There were 74 total responses to this question: 27 (6%) respondents agreed with the proposal, 17 (23%) disagreed and 30 (41%) answered 'maybe'. Similarly, there was concern in the written responses to this question on vulnerable people, and some respondents felt that the viability of this figure depends on the personal circumstances of clients. Whilst some agreed with the proposal as it would reduce administrative burden for providers chasing missing small contributions under this amount, others commented that setting any threshold below £100 would not be worth the administrative effort that it would demand. Overall, whilst many agreed with the proposal, it was noted that the affordability of any contribution will remain an issue.

### **Government response**

157. We will implement a minimum monthly income contribution of £20 (currently the minimum contribution is £1.75) as set out in the consultation paper. Whilst there were different views on this issue from consultees, we have studied the concerns expressed by some that the income contribution level may prove unaffordable. This policy will in fact benefit those on low incomes, as they will not have to pay any contributions if the monthly amount would be below £20.
158. As we acknowledge in relation to the proposed tiered contribution model (see paragraph 152 above), the minimum £20 monthly income contribution should be seen in parallel with our wider changes, particularly, the significant increase to the disposable income thresholds will mean that eligibility for means free legal aid will increase.
159. We have indicated in the consultation paper that the calculation of the minimum £20 monthly income contribution effectively provides for an additional financial buffer as this liability would only fall to those whose disposable income exceeds £672 per month. Therefore, we contend that concerns over affordability of the minimum £20 monthly income contribution are likely to be unfounded. As we further highlighted in the consultation paper, raising the monthly income contribution to £20 is more cost-effective administratively as the LAA will no longer have to deploy resource to collect lower value contributions.

# Chapter 4: Civil capital thresholds, disregards and passporting

## Introduction

160. This chapter outlines our policy decisions related to the capital test for civil legal aid. This includes capital thresholds, capital disregards and capital passporting arrangements. In order to be eligible for legal aid, individuals must pass both the income and capital tests.
161. Consultees strongly supported our consultation proposals to increase the capital thresholds, to disregard additional payments and our proposals on capital passporting. However, our proposals in relation to inaccessible capital and disregarding benefit and child maintenance back payments have been revised to respond to concerns raised in the consultation process.

## Disposable capital thresholds

### Consultation summary

**162. Question 29: do you agree with our proposal to increase the lower capital threshold to £7,000 and the upper capital threshold to £11,000?**

163. There were 73 responses to this question: 54 (74%) agreed, 8 (11%) disagreed, and 11 (15%) answered 'maybe'. The majority of respondents welcomed the resulting expansion in eligibility for legal aid. Some consultees argued that the proposed thresholds should be higher and should, at least, be the same as the welfare benefits thresholds (£16,000) highlighting the misalignment between these two figures. There was also concern that the proposed levels were based on three months expenditure for the median UK household, rather than based on analysis of the cost of legal services, or the ability of individuals to pay for them. However, most of respondents commented that this proposal is a positive step and a welcome change.

### Government response

164. We welcome the support for this proposal and note that the majority of replies with comment viewed this proposal favourably, due to the increase it will deliver in eligibility for legal aid.
165. We note the concerns raised that the proposed thresholds should be higher. The purpose of the lower capital threshold is linked to financial security, so it is important

that the means test enables individuals to retain a level of savings for such costs. The rationale for increasing the lower threshold to £7,000 is based on advice from the Money and Pensions Service (MaPS), an arm's length body of the Department of Works and Pensions (DWP), that individuals should aim for three months' essential expenditure available in savings. The MaPS consider three months' expenditure a suitable amount as it gives individuals a reasonable amount of time to adjust to a change in their financial circumstance, e.g. finding a new job. As flagged in the consultation document, we calculated the £7,000 by using data from the ONS Living Costs and Food survey on average monthly expenditure for the median UK household and rounded it the nearest £'000.

166. The upper threshold figure of £11,000 was determined by the median household financial wealth, i.e. the median value of household's financial assets, such as savings accounts or investments. The rationale for this approach is that those with above average wealth should not generally be eligible for legal aid as they cannot be considered the 'most in need' from a financial perspective.
167. We also acknowledge concerns raised that these thresholds should be in alignment with welfare benefit. We will not be aligning the capital thresholds, or the legal aid means test more generally, with the means test for welfare benefits. This is because we consider the legal aid means test should reflect the aims of legal aid policy, which are different to the aims of welfare benefits policy. For example, Universal Credit (UC) aims to support people to work where possible and to make work pay. It does this by slowly reducing an individual's UC entitlement as their earnings increase (via a 'taper'). In contrast, means testing aims to treat applicants consistently according to their means.
168. Following consultation and on the basis of the above, we will proceed with the proposal as consulted, increasing the lower capital threshold to £7,000 and the upper capital threshold to £11,000. We will be considering the thresholds based on the 2019/20 ONS Living Costs and Food survey data before implementation (see chapter 2). We believe this policy will expand eligibility and improve access to justice for those most in need.

## Equity disregard for the main residence

### Consultation summary

#### **169. Question 30: do you agree with our proposal to increase the equity disregard from £100,000 to £185,000?**

170. There were 72 responses to this question: 58 (81%) agreed, 6 (8%) disagreed, and 8 (11%) answered maybe. Once again, the majority of respondents welcomed this proposal and agree that this increase is necessary for ensuring legal aid is targeted

to those who really need it. It was also stated that this increase was a more realistic reflection of the capital value of property assets. There was concern that as house prices have risen over the last few years, this figure of £185,000 should be the minimum to which it is increased, with some respondents believing it should be further increased.

171. The majority of those who disagreed or were unsure argued that an individual's main residence should not be taken into consideration in the means test assessment. This is because individuals could have difficulty accessing capital that is tied up in property as this capital may be trapped or inaccessible, and some expressed that no individual should have to sell their only residence in order to afford legal services. In addition, it was highlighted that although the figure was based on national averages, it failed to account for the regional disparity in housing costs.

### **Government response**

172. We welcome the support for this proposal. We acknowledge the concerns raised about circumstances where an applicant's main residence is trapped or inaccessible. However, it is important to note that this policy specifically related to the equity disregard which covers property that is not trapped or inaccessible but rather acknowledges circumstances where those with low income may need to sell their property to access any capital. Therefore, to ensure this proposal does not negatively impact individuals who own trapped or inaccessible capital we will create a mandatory disregard for any capital that is 'trapped' or 'inaccessible' (full details on this proposal are provided in paragraphs 185–189 below).
173. We also acknowledge the concerns raised about whether this increase realistically reflects the capital value of assets with recent rise in house prices. We consider that the proposed increase, which is based on ONS data, still accurately reflects the growth of the capital value of property assets since the disregard was introduced in 1996. This is a substantial amount of capital to disregard, and we consider this increase fair.
174. We will proceed with the proposal as consulted, increasing the equity disregard from £100,000 to £185,000. This increase will allow legal aid to be directed to those who are most in need and we do not consider that this includes those who own property and have above average levels of equity.

## **Application of equity disregard where a domestic abuse victim flees the home**

### **Consultation summary**

**175. Question 31: do you agree with our proposal to amend the means test so that where a victim has temporarily left their home, the equity disregard should be applied?**

176. Out of the 73 responses to this question, the proposal was supported by 66 (90%), 2 (3%) of respondents disagreed and 5 (7%) answered with maybe. There was extensive support for this proposal and the benefit it could bring to vulnerable individuals, including those who have had to flee their homes after domestic violence. However, there was concern regarding how the terms 'victim' and 'temporarily' are to be defined and the complexity of how these terms could be proved to establish eligibility for an individual. Many consultees also believed that survivors of abuse should not have to undergo a means test, and therefore should automatically be entitled to non-means tested legal aid. Some also mentioned that this proposal should also be applied to survivors of domestic abuse who have left permanently, not just temporarily. It was noted that whilst this proposal is a welcomed and positive change, it does increase the responsibility on the survivor or victim to be the one to leave the family home, which can cause difficulties and distress.

### **Government response**

177. We welcome the strong support for this proposal. We acknowledge the concerns raised about the definition of 'victim' and 'temporarily' as well as the evidential complexities it might create. We will ensure that there are clear definitions and guidance in place when implementing this proposal.

178. We consider it important to ensure that victims are not penalised for fleeing their home to secure their safety. We also consider it important that where a domestic abuse victim has temporarily left their home but intends to return in the future, or once it is safe to do so, the equity disregard is applied. We acknowledge the concerns raised that the disregard should also be applied where a victim has left the house permanently. However, we consider that as the equity disregard is only applied to an individual's main residence, it would not be appropriate to apply it in this circumstance.

179. Following consultation and on the basis of strong support from respondents, we will proceed with the measure as consulted, applying the equity disregard where a victim has temporarily left their home. We are also taking steps to ensure that this can be implemented effectively and will update the relevant guidance to avoid creating an added burden for victims.



## **Subject Matter of Dispute (SMOD) disregard**

### **Consultation summary**

#### **180. Question 32: do you agree with our proposal to remove the £100,000 cap on the disregard for assets which are the Subject Matter of Dispute?**

181. There were a total of 75 responses to this question: 62 (82%) supported the proposal, whilst a small number of respondents disagreed 5 (7%) and 8 (11%) responded maybe. This proposal was largely welcomed by respondents, as capital that is from a contested asset, or is the subject matter of dispute, is unavailable to fund legal proceedings and individuals should not be denied legal aid based on capital that they cannot access. The main concerns raised related to the statutory charge which is currently levied on retained SMOD assets by the LAA at the conclusion of a case and presently attracts 8% interest. There was concern that this interest turns legal aid into a loan and acts as a disincentive to accessing legal aid.

### **Government response**

182. We welcome the support of this proposal. We acknowledge the concerns raised about the statutory charge levied on retained SMOD assets. We consider that the statutory charge levied on retained SMOD assets is appropriate to ensure that legally aided individuals contribute towards the costs of funding their cases so far as they are able.

183. We consider it important that contested assets be disregarded as the owner is likely to find it difficult to use the asset to fund a legal case concerning that asset. This is because financial lenders are unlikely to provide a loan secured against a contested asset, though it might be possible to use the asset where a lawyer is willing to defer payment until the case has concluded.

184. We will proceed with the measure as consulted, removing the £100,000 cap on the disregard for assets which are the SMOD. We acknowledge that most cases involving the SMOD disregard are family dispute about property that involve domestic abuse. Therefore, the removal of this cap will also align with the government's wider agenda to tackle violence against women and girls.

## **Inaccessible capital**

### **Consultation summary**

#### **185. Question 33: would you support creating a new mandatory disregard in relation to inaccessible capital, and introducing a charging system to recoup legal costs in these cases?**

186. There were 69 responses to this question: 24 (35%) agreed, 17 (25%) disagreed, and 28 (40%) answered 'maybe'. The overwhelming concern among respondents was in relation to the introduction of a charging system to recoup the costs of legal aid to individuals with inaccessible capital. Respondents felt that this re-coup charge would place an administrative burden on providers and applicants, and that it would be seen as a potentially punitive measure that would be detrimental to the victims of domestic abuse and their potential children. At present, DLAC has the power to value any capital asset, stakeholders argue that if we replace this discretion with a mandatory disregard for inaccessible capital then this in effect, narrows the discretion.

### **Government response**

187. We welcome the support for the proposal to create a mandatory disregard in relation to inaccessible capital. We consider it important to proceed with creating mandatory disregard for inaccessible capital as we acknowledge that there are certain circumstances where capital is trapped or inaccessible. We consider that in these circumstances, those in need of legal aid should not be prevented from accessing it due to assets which they do not have access to. We also acknowledge the concerns raised about removing the discretionary disregard for inaccessible capital however we believe there is still a strong rationale making this disregard mandatory. This is because we consider it important that the means test should not take into account capital that genuinely cannot be sold or borrowed against to fund legal services as this is not available capital for the individual to use.

188. We will proceed to create a mandatory disregard in relation to inaccessible capital, under which non-monetary capital must be disregarded where it cannot be used to fund litigation, even if the applicant's ECHR rights are not engaged. This will reduce the administrative burden and operational complexity for providers and the LAA as this will be more prescriptive and clearer. This will allow providers to have more confidence on how they should apply the disregard, whereas with the discretionary disregard there is opportunity for inconsistency. We consider that this will widen the application of the disregard overall.

189. However, we note that the majority of objections to this proposal related to the introduction of a measure to recoup the costs of legal aid. In light of this we reviewed the proposal to introduce a charging system and agreed that there were strong

arguments not to proceed with this measure. Therefore, we will not proceed with the introduction of a charging system to recoup costs as consulted.

## **Pensioners' disregard**

### **Consultation summary**

**190. Question 34: do you agree that we should revise the pensioners' disregard as set out, by: a) increasing the qualifying age to the State Pension Age, b) increasing the disposable income bands to align with the proposed lower disposable income threshold for civil legal aid; and reducing the number of income bands?**

191. There were 57 responses to this question: 30 respondents (53%) agreed, 15 (26%) of respondents disagreed and 12 (21%) of respondents answered maybe. For those who agreed, it was commented that this proposal seemed fair and rational.

192. Concerns were raised regarding the increase in qualifying age and the increases in complexity and administrative burden. In addition, there was concern that raising the qualifying age risks locking people out of legal aid at an age where it may be more difficult to mobilise resources to pay for legal services alone, including difficulties in raising wages and also in ability to draw down capital from assets. It was also noted that many pensioners have to live off savings, whether in a pension scheme or by other means such as cash, ISAs or shares as part of retirement planning.

### **Government response**

193. We welcome the support of this proposal and acknowledgement that these proposals are fair and rational.

194. We acknowledge the concerns raised in relation to increasing the qualifying age. As this qualifying age for the pension disregard is based on the state pension age, we have proposed to increase this qualifying age in line with the increase to the state pension age (currently 66 for the majority of people). We note the concerns that this increase risks locking people out of legal aid however, as this disregard is intended to benefit pensioners, we consider it appropriate to use the state pension age. For those below state pension age, other measures will support improved access to justice, including but not limited to the increase to the equity disregard and the raising of thresholds.

195. We also consider it important to update the income bands to reflect our new disposable income threshold and ensure consistency, as the current income bands derive from the threshold for non-contributory legal aid. Simplifying the number of income bands from ten to three will also reduce complexity and will align with the approach to bands in other areas of legal aid, e.g. income contributions.

196. We will proceed with the proposal as consulted, increasing the qualifying age to the State Pension Age. We will also proceed with the increase to the disposable income bands to align with the lower disposable income threshold for civil legal aid and reduce the number of income bands.

## **Other capital disregards**

### **Scotland and Northern Ireland Redress Schemes for historical child abuse payments**

#### **Consultation summary**

- 197. Question 35: do you agree with our proposal to disregard payments under the Scotland and Northern Ireland Redress Schemes for historical child abuse from the capital assessment?**

198. There were 65 responses to this question: 56 (86%) agreed, 1 (2%) disagreed and 8 (12%) respondents answered maybe. For those who agreed it was commented that it was important that any payments to compensate harm should be disregarded and should not be used to pay for legal services. There were no specific concerns raised in disagreement to this proposal and the 'maybe' responses were due to lack of knowledge of these specific payments.

#### **Government response**

199. We welcome the support for this proposal and note that the majority of respondents agreed that it was fair that these payments are disregarded from the capital assessment. We did not receive detailed comments on this proposal as consultees had limited knowledge of this specific payment. However, we consider it important to disregard payments that are intended for a specific purpose, or compensation for harm, as this type of payment should not be used to pay for legal services.
200. We will proceed with the proposal as consulted, disregarding payments under the Scotland and Northern Ireland Redress Schemes for historical child abuse from the capital assessment on a mandatory basis.

## **Victims of Overseas Terrorism Compensation Scheme (VOTCS)**

### **Consultation summary**

#### **201. Question 36: do you agree with our proposal to create a discretion for the DLAC to disregard VOTCS payments?**

202. There were 56 answers to this question: 37 (66%) agreed, 4 (7%) respondents disagreed, and 15 (27%) answered 'maybe. From those who agreed, it was believed that it was important that VOTCS payments be disregarded. Some respondents went further and suggested that this disregard should be mandatory rather than discretionary, in order to reduce potential error and risk. Similar to the previous question, it was stated that payments should be disregarded where they consist of compensation for harm, and that if there is to be discretion, clear guidance is required. Concerns were expressed that a discretionary disregard could increase complexity and the risk of inconsistent application, as well as an increase to the administrative burden for providers and caseworkers.

### **Government response**

203. We welcome the support for the proposal to disregard the VOTCS payments from the income and capital assessment. We acknowledge the concerns raised that a discretionary disregard could increase complexity and administrative burden. However, we consider it important to disregard these payments on a discretionary basis when assessing an individual's income and capital for both the civil and criminal means tests. This is because the scheme provides a mixture of payments for compensation for harm as well as payments for loss of earnings. As flagged in the Means Test Review consultation document, we do not disregard payments for loss of earnings as they are analogous to earnings. Earnings can be used to pay for legal services and are typically taken into account as part of the means test.

204. Furthermore, we already disregard the Criminal Injuries Compensation Authority (CICA) payments in this way. The VOTCS tariffs, which are similar to those for CICA, set out the different amounts for the different categories of injuries for different time periods. We will mirror the current CICA guidance, in order to provide clear guidance on the application of this discretion for the DLAC and providers. This will help reduce the complexity and administrative burden as this type of disregard is already in operation for CICA.

205. We will proceed with the proposal as consulted and will create a discretion for the DLAC to disregard VOTCS payments. We are also taking steps to ensure that this can be implemented effectively and allow for consistency with other similar payments that are currently disregarded.

## **Backdated benefits and child maintenance back payments**

### **Consultation summary**

#### **206. Question 37: do you agree with our proposal to create a discretionary disregard for benefit and child maintenance back payments from the capital assessment?**

207. There were 64 responses to this question: 47 (73%) agreed with the proposal while 8 (13%) disagreed, and 9 (14%) responded maybe. Many who agreed commented that the proposal seems practical and fair. Some highlighted in their support that the disregard should be mandatory, as individuals, especially survivors of abuse, should not be penalised for delays in receiving payments. The main concern raised by respondents was that the discretion would be too complex and could result in a level of uncertainty for providers applying the discretion when exercising their delegated authority. We originally proposed that the guidance sets out that back payments received up to 24 months before the legal aid application should typically be disregarded. Stakeholders indicated that there should be a disregard for payments received within 24 months but suggested that this disregard should be mandatory and that payment received after 24 months should be disregarded on a discretionary basis. There were also concerns about how eligibility could be proved or evidenced.

### **Government response**

208. We welcome the support for this proposal and have considered the concerns raised by respondents about the complexity that the proposed discretionary disregard could create.

209. We still maintain the rationale for disregarding these payments is valid. These payments are typically paid as a lump sum following a tribunal or court decision, or, the correction of an administrative error, and are earmarked for a specific purpose. We do not consider that those in receipt of these payments should be expected to use it to pay for legal services. There is still a strong argument for having a 24-month timeframe as we believe that it is generally reasonable to expect recipients to have spent these funds within this time.

210. We will proceed with this measure and create a disregard for benefit and child maintenance back payments from the capital assessment. However, we have taken on board the suggestion to create a mandatory disregard and have therefore revised the proposal. We will create a mandatory disregard for benefit and child maintenance back payments received up to 24 months before the date of the application, with a discretionary disregard to be applied for payments received outside this timeframe. This will allow us to achieve the original policy intention and reduce the potential for inconsistent application that could result from a discretionary disregard. It will also reduce the administrative burden on providers and operational complexity for LAA.

211. We also acknowledge the concerns raised about how eligibility will be proved or evidenced. Clear guidance will be provided for the Director of Legal Aid Casework (DLAC) and providers. This revised measure will require discretion to be applied to a smaller number of cases and will therefore be simpler to deliver.

## **Discretionary disregard for compensation, damages and/or ex-gratia payments for personal harm**

### **Consultation summary**

**212. Question 38: do you agree with our proposal to create a discretion to allow the DLAC and providers to disregard compensation, damages and/or ex-gratia payments for personal harm?**

213. There were 66 responses to this question: 53 (80%) agreed with the proposal, 6 (9%) disagreed, and 7 (11%) answered 'maybe'. Many respondents who agreed commented that the proposal seemed fair, and it was sensible that victims are not penalised for compensation for harm. It was noted that in situations where the payment is intended to compensate for personal harm specifically, the discretion should be mandatory not discretionary. The main concerns raised centred around the breadth of the proposed discretion and the risk of complexity and uncertainty for providers and caseworkers exercising their delegated functions. In order to reduce this uncertainty, some respondents suggested that clear guidance would be needed for this disregard to operate effectively.

### **Government response**

214. We welcome the support for this proposal and note that this proposal fits our overarching rationale for disregarding certain payments from the capital assessment where payments are made for a specific purpose or to compensate for harm as they should not be used to pay for legal services. A discretionary disregard, supported by Lord Chancellor's guidance, gives the DLAC and providers, exercising their delegated authority, the flexibility to decide the level of such payments to be disregarded. It will also allow us to future-proof this element of the means test by removing the need to legislate every time a new government scheme emerges with payments that fit our overarching rationale. It will allow the Lord Chancellor to update the guidance when a new payment is identified.

215. We will proceed with the measure as consulted, creating a discretion to allow the DLAC and providers to disregard compensation, damages and/or ex-gratia payments for personal harm. We acknowledge the concerns raised by respondents that a discretion will create complexity and uncertainty for providers and caseworkers. To mitigate this, we will publish clear guidance, including the names of the schemes which fit within our rationale and update it when a new payment scheme is identified.

## Capital passporting

### Consultation summary

#### **216. Question 39: do you agree with our proposal to reintroduce capital passporting for non-homeowners in receipt of passporting benefits through the capital assessment for civil legal aid?**

217. There were 66 responses to this question: 55 (83%) agreed with the proposal, one (2%) disagreed, and 10 (15%) responded maybe. The majority of respondents supported this proposal as it could result in more applicants being eligible for legal aid, whilst reducing administrative burden and the number of capital assessments for applicants in receipt of benefits. It was noted that this proposal excludes low-income homeowners. This was highlighted as a risk and something that should be reconsidered to ensure that low-income homeowners or those whose homes are at risk of repossession are adequately considered and protected. Therefore, it was suggested that capital passporting should be introduced for all recipients of passporting benefits or low-income homeowners. There was also concern that across all proposals there was inconsistency on the use of calculations from DWP. It was suggested that there could be a more consistent alignment on the use of DWP calculations.

### Government response

218. We welcome the support for this proposal. In response to the suggestions that all recipients of passporting benefits should be passported from the capital assessment, our analysis shows that almost all passporting benefit recipients (including Universal Credit recipients) who would fail the legal aid capital test would do so because they are homeowners, rather than because they have other forms of capital (typically savings).

219. Reintroducing capital passporting for non-homeowners will improve efficiency by reducing administrative burden for these applicants and ensure that support is targeted at those that need it most. We note that the majority of respondents acknowledged this. We continue to believe that this proposal is fair as legal aid should be directed at those who are most in need and homeowners may have substantial capital. Homeowners will still be eligible for legal aid if they pass the capital test, but will not be automatically passported through the test.

220. We will proceed with the proposal as consulted, reintroducing capital passporting for non-homeowners in receipt of passporting benefits through the capital assessment for civil legal aid. This will improve the efficiency of the civil means test by reducing the number of capital assessments for applicants in receipt of benefits by around 80%, whilst generating a minimal cost and ensuring passported and non-passported applicants are generally treated equivalently.



## Chapter 5: Immigration asylum, under-18s and non-means testing

221. This chapter outlines the changes we will make to the means test for immigration and asylum proceedings. It also covers the measures we will take to remove the means test for people under the age of 18 applying for civil legal representation, and to simplify the means test for people under the age of 18 applying for civil legal help.
222. We have also set out the steps we will take to remove the means test for:
- legal representation for parents and those with parental responsibility (PR) whose children are facing withdrawal or withholding of life-sustaining treatment.
  - legal help in relation to an inquest where the inquest relates to a potential breach of rights under the ECHR (within the meaning of the Human Rights Act 1998) (HRA Convention Rights), or there is likely to be a significant wider public interest in the client being represented at the inquest.

### Means-testing for immigration and asylum proceedings

#### Representation at the Upper Tribunal

##### Consultation summary

**223. Question 40: do you agree with our proposal to align the immigration representation Upper Tribunal capital threshold (currently £3,000) with those usually used for civil legal aid – namely a lower threshold of £7,000 and an upper threshold of £11,000?**

224. There were 44 responses to this question: 36 (81%) agreed with this proposal, 2 (5%) disagreed and 6 (14%) responded with maybe. Many of those that agreed, simply stated as much, however, some did go on to state that the thresholds should be regularly reviewed, that domestic abuse survivors should be exempt from the capital test and that the thresholds should be aligned with those of welfare benefits. Those that disagreed said little more and those that responded with maybe highlighted the vulnerability of individuals undergoing immigration/asylum related proceedings.

##### Government Response

225. We will implement this measure as it provides consistency and simplicity across different means testing regimes. As with the new civil legal aid means test

thresholds, we have used data from the ONS Living Costs and Food survey on average monthly expenditure for the median UK household to calculate the thresholds. We maintain that those above average means should not generally be eligible for legal aid as they cannot be considered the most in need from a financial perspective. We acknowledge concerns around victims of domestic abuse, but it is important to note that we will take forward specific measures that will benefit victims directly. For example, amendments to the means test so that where a victim has temporarily left their home an equity disregard will be applied.

### **Consultation summary**

**226. Question 41: do you agree with our proposal to remove the exemptions on the payment of income and capital contributions for immigration and asylum representation in the Upper Tribunal, replacing them with the new proposed income and capital thresholds for civil legal aid?**

227. There were 41 responses to this question: 17 (41%) agreed with the proposal, 15 (37%) disagreed and 9 (22%) answered maybe. The main concerns raised were in relation to the vulnerability that many asylum and immigration applicants may have, as they may have no recourse to public funds and would have to rely on their capital to survive. Requesting a contribution towards legal funds for these individuals could deplete their capital and lead to personal risks like destitution. These respondents added that if this proposal goes forward there is a need for a hardship and eligibility review. Of those respondents in support of a uniform approach across civil legal aid, some stated there was limited justification for differentiation in the current system.

### **Government response**

228. This measure will bring the means test for immigration and asylum representation at the Upper Tribunal in line with the means test for other types of licensed work, therefore simplifying our approach to means-testing. We believe this is a fair and proportionate approach which will help to ensure that the provision of public funding is available for those in the greatest financial need and that those who can afford to pay towards their legal costs do so. This approach will not affect children, including asylum-seeking children or separated migrant children as we are proposing to non-means test all under 18s applying for civil legal representation.

229. We remain of the opinion that as contributions to costs are required in other areas of civil legal aid from those who can afford to make them, the same approach should apply to immigration and asylum representation in the Upper Tribunal. We note concerns raised around vulnerability, but we consider that other MTR measures, such as the proposal to increase immigration thresholds will actually improve access to justice for this particular cohort. Taking all of this into consideration, we will implement these proposals.

## First-tier Tribunal Representation

### Consultation summary

#### **230. Question 42: do you agree with our proposal to increase the immigration representation First-tier Tribunal capital threshold from £3,000 to £11,000?**

231. There were 39 responses to this question: 30 (77%) agreed, one (3%) disagreed, and eight (21%) answered maybe. Many of those that agreed, simply stated as much, however, some did go on to state that the thresholds should be regularly reviewed, that domestic abuse survivors should be exempt from the capital test and that the thresholds should be aligned with those of welfare benefits. Those that disagreed said little more and those that responded with maybe expressed concerns that immigration and asylum applicants might be unable to work or access public funds, so would not be able to fund private legal advice.

### Government response

232. This increase was largely welcomed by respondents to the consultation. It will mean the same thresholds would apply to First-tier Tribunal (Immigration and Asylum Chamber) representation and other controlled work matters, making the test fairer for applicants and simpler for providers to administer. It would also increase eligibility for legal aid for this cohort, many of whom are likely to be particularly vulnerable. We will implement this measure.

## Asylum support

233. Although the intention was to consult on introducing passporting for asylum support recipients, this was unintentionally omitted from the MTR consultation. However, we consider that this measure is integral to achieving the wider aims of the Means Test Review, in particular the objective to ensure access to justice for vulnerable groups. Our extensive engagement with stakeholders on similar matters indicates strong support for this objective. Moreover, in practice recipients of asylum support are highly likely to qualify for legal aid, and so this measure will reduce unnecessary administrative burden associated with means testing these individuals.

234. Given the positive response to other passporting related measures and conversations we have had with stakeholders on this issue, we believe this measure would be welcomed by stakeholders. It should also be noted that although this proposal was not specifically mentioned in the consultation, there was support for it in the feedback in the consultation response. We will therefore implement this measure.

## **Legal aid applicants aged under 18**

### **Criminal advice and assistance/advocacy assistance (A&A/AA)**

#### **Consultation summary**

**235. Question 43: do you agree with our proposal to remove the means test for applicants under 18 for criminal advice and assistance and advocacy assistance?**

236. There were 32 responses to this question: 27 agreed (84%), one disagreed (3%) and four (13%) answered maybe. Several responses indicated a preference for expanding the scope to cover 18 to 25-year-olds to ensure that care leavers and young offenders have access to non-means tested legal aid. In order to reduce administrative burden and costs it was suggested that the means test should be removed for all under 18s in all legal proceedings. However, some respondents acknowledged that although the vast majority of under 18s are on low incomes or unemployed, the current system takes into account individual circumstances which is fairer, even if it takes longer to assess.

#### **Government response**

237. This proposal will bring policy in line with our approach to representation at the youth court and Crown Court, and more generally, the wider approach to under-18s in the Criminal Justice System. We recognise that a child or young person's experience of the criminal justice system will play a critical role in determining how they will be reintegrated into their families, education and wider society. An inability to access criminal advice and assistance or advocacy assistance may result in their feelings or needs not being heard. We also recognise that there is a risk that a child or young person could be unrepresented at a disciplinary hearing, where extra time could be added to their sentence, or at a Parole Board hearing where their liberty is at stake. This measure will assist in alleviating these issues.

238. We acknowledge concerns that the age range should be increased up to 25 years and removal of the means test for under 18s in proceedings more generally. However, we believe the proposed increase to means thresholds will, on the whole, increase access to legal aid and in turn, access to justice. We consider that this adequately addresses the concerns raised and we will implement this measure.

## Civil representation

### Consultation summary

#### **239. Question 44: do you agree with our proposal to non-means test applicants under 18 for all civil representation?**

240. Of the 51 responses to this question: 45 were in favour (88%), 2 (4%) responded with no and 4 (8%) responded with maybe. Respondents primarily noted that this proposal would increase access to justice and also reduce inconsistencies in decisions for under-18s although they also asserted that non means tested legal aid should be available for kinship carers and potential kinship carers in both public and private children law matters. Those that were not in favour did comment further.

### Government response

241. This measure will improve consistency in our approach to family and non-family civil matters and ensure access to justice for under 18s, as well as reduce the administrative burden for all concerned. Removing the means test for those under 18 applying for civil representation recognises the vulnerability of this cohort within the civil and family courts system. We consider that this particular group has needs that are different from those of other age groups, and we think it is highly unlikely that a person under 18 would be able to effectively represent themselves in court.

242. The Government laid a draft affirmative SI on 17 October 2022 to expand the scope of legal aid to cover special guardianship orders (SGOs) in private family law proceedings. We believe that this measure, together with Means Test Review non means testing proposals and the proposal to increase means thresholds, will make access to legal aid easier for many individuals, including prospective guardians. We will implement this measure as described at consultation.

### Consultation summary

#### **243. Question 45: do you agree with our proposal to introduce guidance which indicates when the means testing of an applicant who has turned 18 during their case may be unnecessary?**

244. There were 46 responses to this question: 38 (83%) agreed, 2 (4%) disagreed, and 6 (13%) answered maybe. Most respondents commented that this proposal seemed sensible and fair and could lead to a minimisation of administrative burden for providers. It was also noted that this guidance should indicate a presumption that reassessment is not necessary unless a client indicates that there has been a change in circumstances, for example starting work. There were specific concerns that there is a disparity between an 18 year old who inherits/gains a large sum of money, and for example an individual who receives a £2,000 leaving care grant, further, that vulnerable young people need to be protected even if they turn 18 during

the matter, to ensure they are not failed by the system and that any legal aid granted to an individual under 18 should continue until the end of the proceedings, even if they turn 18 during this time.

### **Government response**

245. Those who reach the age of 18 before their case has concluded may be subject to a means assessment at the DLAC's discretion. There will be cases, for instance where the 18-year-old is in full-time employment, and in these circumstances, this may be appropriate. However, in other cases, for instance if the 18-year-old is unable to work because their asylum claim is still being reviewed, it may not be appropriate. We will clarify in guidance the factors that the DLAC should consider when deciding whether an assessment is necessary.
246. This proposal was welcomed by the majority of respondents. We will update the Lord Chancellor's Guidance to clarify the exceptional circumstances the legal aid agency (LAA) should consider when looking at whether re-assessment is necessary.

## **Legal help**

### **Consultation summary**

#### **247. Question 46: do you agree with our proposal to continue means-testing applicants under 18 for civil legal help, family help (lower and higher) and Help at court?**

248. There were 48 responses to this question: 7 agreed (15%), 34 disagreed (70%), and 7 responded with maybe (15%). The main reasons given for disagreement with this proposal were concerns that this approach to means testing could lead to barriers to access to justice for under 18s and was not in line with the Government's current efforts to increase the uptake of legal advice with Under 18s. It was also highlighted that under 18s are not means tested for civil representation, and therefore there is no justification to means test for civil legal help, family help and Help at court and that under 18s should be treated consistently.

### **Government response**

249. When representation is not required, we consider it appropriate that resources be aggregated where it is equitable to do so, and that legal costs should be covered by the adult where they have enough income or capital to do so.
250. A key reason we propose to introduce non-means testing for family representation is efficiency; we rarely aggregate resources for family representation. It is also worth noting that applicants under 18 nearly always pass the means test. However, this rationale is less applicable to legal help and other forms of civil and family controlled work (with the exception of controlled legal representation), where the interests of the

child or young person are more likely to be aligned with their maintaining adults,' which means that aggregation is more frequent.

251. In order to ensure that legal aid is being directed towards those most in need, we will retain means testing for under 18s for legal help. We will introduce guidance on when it is equitable to aggregate means in these circumstances and this will assist in providing greater clarity, this was welcomed by respondents.

### **Consultation summary**

#### **252. Question 47: do you agree with our proposal to introduce a simplified means test for applicants under 18 for civil legal help, family help (lower and higher) and Help at court?**

253. There were 43 responses to this question: 15 agreed (35%), 10 disagreed (23%), and 18 responded with maybe (42%). Whilst the majority of respondents did not support the continued means testing of under 18s proposed in question 46, and further stated that applicants who turn 18 during the life of the case should not have their means assessed. Respondents felt that should this approach continue, the preference was for a light touch approach when assessing the eligibility of this particular cohort.

### **Government response**

254. A simplified 'light touch' means test is currently undertaken for those under 16 years old seeking representation where there is no aggregation. The applicant is asked whether they have any regular income or capital of more than £2,500. If the answer to both questions is negative, they are assumed to be eligible for non-contributory legal aid and the full means assessment is not carried out.

255. We consulted on whether we should extend the "light touch" means test to all applicants for legal help aged under 18 where it is not considered equitable to aggregate their income with their maintaining adult. We believe that this is a sensible approach given the high probability of an applicant under 18 passing the means test when their means are not aggregated with a maintaining adult, and we intend to proceed with this measure. We will update the Lord Chancellor's Guidance to clarify the circumstances under which a re-assessment is necessary where a legal aid recipient turns 18 during the life of the case.

## **Non-means tested legal aid**

### **Proceedings relating to the withdrawal or withholding of life-sustaining treatment from children**

#### **Consultation summary**

**256. Question 48: Do you agree with our proposal to remove the means test for legal representation for parents/those with parental responsibility whose children are facing proceedings in relation to the withdrawal or withholding of life-sustaining treatment?**

257. There were 42 responses to this question: 36 (86%) agreed, one (2%) disagreed and five (12%) responded with maybe. This proposal was broadly supported in the consultation responses as it will positively impact individuals in a complex and stressful situation. However, some respondents, whilst in agreement with the proposal, did state that the policy should be extended to those with caring responsibility for adults facing withdrawal or withholding of life-sustaining treatment. Some respondents added that the current means testing of parents in this situation is wrong in principle, as they are being treated in a different way to parents in special Children Act proceedings – therefore the proposal to remove this means testing was welcomed. Respondents also believed that this approach would reduce delays in the appointment of legal representation and therefore reduce delays in decision making for the child.

#### **Government response**

258. These proceedings can be enormously difficult for all concerned and require an understanding of complex medical and legal arguments and private representation can therefore be expensive. Parents and those with parental responsibility must currently undergo a means test for legally aided representation and may therefore find themselves ineligible for legal aid on financial grounds. They are therefore often faced with trying to represent themselves, which may be very difficult considering both the complexity and the highly emotive context of these matters.

259. We acknowledge the assertion that the policy should be extended to those with caring responsibility for adults facing withdrawal or withholding of life-sustaining treatment, but our position acknowledges the significant importance of the welfare of the child, and of the consequences to their parents. We believe that legal representation must be available to ensure their position can be properly represented and we will implement this measure.



## Legal help at inquests

### Consultation summary

#### **260. Question 49: do you agree with our proposal to remove the means test for legal help at inquests where the case relates to a potential breach of ECHR obligations or significant wider public interest?**

261. There were 39 responses to this question, 26 (67%) agreed with the proposal, 12 (30%) responded with 'maybe', and 1 (3%) disagreed. Some consultees stated that non-means tested legal aid should be available for all inquests where the state is represented or where deprivation of liberty was in question. Another assertion was that Exceptional Case Funding (ECF) was rarely granted for these matters and that inquests should be non-means tested until it is clear the matter does not concern a breach of ECHR rights (within the meaning of the Human Rights Act 1998) or does not have a wider public interest. Many respondents who supported the proposal stated that was an important measure that will make the process fairer and will allow individuals to receive vital early advice and avoid delays due to the administration of a means test process.

### Government response

262. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, subject to a means and merits test, legal aid is available for advice and assistance (legal help) to members of the deceased's family for all inquests but legal aid for representation at an inquest is generally not available. This is because inquests are a relatively inquisitorial process, rather than an adversarial one. However, in certain circumstances, legal representation for bereaved families at inquests may be funded through the Exceptional Case Funding (ECF) scheme. Since January 2022, legal representation for inquests funded through the ECF scheme is non-means tested.

263. ECF is available where the applicant can show that either it is required to uphold rights under the European Convention on Human Rights (within the meaning of the Human Rights Act 1998) (HRA Convention Rights), or where there is a wider public interest in the family being represented at the inquest.

264. We will implement this measure. These changes recognise the importance of families receiving advocacy for such matters and aligns with other Ministry of Justice work to improve the experiences of bereaved families during a difficult time.

265. In developing this policy, we listened carefully to concerns from stakeholders who felt it was only right that due to the essential work undertaken at the initial legal help stage for inquests, a consistent approach should be taken with the measures introduced in January 2022 and that the current waiver should be replaced with a new process.

266. As set out in the consultation, we consider it reasonable that, in order to be eligible for means-free legal help in relation to an inquest, legal aid providers must continue to apply to the LAA for a decision on whether they agree that the matter concerns Human Rights Act Convention Rights or wider public interest significance. These are often complex matters and maintaining LAA oversight mitigates against the risk of providers' decisions being overturned at audit and the loss of any related fees. We will communicate the specifics of the new process in guidance.

## **Backdating legal help at inquests**

### **Consultation summary**

**267. Question 50: do you agree with our proposal to amend backdating provisions so that providers can continue to have funding for legal help in relation to an inquest backdated to the date of application (whether for standalone legal help or following a successful ECF grant)?**

268. There were 36 responses to this question: 28 (78%) agreed with the proposal, zero respondents disagreed and 8 (22%) answered 'maybe'. The majority of respondents agreed with this proposal, stating that it would save time and ensure that providers can start work as soon as possible to reduce risk. Concerns were raised over how the backdating process would operate from a practical perspective, and that it might conflict with the current guidance in the LAA Provider Pack.

### **Government response**

269. We understand the importance of legal help in these matters and that providers will need to undertake a certain amount of work at the legal help level of service in these circumstances whilst they await a decision of a grant of legal help from the LAA. For these reasons we believe providers should be able to make such a claim for legal help once granted. This proposal was widely supported by consultees and we will implement it.

270. We will update the Lord Chancellor's Guidance alongside the implementation of these measures and work with the LAA to ensure other guidance (including guidance for providers) is updated to provide clear direction and explanation of the new and revised assessments.

## Chapter 6: Crown Court income and capital thresholds, passporting and contributions

271. This chapter outlines our policy decisions for the Crown Court means test and associated contributory regime, including our approach to benefits passporting and the means tests for appeals and sentencing hearings at the Crown Court. It also sets out our proposals to add deductions to the disposable income assessment, to raise the lower disposable and lower gross thresholds for legal aid at the Crown Court to reflect cost increases since the thresholds were last raised, to remove the upper disposable income threshold, and to make changes to our approach to income and capital contributions.

### Income thresholds

#### Lower gross income threshold

##### Consultation summary

**272. Question 51: do you agree with our proposal to increase the lower gross income threshold for legal aid at the Crown Court to £13,000 for an individual?**

273. Of the total 25 responses to this question, 14 respondents (61%) agreed with the proposal, 3 respondents (13%) disagreed, and 6 respondents (26%) answered 'maybe'. The majority of the feedback across all respondents was in favour of an increase to the lower gross income threshold with some saying it is necessary. However, a small number of respondents were concerned that the increase was not sufficient.

##### Government response

274. We have concluded that it is right to increase the lower gross income threshold for legal aid at the Crown Court. However, we acknowledge the concerns expressed by consultees about the impact of the recent rise in the cost of living. We will, therefore, consider the proposed £13,000 threshold ahead of implementation to ensure that the threshold is set at the appropriate level.

## Assessment of disposable income

### Consultation summary

**275. Question 52: do you agree with our proposal to incorporate a work allowance for all members of the household who are in work into the Crown Court means test?**

276. There were 23 total responses to this question, 15 respondents (65%) agreed with the proposal, 2 disagreed (9%) and 6 respondents (26%) answered 'maybe'. There were limited comments on this question. One respondent commented that the proposal was fair. Another agreed, noting that some individuals have significant work expenses that should be disregarded from disposable income. One respondent disagreed with the proposal stating that it is unnecessary to means test all members of the household for these purposes.

**277. Question 53: do you agree with our proposal to set the work allowance at £66 per month?**

278. There were 24 responses to this question: 13 responses (54%) agreed, ten respondents (42%) answered maybe and only one respondent (4%) disagreed. In the written feedback, many respondents agreed with the idea of a work allowance, but raised concerns that the figure would not be sufficient to cover work-related expenses.

### Government response

279. We remain of the view that implementation of a work allowance dovetails with wider government policy to encourage work and to ensure that working age adults are better off in work than out of work. Therefore, we will provide for an additional deduction from the disposable income assessment to reflect this in the means test at the Crown Court as well as the magistrates' court.

280. We understand concerns expressed by consultees regarding the precise amount that should be set for the work allowance, given views that the proposed £66 may understate work-related travel costs in light of recent cost of living pressures. We will consider the allowance level prior to its implementation. However, this element of spending is not captured in the ONS Living Costs and Food Survey data as we described in our consultation paper. We previously relied on a 2019 Lloyds/YouGov report on average monthly work travel costs to inform our thinking in this area. Therefore, any re-consideration of the level of the work allowance would be subject to the availability of quantitative research into average monthly work travel costs.

## Cost of Living Allowance

### Consultation summary

**281. Question 54: do you agree with our proposal to increase the Cost of Living Allowance for the Crown Court means test to £713 per month (£8,556 per year)?**

282. There were 23 responses to this question, 12 consultees (52%) supported the proposal, 10 respondents (44%) answered 'maybe' whilst only one respondent (4%) disagreed. In the written responses, an increase was broadly supported, although there were concerns that this figure was based on outdated data and therefore it should be higher.

### Government response

283. We remain persuaded that implementation of the proposed Cost of Living Allowance is the correct approach. However, as stated in response to earlier questions in this chapter, we recognise the concerns flagged by consultees regarding whether the level of the proposed allowance is appropriate, given recent cost of living pressures. We will, therefore, prior to their implementation, consider the thresholds to ensure the means test continues to protect access to justice, and remains sustainable in the short, medium and long term, focusing finite public funds on those who are least able to pay themselves. This process will use the most recent available ONS data.

## Lower disposable income threshold

### Consultation summary

**284. Question 55: do you agree with our proposed deductions for dependents of £513 per month for each adult and child aged 14 or over, and £242 per month for each child under 14?**

285. There were a total of 23 responses to this question: 13 consultees (57%) agreed, 3 respondents (13%) disagreed and 7 (30%) answered maybe. Similar to other questions in this chapter, many of the written responses were in favour of the increase but expressed concern over the specific proposed figures, as they were based on data which pre-dates the recent cost of living pressures.

### Government response

286. Our conclusion is that adopting fixed deductions for dependents of the applicant is appropriate (these would cover each adult and child aged 14 or over as well as each child under the age of 14). However, as already indicated, we will consider whether the proposed deductions of £513 and £242 per month, respectively, are still accurate prior to implementation.

**287. Question 56: do you agree with our proposal to align the Crown Court lower disposable income threshold with the Cost of Living Allowance?**

288. Out of the 23 responses to this question, 12 respondents (52%) agreed, zero respondents disagreed, and 11 respondents (48%) answered maybe. Those respondents who answered 'maybe' tended to agree with the proposal so long as the levels are appropriate and noted that this proposal increased eligibility for legal aid.

**Government response**

289. We will implement this measure as set out and welcome the broad support of consultees for this approach. As described in the consultation paper, this measure will allow us to adopt a consistent approach between the Crown Court and civil legal aid in how we set the lower disposable income threshold. In turn, this should make the Crown Court thresholds easier to understand both for practitioners and those using legal aid services.

## **Upper disposable income threshold**

**Consultation summary**

**290. Question 57: do you agree with our proposal to remove the upper disposable income threshold for legal aid at the Crown Court?**

291. There were 23 answers to this question: 18 respondents (78%) agreed with the proposal, 1 respondent (4%) disagreed, and 4 respondents (18%) answered maybe. There was limited written comment on this question, but feedback generally expressed that this proposal seemed fair.

292. One respondent argued that the proposed change needed to go further by providing for the reimbursement of reasonable costs for acquitted defendants who pay privately rather than funding their defence through legal aid. Under existing arrangements, if a Crown Court defendant applies for and is refused legal aid on account of their financial means, their private costs may be reimbursed from Central Funds but they are limited to legal aid rates.

**Government response**

293. We welcome the strong support from consultees and will implement this measure as part of the means test reform package for the Crown Court. By removing the upper disposable income threshold, we will ensure that all Crown Court defendants, including those who are currently financially ineligible, will now qualify for legal aid. This means that there will no longer be a scenario where a defendant cannot secure legal aid at the Crown Court and, therefore, has to pay privately for their defence.

294. If high-income individuals choose to accept an offer of legal aid, they will very likely have to pay income contributions; in lengthier cases, these may potentially cover up to the full cost of legal aid representation for their case. In the event that the defendant is acquitted, all income contributions will be refunded with interest; if the defendant is convicted and there remain any outstanding legal aid costs, these may potentially be recouped through a capital contribution order.
295. The scope of the legal aid means test review consultation did not extend to consider arrangements for the payment of acquitted defendants' costs from Central Funds. However, the impact of our decision to make legal aid available to all Crown Court defendants, albeit subject to a possible income contribution, means that if any defendant now chooses to pay privately, they will no longer be eligible to claim any of their legal costs from Central Funds if they are acquitted.

## Income contributions

### Payment period

#### Consultation summary

- 296. Question 58: do you agree with our proposal for a maximum income contribution payment period of 18 months?**
297. There were 22 responses to this question: 9 (41%) agreed, 5 (23%) disagreed and 8 respondents (36%) answered maybe. Those disagreeing expressed concerns that defendants on low incomes may struggle to sustain monthly payments over such a long period. Consequently, it was argued that some innocent defendants may plead guilty to avoid paying lengthy contributions. Equally, it was felt that some defendants may decline legal aid altogether, potentially leading to a rise in unrepresented defendants
- 298. Question 59: do you agree with our proposal for a payment incentive to be built into the 18-month repayment schedule based on an exemption at months 6, 12 and 18 provided all previous monthly payments (months 1 to 5, 7 to 11, and 13 to 17) are made on time?**
299. There were 22 total answers to this question. 9 (41%) agreed, 7 (32%) respondents answered maybe, and 6 (27%) disagreed. Many respondents agreed with the additional built-in payment incentive and believed that this proposal creates a reasonable incentive but highlighted that this is effective only if the client is able to pay the contributions on time. Those that disagreed felt that those facing a criminal trial are likely to already be facing financial uncertainty.

**300. Question 60: do you agree with our proposal to maintain the option for the defendant to settle their total income contribution liability through one or more lump-sum payments?**

301. There were 22 answers to this question: 14 respondents (64%) agreed, zero respondents disagreed, and 8 respondents (36%) answered maybe. The responses generally saw the proposal as sensible and agreed with it. However, it was noted that many criminal clients are unlikely to be in the position to pay their total income contribution in lump-sum payments, though the scheme is likely to be useful for those who can.

**302. Question 61: do you have any wider thoughts or views about the effectiveness with which the payment incentive or lump sum payment facility help to improve and incentivise overall payment compliance by the defendant?**

303. This question was an open question allowing respondents to share any additional or wider thoughts. Out of the total 17 answers the majority simply stated that they did not have any additional comments. Of those who added short comments, the general theme was that they supported any proposals that gave more options, which may suit individuals' needs better. Some added that these arrangements may have a limited impact, though this impact would be positive. 4 respondents (23%) stated that they did not support the proposed arrangements.

**Government response**

304. We have listened to the views expressed by consultees but remain of the view that the income contribution period should be extended from 6 months to 18 months as this will allow income contributions to be collected from longer running cases.

305. Relying on data for 2021/2022, the average (mean) Crown Court case duration is now 23 months. We recognise that the recent increase in case duration has been driven by delays arising from the pandemic (based on 'pre-pandemic' data from 2019/2020, 98% of cases had concluded within 18 months).

306. We have reflected carefully on whether defendants should be asked to pay income contributions over a longer period when cases may take longer to conclude through no fault of the defendant. In practice, a tiered approach to calculate the monthly income contribution, as well as a minimum monthly payment of £100 (as opposed to the current £255), means that individual monthly payments are likely to be lower, albeit spread over a longer period (see paragraphs 150–154 below). However, there are further policy safeguards to mitigate against unfairness for the defendant.

307. First, if the defendant's case concludes within 18 months, income contributions end from that earlier date. Second, we will retain a cost cap per offence class which will substantially guard against overpayments compared to likely case costs. The cost



cap will be revised ahead of implementation to reflect the fee changes introduced by CLAIR. By fixing the cap at the 90<sup>th</sup> percentile of case costs per class, we avoid the risk that the most expensive cases may distort the likely overall costs in any individual case. Third, as happens now, if the defendant is acquitted all income contributions are refunded with interest. Equally, if the defendant is convicted and any overpayments have been made, the overpayments will be refunded with interest.

308. As we have highlighted, these measures should substantially mitigate the risk of unfairness for the defendant. However, we will monitor the impacts of this policy change closely, including whether the increase to an 18-month income contribution payment period shows any evidence that more defendants may be choosing to decline legal aid or plead guilty. In light of the measures we have in place, we believe the risk of a rise in the number of unrepresented defendants is likely to be small.
309. Regarding the policy proposal to maintain a payment incentive, we welcome the broad support of consultees in favour of our proposal to incorporate an exemption at months 6, 12 and 18 provided all previous payments (at months 1 to 5, 7 to 11, and 13 to 17) have been made on time. Whilst not all defendants will be in a position to pay by lump sum, we believe this is a pragmatic approach for those who can. We will, therefore, implement this measure as set out.
310. Furthermore, following consultee feedback in favour of options allowing the defendant to settle their total income contribution liability in one or more lump sum payments, we will implement this as part of our policy. In calculating the lump sum payment(s), we will reflect the same payment incentive in the proposed 18-month payment schedule (effectively, a discount of 1/6<sup>th</sup> provided the lump sum payment(s) is made by the agreed deadline).

## Tiered contribution model

### Consultation summary

#### **311. Question 62: do you agree with our tiered model approach (40%/60%/80%) with a minimum monthly payment of £100 to determine the income contribution?**

312. There were 23 total responses to this question: 5 respondents (22%) agreed, 4 (17%) disagreed and 14 (61%) answered maybe. Of those responses that provided a written comment, the majority in favour of the proposal, seeing it as a positive change and a reasonable way to set a minimum value contribution. Other responses stated that, in circumstances where the defendant's financial position changes, possibly through a loss or change of job, timely and prompt reassessments would be required so that any ongoing liability to pay a monthly income contribution accurately reflects the defendant's new financial position.

## **Government response**

313. Following our assessment of consultation responses, we have decided to implement this measure. Whilst there was not unanimous support from consultees, we believe that the proposed tiered approach still represents a much more progressive mechanism to calculate monthly income contributions whilst avoiding the ‘cliff edge’ nature of the existing approach, as highlighted in the consultation paper.
314. We will also proceed with implementation of a minimum monthly income contribution of £100. As we have indicated, this is the minimum level at which collection of income contributions becomes administratively cost-effective. We have reflected on concerns from consultees that the minimum contribution level, taken with the contribution rates, may mean individual contributions could become unaffordable, especially given apprehension over inflation and the cost of living. Nonetheless, we maintain that the progressive nature of the proposed bands, as well as our commitment to consider the proposed increases to the disposable income thresholds ahead of implementation, should manage any risk of unfairness for the defendant.
315. If the defendant’s financial position changes during the income contribution payment period, the individual remains entitled to seek a reassessment of their means. Subject to the outcome of the reassessment, the monthly income contribution amount may be adjusted up or down, or, if appropriate, the liability to pay ongoing monthly income contributions may be lifted altogether. Any revision will take effect from the date that the defendant’s financial circumstances changed; this is subject to the defendant notifying the LAA of the change within 28 days of the date it occurred unless they provide a reasonable excuse for not being able to do so.

## **Review process**

### **Consultation summary**

#### **316. Question 63: do you agree with our proposal to continue the hardship review process for legal aid at the Crown Court?**

317. There were 23 responses to this question: 14 respondents (61%) agreed with the proposal, zero respondents disagreed, and 9 respondents (39%) answered ‘maybe’. The theme of responses was that of general support with views that the application process should be simplified, as it is currently time-consuming and complex to make applications and obtain necessary evidence.

### **Government response**

318. We have concluded that the hardship review process should be maintained as part of the implementation of the new Crown Court means test. In light of comments received, we will work with the LAA and criminal practitioners ahead of implementation to explore how the application process might be streamlined.

## Applying interest to unpaid ICO contributions

### Consultation summary

**319. Question 64: do you agree with our proposal to apply simple interest on a discretionary basis to unpaid ICO contributions, relying on the Bank of England base rate at the time of implementation of this proposal plus 2.5% in order to fix the relevant rate of interest?**

320. There were 22 responses to this question: 3 respondents (13%) agreed with the proposal, 7 (32%) disagreed and 12 (55%) answered maybe. Some respondents outlined that applying interest is unjust, especially as it would impact people on very low incomes, however, others described the 2.5% rate as reasonable. Those opposed to the proposal also maintained that, in the interests of fairness, the interest rate applied to unpaid contributions and refunds should be the same (see question 65 below).

### Government response

321. As we explained in the consultation paper, we do not believe that interest should be mandated where ICO payments have not been paid on time, as to do so is likely to appear overly punitive given the individual may be acquitted at the conclusion of their trial. We also recognised that practical challenges in contacting the individual (for example, if they are being held on remand) may result in a missed payment without there being any evidence of wilful intent not to pay.

322. However, we maintain that where there is evidence of a significant unwillingness on the part of the individual to pay their contribution, it is appropriate for the LAA to retain the option to apply interest on a discretionary basis. This approach should help to incentivise payment of unpaid income contributions and also ensure fairness with those who do pay on time.

323. We had proposed in the consultation to charge simple interest at the Bank of England base rate + 2.5%. However, given the base rate has since risen to 4%, we will apply an interest rate which mirrors the Bank of England base rate at the time of implementation without applying any uplift. To avoid administrative complexity, we will not 'track' the Bank of England base rate in the event of further interest rate changes after implementation, but will keep the interest rate fixed. As part of our wider commitment to review the new means test within 3 to 5 years following implementation, we would review the interest rate at that point.

324. To ensure consistency, we have decided to align the rate of interest charged for both unpaid income as well as unpaid capital contributions (see paragraphs 337-346 below). This should provide greater transparency, as well as helping ease any administrative burden in charging two different rates of interest for unpaid income

and capital contributions when collecting and enforcing final defence costs against a convicted individual.

## **Interest added to income contribution refunds**

### **Consultation summary**

**325. Question 65: do you agree with our proposal to add simple interest to refunds of income contributions following acquittal or overpayment? For the purpose of setting the interest rate, we would rely on the Bank of England base rate minus 1%, subject to a minimum 0.5%.**

326. There were 22 responses to this question: 4 respondents (18%) agreed with the proposal, 10 (46%) disagreed and 8 (36%) answered 'maybe'. Those opposing the proposal argued that, for reasons of fairness, the same interest rate should be applied to unpaid contributions as to refunds.

### **Government response**

327. We accept that the individual should be entitled to the payment of simple interest as financial redress either where they are owed a refund of their income contributions following acquittal, or because their income contributions paid exceed their final defence costs following their conviction.

328. We have reflected on consultee feedback that the interest rate for refunds and unpaid contributions should be aligned. Nonetheless, in commercial practice it is recognised that a lower rate of interest is generally payable on refunds compared to the rate imposed for debt collection. This is consistent with the wider approach also taken by HMRC in relation to tax matters. For this reason, we believe it is justifiable to apply a lower rate of interest for refunds and will implement this measure.

329. The interest rate metric will be set at the time of implementation using the Bank of England base rate at that time. It is not our intention to 'track' the Bank of England base rate in the event of further interest rate changes after implementation as this would be administratively onerous and complicated; instead, we would keep the interest rate fixed. As part of our wider commitment to review the new means test within 3 to 5 years following implementation, we would review the interest rate at that point.

## Capital contributions

### Capital allowance

#### Consultation summary

#### **330. Question 66: do you agree with our proposal to maintain the capital allowance at £30,000?**

331. There were 23 responses to this question. 9 respondents (39%) supported the proposal, 8 respondents (35%) disagreed and 6 (26%) answered 'maybe'. Some respondents added that the allowance should be increased, as this figure has been in place for a number of years, and many respondents commented that equity in the home should be disregarded from this assessment.

#### Government response

332. Whilst the £30,000 capital allowance has not been updated since 2010, we have concluded that any adjustment to this amount cannot currently be justified. When we modelled this aspect of the Crown Court means testing policy in 2008, it was anticipated that 8% of Crown Court defendants would hold capital assets in excess of £30,000. In practice, between 2% and 3% of the legally aided population at the Crown Court are required to pay a capital contribution order each year.

333. We recognise that a different approach has been taken to uprating the capital allowance for the civil legal aid scheme. However, as the civil scheme requires an up-front payment of the capital contribution before the legal aid certificate may be granted, we believe a more generous threshold is appropriate. At the Crown Court, no such up-front payment is required before legal aid is granted to the defendant; instead, any potential liability to payment of a capital contribution order only crystallises if the defendant is convicted. Therefore, we have decided that the capital allowance should be maintained at £30,000.

## Timing of the valuation of capital assets

#### Consultation summary

#### **334. Question 67: do you agree with our proposed policy regarding when we should undertake the valuation of capital assets?**

335. There were 22 responses to this question: 7 respondents (32%) agreed with the proposal, 4 (18%) disagreed and 11 consultees (50%) responded with maybe. Those who disagreed expressed concerns that equity in a property should not be taken into account as this amounted to 'trapped capital' against which it was unrealistic for an individual charged with a criminal offence to be able to raise funds.

### **Government response**

336. As we recognised in our consultation paper, the value of capital assets may vary over time. We still believe it is fairest to the defendant if the valuation of the relevant capital assets is undertaken after conviction rather than relying on a valuation conducted when the legal aid application was submitted, which now be out of date. In this way, we can ensure that the individual's liability to the capital contribution order most accurately reflects what they are able to pay. Given that we will not force the sale of property against the individual's will, we do not consider the trapped capital concerns to be substantiated. Practice in relation to recovering Capital Contribution Orders is covered below in the government response.

## **Applying interest to unpaid capital contributions**

### **Consultation summary**

**337. Question 68: do you agree with our proposal to mandate the payment of simple interest on unpaid Capital Contribution Order (CCO) debt, relying on the Bank of England base rate at the time of implementation plus 2.5% in order to set the relevant rate of interest?**

338. There were 21 responses to this question: 3 respondents (14%) agreed with the proposal, 3 (14%) disagreed and 15 respondents (72%) answered 'maybe'. Similar to previous responses, the general theme was that applying interest was seen as 'unjust' by some consultees, and that it was important that acquitted clients should not lose out.

### **Government response**

339. We have considered the responses to this question and concluded that it remains appropriate to apply mandatory simple interest to all unpaid CCO debts. However, we have chosen to revise the metric for calculating the rate of interest given the sharp rise in the Bank of England base rate since we published our consultation proposals (see paragraph 329 below).

340. We can confirm interest will only be applied to new CCO debt which accrues after implementation of the new means test. We will not add interest retrospectively to existing CCO debt where none has previously been applied.

341. It is our intention to treat all new post-implementation CCO debt consistently. Commonly, in the event of non-payment and where the individual owns a property, we use a charging order to secure the CCO debt. Typically, it may take around 90 days following the making of the CCO for a charging order to be come into effect if the individual does not pay the CCO. Charging orders are issued by the courts. Given that the individual may wish to appeal against the charging order, we will only start to charge interest on the unpaid CCO debt once 150 days have elapsed after the issuing of the CCO.

342. In the consultation paper, we proposed charging simple interest at the Bank of England base rate + 2.5%. As the base rate has since risen significantly, we will use the Bank of England base rate at the time the measures are introduced into law. For administrative ease, we will not 'track' the Bank of England base rate in the event of further interest rate changes after implementation but will keep the interest rate fixed.
343. As the HMRC rate (base rate + 2.5%) seeks to incentivise payment from those individuals who have defaulted, we do not believe this is a fair analogy for those who have not paid their CCO. In many cases, individuals are unable to access their capital unless their home is sold, and the individual may not wish to do this until a time that suits them. Realistically, this may only happen over a much longer time scale of 10–20 years.
344. Therefore, the purpose of adding interest to the unpaid CCO is to protect the debt for the taxpayer as we will not force the sale of the property against the individual's will. If we decided to apply no interest, the value of the CCO debt over a period of years would likely depreciate markedly given the impact of house price inflation. In addition, and as we highlighted in the consultation paper, interest stops those who do not pay their CCO on time, from gaining an unfair financial advantage over those who do.
345. We do acknowledge that circumstances may arise where there is a compelling reason to waive interest, for example if waiving interest may incentivise earlier payment of the CCO or, equally, if enforcement action has already applied separate rates of interest and we wish to avoid any duplication of interest. Therefore, whilst our overriding policy position is to apply interest on a mandatory basis in the first instance, we will retain a discretion to waive interest on an exceptional basis if there are compelling reasons to do so. We will be working with the LAA to draft supporting guidance setting out the type of exceptional circumstances in which interest may be waived.
346. As with our approach to applying interest to unpaid income contributions and for refunding income contributions to acquitted defendants, we will review the impact of our interest rate policy for unpaid capital contributions as part of our wider commitment to review the new means test within 3 to 5 years following implementation.
- 347. Question 69: in your opinion, what behavioural impacts will the mandating of interest have on defendants; for example, do you agree that it will incentivise payment or may it trigger other behaviours?**
348. There were 23 answers to this question: 5 respondents (22%) agreed, 6 (26%) disagreed and 12 (52%) answered maybe. The general theme of responses was that mandated interest will have little impact on defendants. Those who are able to pay will do so, and those who are not in a position to pay will not, and this is largely

unchanged by the mandating of interest. Concerns were raised that for those not in a position to pay, interest could lead to financial hardship and a greater burden on individuals, which may lead to increased risk to health and wellbeing.

### **Government response**

349. We recognise that there is uncertainty over the precise behavioural impacts of mandating interest payments on unpaid CCO debt. We have noted the wider point made by some consultees who argued firmly that it is unprincipled for the government to seek to make a profit out of the contributory regime through its interest rate policy. In response, we wish to stress that our policy is not designed to be punitive or profit-making but seeks to ensure that the value of the unpaid CCO debt is protected in circumstances where the property may not be sold for many years (see paragraphs 337–346 above). Equally, it prevents those who have not paid their CCO on time from gaining an unfair financial advantage over those who do. As with other areas of our policy, we will be monitoring the behavioural impacts of our decision to apply interest to unpaid CCO debt and will be reporting on the impacts when we conduct a formal review of the new means testing scheme; this is scheduled to take place no earlier than 3 years and no later than 5 years after implementation of the new scheme.

## **Crown Court appeals**

### **Consultation summary**

**350. Question 70: do you agree with our proposal to increase the fixed contribution for unsuccessful Crown Court appeals from £500 to £800 for an unsuccessful appeal against conviction; from £250 to £400 for an unsuccessful appeal against sentence; and from £250 to £400 for an unsuccessful appeal against conviction but where the appeal against sentence is allowed?**

351. There were 24 responses to this question: 5 (21%) agreed with the proposal. 10 (42%) disagreed and 9 (37%) responded ‘maybe’. Those who opposed the proposal asserted that the increase to the fixed fee may deter individuals from appealing, even if they believe they have a strong case, and that the rising cost of living is likely to exacerbate this risk.

**352. Question 71: In calculating the applicant’s disposable income for the purpose of a legally aided appeal, do you agree with our proposal to increase the deduction for the cost of an appeal from £500 to £800?**

353. Of the total 23 responses to this question, 11 (48%) responded ‘maybe’, 6 (26%) agreed and 6 (26%) disagreed. Some written responses to this question commented that this increase seemed ‘fair’, though others disagreed for the same reasons given in response to the previous question.



## **Government response**

354. We remain persuaded that those individuals, whose legally aided appeal to the Crown Court is unsuccessful, should continue to make a fixed contribution towards their appeal costs. The contribution would only be paid by those individuals if they fail the Crown Court means test for income so ensuring consistency with our wider view that only those who can afford to pay for their legal costs should do so. In this way, we do not believe that our policy would deter individuals from appealing.
355. As the existing contribution amount of £250 or £500 reflected average legal aid costs in 2010, we believe it is fair and reasonable to update these figures as we have done across most other elements of the means test review. We see no justification in carving out an exception to this approach just for Crown Court appeals.
356. Since 2010, the average legal aid cost for a Crown Court appeal has risen, most recently as a result of the fee increases implemented for such work under the Litigators' Graduated Fee Scheme and the Advocates' Graduated Fee Scheme. Taking these latest increases into account, we will now the contribution amounts at £800 for an unsuccessful appeal against conviction; we will also increase to £400 the contribution for an unsuccessful appeal against sentence and for an unsuccessful appeal against conviction but where the appeal against sentence is allowed.
357. We want to ensure that in assessing an individual's potential liability to a contribution for a legally aided Crown Court appeal, we do so as equitably as possible. For this reason, in assessing the individual's disposable income, we will increase the deduction for the legal aid cost of an appeal to £800.

## **Sentencing hearings at the Crown Court**

### **Consultation summary**

- 358. Question 72: Do you agree with our proposal that the sentencing hearings at the Crown Court, following a guilty plea at the magistrates' court, should continue to fall under the magistrates' court means test?**
359. There were 25 responses to this question: 12 (48%) responded maybe, 8 (32%) disagreed and 5 (20%) agreed. Some responses stated that this proposal seemed 'fair'. However, other responses justified their disagreement with concerns that this approach could create perverse incentives. In particular, a defendant who is ineligible for legal aid at the magistrates' court would not currently qualify for legal aid if the case were committed for sentence to the Crown Court. Consequently, it is argued that the defendant may choose to plead not guilty so that if they are sent for trial at the Crown Court, they will qualify for legal aid. However, if the defendant then pleads guilty at the Crown Court, they may lose credit for not having pleaded at the earliest opportunity in the magistrates' court.

### **Government response**

360. We have listened carefully to the arguments made in relation to this proposal and remain persuaded that it should be implemented as consulted on.

361. We take the view that the proposed new income thresholds and allowances at the magistrates' court will mean that a higher proportion of defendants now qualify for non-contributory legal aid. As we highlighted in the consultation paper, our modelling has shown that those individuals who are found financially ineligible at the magistrates' court should have sufficient income to pay privately for a sentencing hearing at the Crown Court (if the defendant has submitted an early guilty plea, they will not incur the private costs of a magistrates' court trial). For this reason, we believe that concerns about an unrepresented defendant being disincentivised to enter a not guilty plea at the magistrates' court in order to qualify for legal aid funding if their case is committed for trial at the Crown Court are likely to be exaggerated.

362. We would also point out that whilst the wider Crown Court means test may be more generous than the magistrates' court scheme, defendants at the Crown Court may have to pay a contribution towards their legal aid costs. We would not want to introduce a contributions scheme for committals for sentence to the Crown Court.

363. We further wish to note that in cases where the defendant may have unusually high essential outgoings, the hardship review mechanism will continue to provide an additional backstop for a financially ineligible defendant to seek a re-consideration of a decision to refuse legal aid funding at the magistrates' court.

## **Benefits passporting**

### **Income passporting**

#### **Consultation summary**

**364. Question 73: do you agree with our proposal to continue to passport all recipients of existing passported benefits for the Crown Court means test?**

365. We received 23 responses to this question: 15 (65%) respondents, 1 (4%) disagreed, and 7 (31%) answered 'maybe.' Those who agreed believed the proposal would reduce the administrative burden associated with the criminal legal aid means test, both for the provider and the LAA. Those that were opposed, or responded with 'maybe', said little more.

#### **Government response**

366. We have decided to proceed with the measure to passport all recipients of existing passported benefits through the income assessment of the Crown Court means test.

As we highlighted in the consultation paper, the different income thresholds proposed for the criminal legal aid means test would result in 97% of passported applicants in the Crown Court being eligible for non-contributory legal aid if they underwent an income means assessment. This means that the cost of passporting all defendants on an existing passporting benefit, including UC, is much lower than for civil legal aid. Therefore, we maintain our position that restricting the number of passported applicants reduces the efficiency of the means test in terms of the administrative burden for the LAA and criminal practitioners, for only very limited financial savings.

## **Capital passporting in the Crown Court**

### **Consultation summary**

#### **367. Question 74: do you agree with our proposal to limit capital passporting for legal aid in the Crown Court to non-homeowners in receipt of passporting benefits?**

368. There were 22 responses to this question: 10 (45%) respondents, 7 (32%) answered maybe and 5 (23%) agreed. Disagreement with the proposal stemmed chiefly from concern that household equity should be excluded from the means assessment and treated instead as inaccessible capital. Concerns were also expressed that those in prison would have limited opportunity to deal with the practicalities of selling their property.

### **Government response**

369. We have concluded that there is a sufficiently strong case for implementing our consultation policy proposal to limit capital passporting to non-homeowners in receipt of a passporting benefit. As set out in the consultation paper, in the region of 2,000 Crown Court defendants who will be passported on UC through the income test will have in excess of £30,000 as equity in their property. We believe those who can contribute towards their defence costs should be required to do so and that not to take any action creates an inconsistency in how we treat those in receipt of a passporting benefit compared to those who are not.

370. We acknowledge that any equity held in a property by a convicted defendant may only be released and passed to the LAA once the property is sold. As currently happens, we wish to stress that we have no intention to force the sale of any individual's property; that decision rests with the individual and any other co-owners who hold an interest in the property.

# Chapter 7: Magistrates' court and criminal advice and assistance/advocacy assistance means test

## Magistrates' court representation

371. This chapter covers the means tests for criminal legal aid at the magistrates' court and criminal advice and assistance and advocacy assistance. Decisions include raising the magistrates' court means test thresholds and aligning the means tests for criminal advice and assistance and advocacy assistance. This chapter also sets out our approach to passporting.

## Consultation summary

**372. Question 75: do you agree with our proposal that legal aid at the magistrates' court should continue to be non-contributory?**

373. There were 20 responses to this question: 17 (85%) agreed, zero respondents disagreed, and 3 (15%) answered maybe. Consultees provided comments that this proposal seems fair, sensible and that non-contributory legal aid is appropriate due to the way magistrates' courts operate. It was noted that introducing a contribution system into the magistrates' court would likely create a bureaucratic burden.

## Government response

374. We intend for the magistrates' scheme to remain non-contributory and, in light of overwhelming support from consultees, will proceed as consulted on. We believe that this is a sensible and pragmatic approach given that magistrates' court cases are generally much shorter and less complex than at the Crown Court and, as a result, typically cost much less.

## Upper gross income threshold

### Consultation summary

**375. Question 76: do you agree with our proposal to set a new upper gross income threshold of £34,950 (£2,913 per month) for an individual?**

376. There were 21 responses to this question: 16 (76%) responses agreed; 1 (5%) disagreed; and 4 (19%) responded with maybe. Concerns were raised about the figures accurately reflecting inflation and the cost of living pressures, however some consultees acknowledged that the increase seems fair and long overdue.

### Government response

377. We remain of the view that linking this threshold to the median gross annual income of an individual, as published by the ONS, is fair and reasonable and we welcome the broad endorsement of consultees for this proposal. Our policy approach towards setting the upper gross income threshold at the magistrates' court will align with that being taken for the civil legal aid means test (see paragraphs 85–88, chapter 3).

378. Given wider concerns expressed about the impact of recent financial pressures on individual and family budgets, we will consider the level of this threshold in advance of implementation.

## Lower gross income threshold

### Consultation summary

**379. Question 77: do you agree with our proposal to set a new lower gross income threshold at the magistrates' court of £13,000 for an individual?**

380. There were 21 responses to this question: 12 (57%) consultees agreed with the proposal; 5 (24%) answered maybe; and 4 (19%) disagreed. Consultees suggested that this threshold should be higher so that it reflected recent cost of living pressures.

### Government response

381. As we explained in the consultation paper, we have sought to amend the lower gross income threshold so that it is only likely to be passed by individuals who would also pass the disposable income test, thereby reducing the wider administrative burden associated with the means test. The proposed threshold level also aligns with that proposed for the Crown Court (see paragraphs 272–274, chapter 6).

382. In implementing this measure, we welcome the majority support of consultees but note wider concerns about the impact of the recent rise in the cost of living. Therefore, we will consider the proposed £13,000 threshold prior to implementation so that we ensure it is set at the appropriate level.

## Assessment of disposable income

### Consultation summary

**383. Question 78: do you agree with our proposal that the magistrates' court means test should deduct pension contributions up to 5% of earnings, student loan repayments, a work allowance of £66 per month and priority debt repayments from disposable income?**

384. There were 21 responses to this question: 15 (71%) respondents agreed with the proposal; 2 (10%) disagreed; and 4 (19%) responded maybe. Consultees highlighted that there would need to be a clear definition of 'priority debt' but also noted that this proposal seems fair.

### Government response

385. We will incorporate the proposed additional deductions as part of the disposable income assessment and acknowledge the strong majority support for this proposal. We continue to take the view that these additional deductions are sensible and pragmatic and will allow for a more accurate and reliable assessment of the individual's cost of living expenditure.

386. We have noted the request from consultees that we provide greater clarity about the list of priority debts to be taken into account. We included a proposed list of priority debts at paragraph 116 of the consultation paper. We will be clear in regulations and guidance which priority debts will be deducted from the disposable income assessment in advance of implementation.

387. Regarding the proposed monthly work allowance of £66, we have recognised concerns that ongoing financial pressures for individuals and families may mean that this understates current work-related travel costs (see paragraphs 99–102, chapter 3). As such, we will consider the level of the allowance prior to its implementation as part of the new means test. However, this element of spending is not captured in the ONS Living Costs and Food Survey data; as we highlighted in our consultation paper, we previously relied on a 2019 Lloyds/YouGov report on average monthly work travel costs to inform our thinking in this area. Therefore, any re-consideration of the level of the work allowance would be subject to the availability of quantitative research into average monthly work travel costs.

## **Cost of Living Allowance and additional deductions**

### **Consultation summary**

**388. Question 79: do you agree with our proposal to set the magistrates' court means test Cost of Living Allowance at £713 per month, as proposed for the Crown Court means test?**

389. There were 21 responses to this question: 13 (67%) agreed with the proposal; none disagreed; and 8 answered maybe. There were few comments on this proposal, however, some consultees noted that annual uprating is needed.

### **Government response**

390. We welcome the significant majority support for this proposal which will be implemented as part of the new means test for the magistrates' court as well for the Crown Court. We have noted the concerns of consultees about whether the level of the allowance is appropriate, given recent inflationary growth and the rise in the cost of living (see chapter 6). Consequently, we will consider the level of the allowance ahead of implementation to ensure that it is set at an appropriate level. Following implementation, this allowance will be reviewed in line with our planned approach to review the means tests every 3–5 years.

## **Deductions for dependents**

### **Consultation summary**

**391. Question 80: do you agree with our proposed deductions for dependents of £513 per month for each adult and child aged 14 or over, and £242 per month for each child under 14?**

392. We recorded 20 responses to this question: 11 (55%) agreed with the proposal; 2 (10%) disagreed and 7 (35%) responded maybe. Again, some consultees noted that the lack of annual uprating could cause issues, with additional emphasis given to recent cost of living pressures.

### **Government response**

393. As we set out in the consultation paper, we remain of the view that it is appropriate to adopt fixed allowances for additional adults and children by using a fixed percentage of the Crown Court Cost of Living Allowance (COLA). For an additional adult or child over 14 the dependents allowance will be 72% of the allowance for a single adult; for a child under 14, the dependents allowance will be set at 34% of a single adults COLA. This is the same approach as that which we will use for the Crown Court (see paragraphs 284–286, chapter 6) and we note the majority support of consultees for this approach.

394. As already noted, in advance of implementation, we will consider the level of the proposed COLAs. For a single adult in the Crown Court the COLA is set at £713 per month. Any future adjustment to this figure would automatically trigger an adjustment to the proposed level of the dependents' allowances, due to the method we will use to determine dependents' allowance. We will also introduce an eligibility calculator to support the revised means tests.

## **Disposable income allowance**

### **Consultation summary**

**395. Question 81: do you agree with our proposal to increase the disposable income allowance to £400 per month?**

396. There were 20 responses to this question: 15 (75%) of consultees agreed with the proposal; none disagreed; and 5 (25%) responded maybe. There were limited comments on this proposal. The main responses stated that this seems a fair and reasonable approach for the purpose of protecting access to justice.

### **Government response**

397. We have concluded that we should increase the disposable income allowance to £400 per month and welcome the strong majority support of consultees for this. As we stated in the consultation paper, this approach will allow us to distinguish between defendants who can afford to pay for their defence costs privately as opposed to those who cannot and so still need access to a legally aided defence.

## **Review process**

### **Consultation summary**

**398. Question 82: do you agree with our proposal to continue the hardship review process for legal aid at the magistrates' court?**

399. There were 20 responses to this question: 11 (55%) of consultees agreed with the proposal; none disagreed; and 9 (45%) responded maybe. Those supporting the proposal wanted the process to be simpler and argued that criminal practitioners should be rewarded financially for the time taken to complete the hardship review application.

### **Government response**

400. We welcome the majority support for this proposal and have decided to retain the hardship review process as an integral part of the criminal means test. We are mindful of the concerns aired about the complexity of the hardship review application process and we will work closely with the LAA and criminal legal aid providers to explore whether this process may be streamlined further.



## Benefits passporting

### Consultation summary

**401. Question 83: do you agree with our proposal to continue to passport all recipients of existing passported benefits for the magistrates' test?**

402. There were 21 responses to this question: 14 (67%) of consultees agreed with the proposal; none opposed it; and 7 (33%) responded with maybe. There were limited comments on this proposal, but some questioned why this approach cannot be applied to civil legal aid.

### Government response

403. We intend to implement this measure and note that the significant majority of consultees support our approach. Our view remains that this represents a coherent and efficient policy position given that in the magistrates' court 98% of passported applicants, including those in receipt of UC, would be eligible for criminal legal aid under the new thresholds.

404. As we highlighted in the consultation paper, 73% of UC recipients would qualify for non-contributory civil legal aid. Consequently, the cost to criminal legal aid in passporting all UC recipients is estimated to be lower than for civil legal aid (please see paragraph 366 at chapter 3).

## Criminal advice and assistance/advocacy assistance

### Consultation summary

**405. Question 84: do you agree with our proposal to align the Advice and Assistance and Advocacy Assistance tests?**

406. We recorded 22 responses to this question: 10 (45%) agreed with the proposal; none disagreed; and 12 (55%) responded maybe. Consultees commented that there was no rationale for having different thresholds and this proposal would create parity within access to legal aid.

### Government response

407. We intend to implement the measure as consulted on; whilst there was no outright majority of respondents in favour of the proposal, we note that no consultees disagreed with our position.

408. As we made clear in the consultation paper, given that Advice and Assistance and Advocacy Assistance frequently overlap in practice, we see no justification in maintaining different thresholds. Our approach will ensure consistency from the perspective of the applicant and make it easier for practitioners to administer the test.

### **Consultation summary**

#### **409. Question 85: do you agree with our proposal to align the A&A and AA tests with the proposed civil legal help and controlled work means test?**

410. There were 21 responses to this question: 9 (45%) agreed with the proposal; none disagreed; and 11 (55%) answered maybe. Again, consultees acknowledged that this proposal seemed fair, however those expressing reservations about this proposal stated that our proposal might disadvantage some clients where they or their partner receive UC.

### **Government response**

411. We have concluded that this measure should be implemented; not only will this allow for greater consistency, but as we set out in the consultation paper, it will provide a more generous test for the majority of those applying for Advice and Assistance and Advocacy Assistance where the income and capital thresholds have not been updated in recent years. As with civil legal aid, the changes we have proposed will ensure legal aid is available to those most in need and those with below average income and capital. Furthermore, the measure to align the A&A and AA tests with civil legal help and controlled work reflects the fact that contributions cannot be collected for this work – this is because, like the civil legal help means test, the A&A/AA means test is undertaken by providers, who have no mechanism to collect legal aid contributions.

412. Some applicants under our measures for A&A and AA may be disadvantaged when compared to the current means test where they or their partner receive UC as this is currently a passported benefit for both these categories of work. UC passporting is being changed under the UC+500 measure. However, most A&A and AA cases fall under the Prison Law category of work and most prisoners are unable to claim UC. Please also see paragraphs 136–141, chapter 3 in relation to our rationale for the introduction of an earnings threshold and the response to question 86 (immediately below).

### **Consultation summary**

#### **413. Question 86: do you agree with the proposal to align the passporting arrangements for advice and assistance with those for civil legal aid?**

414. We received 20 responses to this question: 8 (40%) agreed with the proposal; 1 (5%) disagreed; and 11 (55%) responded maybe. Some consultees noted concerns about the potential additional administrative burden of implementing a UC earnings threshold of £500 per month (this mirrors wider concerns about the adverse administrative impact of the proposed UC passporting policy for civil legal aid).

### **Government response**

415. We have decided to implement this measure as part of the wider suite of changes to the legal aid means test. Whilst we note that prisoners account for the majority of applications for Advice and Assistance as well as Advocacy Assistance, in practice, we do not consider that the proposed UC earnings threshold of £500 per month will have a material impact for them as most prisoners are unable to claim UC. In taking forward our measure, we will also be able to achieve further alignment between the civil and criminal legal aid schemes which has been one of our overriding objectives of the means test review.

## Chapter 8: Implementation and review of the new legal aid means tests

416. In this chapter we will cover implementation of the new means tests and the intended phased approach, including transitional provisions for those who are already in receipt of legal aid when the new means tests are implemented. We also set out our approach to monitoring the impact of the new means tests, and for reviewing the income and capital thresholds.

### Implementation

**417. Question 87: do you agree with our proposal to implement the new means tests via a staggered approach, rather than on a single date?**

418. There were 66 responses to this question: 27 respondents (41%) agreed with this proposal, 16 (24%) disagreed and 23 (35%) responded with maybe. Of those in favour of this proposal, responses mentioned the need for a period of notice prior to implementation of each phase, that the process should be clearly communicated to stakeholders and that certain changes, for example, the proposed increase to thresholds, should be prioritised. Those that responded with 'maybe' stated that changes should be implemented as soon as possible, that a clear timeline was needed and that thresholds need to be in line with the cost of living at the time of implementation. Those not in favour of the proposal expressed concerns about the complexity of the approach and suggested all changes should be implemented simultaneously to minimise the administrative burden and to prevent the need for certain policies to be updated or revised by the time of implementation.

### Government response

419. Where respondents expressed concerns over implementation of phase 2 and certain changes becoming outdated prior to implementation, the focus appeared to be on threshold values. We acknowledge this concern: whilst we have committed to raising thresholds as described in the consultation, we have also committed to reconsidering the thresholds prior to implementation. This is in order to obtain a better view of the impact of the recent inflationary period and the severity of the cost of living pressures. Another concern was that not implementing everything at once would cause an administrative burden. We understand this concern, but the amount of digital change across several different systems required is significant and delivering all the changes in one step carries unacceptable risk. We intend to manage this risk by adopting the phased approach as set out.

**420. Question 88: do you agree with our proposal to implement the non-means tested areas of civil legal aid (if confirmed following consultation) before any other areas?**

421. There were 58 responses to this question: 27 respondents (47%) agreed with this proposal, 6 (10%) disagreed and 25 (43%) responded with maybe. Of those in favour of this proposal, responses highlighted the benefits for children and young people as the main advantage, as well as the need for a 12-week notice period from the consultation response being published to the implementation of this phase. Those that responded with 'maybe' queried the rationale behind this proposal, as well as the administrative implications of this approach. Requests were also made for other proposals to be brought forward, such as increasing capital thresholds. Those not in favour stated a clear preference for one implementation date for all proposals.

**Government response**

422. Phase 1 will deliver the following changes to non-means tested areas of legal aid first: i) non means testing for people under the age of 18 applying for civil legal representation and criminal advice and assistance and advocacy assistance, ii) parents or those with parental responsibility facing withdrawal/withholding of life-sustaining treatment for children under 18, and iii) legal help for inquests involving a potential breach of ECHR rights or significant wider public interest. We believe that implementing these changes first makes sense as they would increase access to legal aid in these areas and they are straightforward and quick to implement. With regard to a notice period of 12 weeks, we may decide to proceed to implementation within a shorter timeframe in order to deliver the benefit to users of legal aid as soon as possible. However, we will continue to provide updates to stakeholders in as timely as possible a manner. We intend to proceed with this proposal.

**423. Question 89: do you agree with our proposal to implement the remainder of the new civil means test as Phase 2 of the implementation process, in advance of the new criminal means tests?**

424. We received 54 responses to this question: 22 respondents (41%) agreed with this proposal, 8 (15%) disagreed and 24 (44%) responded with maybe. Among those in favour, it was mentioned that a period of notice should be given prior to implementation and that thresholds should reflect the cost of living at time of implementation. Those that responded with 'maybe' stated that any delay could carry a risk to children and that the proposed measures could be out of date by the time of implementation. Those not in favour stated a clear preference for one implementation date for all proposals.

### **Government response**

425. We will implement the rest of the new civil means test and contributory system next as phase 2, before the new criminal means tests. The rationale for this is that according to our analysis, more legal aid applicants will benefit from the proposed civil changes. We estimate that, in steady state, clients will benefit from up to 3,000 more civil representation cases and up to 19,000 more legal help cases under the new civil legal aid means tests. As a result of the criminal changes, we anticipate an increase of 13,000 magistrates' courts claims per year, and around 200 Crown Court claims. Further, the current criminal legal aid means tests for representation in the magistrates' court and Crown Court have an existing hardship route and a slightly more generous test when compared to civil legal aid. We therefore intend to make the civil changes first, to benefit more applicants sooner.
426. Where respondents expressed concerns over implementation of phase 2 and certain changes becoming outdated prior to implementation, again, the focus seems to be on thresholds. As set out, we will reconsider the thresholds prior to implementation to obtain a better view of the impact of the recent rise in inflation. With regards to concerns over children, details of the nature of these concerns were not provided in the responses. The measures that will be taken in phase 1 will mean a more generous means test for children.
- 427. Question 90: do you agree with our proposal to implement the new criminal means tests as Phase 3, and the removal of Crown Court capital passporting for benefits recipients who are homeowners as Phase 4?**

428. There were 41 responses to this question: 11 respondents (27%) agreed with this proposal, 3 (7%) disagreed and 27 (66%) responded with maybe. Of those in favour of this proposal, the majority agreed with it without qualifying their response. Those not in favour expressed concerns that a staggered approach to implementation might cause confusion. Those that responded with 'maybe' raised concerns that, once again, any delay in implementing could pose a risk to children, that it might also mean proposals become outdated and finally, questioned what the administrative implications might be.

### **Government response**

429. Phase 3 will consist of the implementation of the new criminal means tests: i) the new Crown Court, magistrates' court and criminal advice and assistance and advocacy assistance means tests, and ii) the updated Crown Court contributory system. The removal of Crown Court capital passporting for benefits recipients who are homeowners, will be implemented as phase 4. Phase 4 will take place approximately 1–2 months after the other new measures for criminal legal aid. The Means Test Review (MTR) policies require a significant set of changes for the Legal Aid Agency's

(LAA) digital systems. Our plans for implementation are designed to minimise the risk of a system failure associated with such large-scale change.

430. Concerns were once again raised around potential administrative burdens, implementation delays and outdated policy. We have already addressed these concerns and set out the rationale for the approach to sequencing. It is however also important to note that for the Crown Court and magistrates' court means test, a review mechanism is currently in place; this means that any applicant for legal aid who considers that their assessed monthly income contribution is unaffordable or has been found ineligible for legal aid on grounds of means but considers that they cannot afford to pay for a private defence, may apply to the LAA for a review. This review may result in a reduced income contribution being sought or an applicant being found eligible for legal aid when they were previously ineligible.

**431. Question 91: do you have any further comments in relation to the implementation phasing of the new means tests?**

432. This question was an open question allowing respondents to share any additional or wider thoughts and did not ask for yes/no/maybe responses. There were 36 responses to this question. Respondents generally expressed a wish for the system to be as simple as possible, with an approach that aimed to reduce administrative burden on providers as much as possible. It was noted that further discussion with providers could be beneficial, especially once timelines for implementation are drafted. Concern was expressed that this implementation may be delayed if it is dependent on the development of digital tools and upgrades. A phased approach of implementation was deemed necessary in the responses to this question.

## **Transitional Provisions**

**433. Question 92: do you agree with our proposal to allow existing recipients of legal aid to seek a reassessment under the new means-testing rules, when implemented?**

434. There were 61 responses to this question: 40 respondents (66%) agreed with this proposal, 10 (16%) disagreed and 11 (18%) responded with maybe. Those in favour of this proposal raised a number of additional concerns including: that a hardship route should be introduced until the new thresholds are implemented, that clients might not understand the benefit of when and when not to request a reassessment and that upon implementation, an allowance should be made for a refund of contributions for civil matters where a legal aid recipient has already contributed towards the cost of the matter for 24 months, or more. Further, whilst this proposal is fair, depending on which overall proposals are implemented, there could be a risk that in a criminal case a client would have to pay contributions for longer. The need

for an eligibility calculator was also highlighted. Those not in favour expressed concerns that this would be too burdensome, that this approach would adversely affect cases concerning divorce/children and there would be no benefit for mediation clients.

### **Government response**

435. Under existing regulations, a legal aid recipient has no right to request a reassessment following any changes to means-testing rules. We propose to change this, giving both civil and criminal legal aid recipients a right to reassessment under the new means-testing regime. The existing certificate or representation order would remain in place during reassessment to ensure continuity and avoid disruption to the case or trial. Any capital or income contributions made or owing from the pre-implementation rules would be unaffected by the reassessment.
436. Regarding the proposal on reassessment of existing legal aid recipients and concerns around additional administrative burden, reassessments are already a regulatory requirement where there is a change in the applicant's financial circumstances. This measure introduces an optional reassessment due to the changed test. On points raised around a hardship review, the criminal legal aid scheme already allows for a review on hardship grounds. We note the concerns raised around cases involving children/divorce being adversely affected, however, no explanations were provided in the consultation responses as to why this group are particularly affected when compared to others. With regard to refunding contributions, as the MTR proposals will not have retrospective effect, where payments have already been agreed and/or made, those payments are subject to the current (or otherwise applicable) rules and regulations. Finally, we are reintroducing a calculator that will assist in determining a legal aid applicant's financial eligibility. The 'Check Your Client Qualifies' tool is currently being tested with some legal aid providers and will continue to be rolled out to more providers over the coming months. We will implement this measure.
- 437. Question 93: do you agree with our proposal that reassessments for civil legal aid recipients should be carried out under the new means-testing regime, but with the proviso that recipients who have benefitted from the previous rules on UC income passporting and/or the pensioner disregard should continue to be subject to the previous means-testing rules in these areas?**
438. There were 60 responses to this question, 40 respondents (67%) agreed with this proposal, 11 (18%) disagreed and 9 (15%) responded with maybe. Of those in favour of this proposal, some stated that if this measure wasn't adopted, existing recipients might not be eligible under the new system and would be unfairly penalised. Furthermore, some respondents stated that recipients should be assessed under the most generous regime. Those that responded with maybe felt that this was a



complex approach and that the rules under which the initial assessment was undertaken should be used throughout the duration of the case and should not be subject to change mid-case. Those not in favour stated that this was an overly complicated approach to take as individuals would already be in receipt of legal aid, and that it was too burdensome, as many providers do not have the capacity to undertake such reassessments.

### **Government response**

439. The majority of civil legal aid recipients are likely to see a more favourable means outcome following an assessment under the new rules. Therefore, we proposed that, as a default, any reassessment should be carried out under the new rules. However, we acknowledge that some may be disadvantaged, namely UC recipients who were passported through the income test regardless of their earnings level but who may now lose out if their monthly earnings exceed £500 and would therefore be required to go through a full means assessment. Those between 60 and the average pension age of 65 may also be disadvantaged by the change in age criteria for the pensioner capital disregard.
440. We proposed that if an individual has benefitted from the pre-implementation rules on UC income passporting, or the pensioner disregard, the pre-implementation rules regarding those two specific elements will continue to be applied on any reassessment.
441. We acknowledge the concerns raised around reassessments in civil matters, but ultimately, not pursuing this measure would result in UC recipients that have already been deemed eligible and passported, who have monthly earnings above £500, being required to go through a full means assessment. We therefore believe this is a fair and pragmatic approach to take.
- 442. Question 94: do you agree with our proposal that, following the implementation of the new Crown Court means test, any reassessments carried out due to a change of income, new information, administrative error or hardship should use the previous means test as a default, but allow the defendant to opt for the new means test if they prefer?**
443. There were 36 responses to this question: 18 respondents (50%) agreed with this proposal, 1 disagreed and 17 (47%) responded with maybe. The primary concern raised in response to this question was that legal aid recipients would need a clear breakdown of their options to ensure they were fully informed. No further substantive comments were made in response to this question.

### **Government response**

444. While defendants at the Crown Court will generally benefit from the proposed changes to the means test in that their monthly income contribution is likely to be lower post-reassessment, the proposed extension of the maximum income contribution payment period from 6 months to 18 months may result in a potential detriment to the individual.

445. We therefore propose that, as a default, reassessments in relation to a change of income should be carried out under the pre-implementation rules. However, the defendant would be able to opt for reassessment under the new rules if they preferred.

446. With reference to the concerns highlighted around a need for legal aid recipients to be clear on their options and consequences of any decisions taken – new guidance, including a ready reckoner, will allow the defendant and their legal representative to reach an informed decision. We will implement this measure.

#### **447. Question 95: do you have any further comments about our proposals in relation to the transition from the old to the new means-testing regime?**

448. This question was an open question allowing respondents to share any additional or wider thoughts and did not ask for yes/no/maybe responses. There were 32 responses to this question. In these responses, consultees stated a preference for clear guidance to be issued alongside a reasonable amount of time for providers to understand the changes and requirements. It was also suggested that training could be useful to help with this transition period. There was concern of delays in implementing the new means test, as it is seen to be a complex and lengthy process – it was highlighted that this implementation should be a priority for the department to ensure that the most vulnerable people in society have access to justice.

#### **449. Question 96: do you agree with our proposal to carry out a review of the means test thresholds within 3–5 years after the implementation of the new means tests?**

450. There were 57 responses to this question: 27 respondents (47%) agreed with this proposal, 24 (42%) disagreed and 6 (11%) responded with maybe. Of those in favour of this proposal, most simply agreed with it, with some expressing concerns that proposed measures might be outdated by the time of implementation. Those not in favour expressed concerns that changes could be outpaced by the rate of inflation and that thresholds should be updated on a more regular basis, some even suggested annually.

## **Government response**

451. We will review the income and capital thresholds for legal aid (including the earnings threshold for UC passporting), as part of a Post Implementation Review (PIR) 3 to 5 years from the new means test coming into operation. The PIR would be published no earlier than 3 years and no later than 5 years after all the means test review measures have come into operation.
452. The scope of this review would include an aim to ensure access to justice and that the means test thresholds continue to operate in a way that is consistent with one of the original LASPO objectives, to target legal aid at those who need it most. The review could take into account factors including (but not necessarily limited to), the most recent ONS Living Costs and Food survey results (which form the basis of the proposed new means tests); ONS figures on average equity in houses (for the equity disregard); recent inflation figures; Spending Review timelines; and wider government finances.
453. Reviewing the MTR measures 3–5 years post implementation aligns with typical government post implementation review time-frames and we maintain that this is a reasonable period to allow for changes to settle in. Any review undertaken sooner than this might not provide an accurate picture of any impact being felt. Many concerns were in relation to thresholds and how our proposals could be outpaced by the rate of inflation. We believe this concern is addressed by our recommended approach to consider threshold values prior to implementation. Thresholds will in any case be included in the post-implementation review. We agree with respondents that implementing the changes should be a priority to ensure access to justice for vulnerable people and will implement each phase as quickly as practically possible. Implementation of all the changes is a significant piece of work and will require changes to several LAA digital systems. We will keep providers and stakeholders updated as our plans develop and as we have greater certainty over implementation dates for each phase. Recognising the need for certainty and notice periods, we intend to lay the Statutory Instruments for the civil changes by the end of 2023. Coming into force dates will be set at the time of laying the instruments, and we expect all phases to have been implemented within around 2 years following the publication of this response.

## Equalities and provider impact

**454. Question 97: do you have any views on the potential impact of our proposals on groups with protected characteristics? These are: age; race; disability; sex; sexual orientation; gender reassignment; marriage and civil partnership; pregnancy and maternity; religion or belief. We would particularly welcome information on the protected groups which we do not have legal aid data on: gender reassignment, marriage and civil partnership, pregnancy and maternity, and religion or belief.**

455. This question was an open question allowing respondents to share any additional or wider thoughts and did not ask for yes/no/maybe responses. There were 45 responses to this question. Responses generally commented that the most vulnerable groups will be impacted the most by these proposals, both positively and negatively, for example, there may be increased eligibility, however, they could have difficulty in locating a solicitor with capacity to take their matter on. Specific reference was made to survivors of domestic abuse and how they could be negatively affected by the proposals around Universal Credit.

**456. Question 98: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for legal aid for civil representation, increase it or leave it broadly similar?**

457. This question was an open question allowing respondents to share additional thoughts or wider feedback on the proposals and did not ask for yes/no/maybe responses. There were 56 responses to this question. Some respondents commented that the proposals could marginally reduce the administrative burden for providers and applicants, however the majority of responses stated that the proposals will increase this burden. It was noted that the proposals would expand eligibility, but do not effectively tackle or reduce administrative burden – both in terms of time spent and remuneration.

**458. Question 99: do you think these proposals, if enacted, will improve the sustainability of civil legal aid?**

459. There were 60 responses to this question: 6 respondents (10%) answered yes, 40 (67%) answered no and 14 (23%) responded maybe. Respondents who agreed with the proposal, and some who answered maybe commented that the proposals may slightly improve the sustainability. It was noted that as a result of these proposals more people will be eligible for legal aid, and this could improve the sustainability but is not enough to guarantee the future of civil legal aid. Those who disagreed primarily commented that the proposals do not effectively address administrative costs, or the

rates at which providers are paid. There was significant concern that clients may be unable to access mediation.

**460. Question 100: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers and applicants for legal aid for civil legal help, increase it or leave it broadly similar?**

461. This question was an open question allowing respondents to share any additional thoughts and did not ask for yes/no/maybe responses. There were 73 responses to this question. There were mixed responses to this question, some respondents believed that these proposals would marginally reduce the administrative burden, others commented that it would leave it broadly similar, and others believed it would increase. There was specific attention paid to proposals around UC and that the removal of UC passporting would significantly increase administrative burden.

**462. Question 101: do you think that these proposals, if enacted, will improve the sustainability of civil legal aid?**

463. This question was a repeat of question 99. As respondents replied to both questions separately, we have reported responses to each. There were 67 responses to this question: 9 respondents (13%) answered yes, 50 respondents (75%) answered no, and 8 respondents (12%) answered maybe. The majority of respondents expressed that although these proposals will make massive progress in widening access to justice and legal aid, there is concern that they will also increase the administrative burden significantly, and without sufficient remuneration. It was asserted that insufficient funding equates to inadequate legal aid provision. Respondents stated that much of this administrative burden would stem from proposals to move clients who are currently passported into a full means assessment.

**464. Question 102: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for legal aid for public family cases, increase it or leave it broadly similar?**

465. This question was an open question allowing respondents to share wider views or feedback and did not ask for yes/no/maybe responses. There were 41 responses to this question. The majority of respondents stated that the administrative burden would increase as a result of these proposals. It was noted that the proposals that would remove means testing for groups of clients (for example, for under 18s) will reduce administrative burden, but the proposals as a whole were believed to increase the administrative burden.

**466. Question 103: do you think these proposals, if enacted, will improve the sustainability of legal aid for public family matters?**

467. There were 44 responses to this question: 7 respondents (16%) answered yes, 27 (61%) said no and 10 (23%) answered maybe. Some respondents believed the sustainability of the system will remain largely the same, others believed that it will be increased. Primarily it was commented that although more people will be eligible to access legal aid, the proposals will not impact the number of providers – and therefore there could be issues with supply and demand. Respondents asserted that the sustainability of legal aid for public family matters is linked to the rates paid to providers, and that there is a need for more remuneration to providers.

**468. Question 104: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for of legal aid for private family cases, increase it or leave it broadly similar?**

469. This question was an open question allowing respondents to share any additional feedback and did not ask for yes/no/maybe responses. There were 49 responses to this question. The majority of respondents commented that the administrative burden will not be reduced, and many added that it will be increased as a result of these proposals. It was noted that the proposals will increase workloads to unsustainable levels. Respondents believed that the proposals were focused on widening access to legal aid, however, that consequently they would create a situation where the number of mediation services providing legal aid may be reduced, due to increased administrative burdens making these services no longer economically viable.

**470. Question 105: do you think these proposals, if enacted, will improve the sustainability of legal aid for family matters?**

471. There were 49 responses to this question: 4 respondents (8%) answered yes, 34 (69%) answered no and 11 (23%) answered maybe. Respondents stated that the proposals could lead to more individuals being eligible for legal aid, which could positively impact the sustainability of the system. However, it was also asserted that there would likely be an increase in the administrative burden on providers, which might create issues around economic viability, which in turn could cause the number of providers to decrease.

**472. Question 106: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for of legal aid at the Crown Court and magistrates' court, increase it or leave it broadly similar?**

473. This question was an open question allowing respondents to share any additional or wider thoughts and did not ask for yes/no/maybe responses. There were 27 responses to this question, the majority shared the view that the administrative

burden will not be reduced and will either remain the same or be increased, though it was mentioned that some proposals specifically would help to reduce the administrative burden – these proposals were the ones that either allowed clients to be passported or removed means testing for certain groups.

**474. Question 107: do you think these proposals, if enacted, will improve the sustainability of criminal legal aid?**

475. There were 26 responses to this question: 4 respondents (15%) answered yes, 12 (46%) answered no and 10 (39%) answered maybe. There was not extensive commentary on this question, some respondents expressed that they were unsure of the impact these proposals could have, others expressed that the sustainability could improve a small amount. Overall, the sentiment was that the proposals were designed to make legal aid more accessible to the public, but due to a lack of increase in fees, there was uncertainty as to whether there would be enough legal aid providers to support this.

**476. Question 108: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for legal aid for criminal advice and assistance/advocacy assistance, increase it or leave it broadly similar?**

477. There were 25 responses to this question: 2 respondents (8%) answered yes, 7 (28%) answered no and 16 (64%) answered maybe. The comments on this question were not extensive but were broadly split between those who believed the administrative burden is likely to stay the same, and those that thought the proposals could further complicate matters.

**478. Question 109: do you think these proposals, if enacted, will improve the sustainability of legal aid for criminal advice and assistance/advocacy assistance matters?**

479. There were 26 responses to this question: 4 respondents (15%) said yes, 8 (31%) said no and 14 (54%) answered maybe. Similarly, to other responses in this chapter, some respondents commented that sustainability may increase, as access to justice will be widened, but others outlined that the sustainability of legal aid, specifically for advice in criminal cases, would not be increased.

**Government response**

480. We welcome the feedback given on how the Means Test Review will impact legal aid providers. Means testing for legal aid sits at the heart of access to the justice system, and as such touches on many aspects of legal aid services. We have therefore considered our response to these questions in two categories. First, we have responded to the themes in responses above which are directly related to the means

test review proposals. Secondly, where issues have been raised which are relevant to other areas of legal aid policy, we have outlined this work and provided details of where further information can be found.

481. The balance between the benefits of widening eligibility to legal aid and increasing the burden on providers was a common theme in the responses. We recognise this and acknowledge that an inevitable consequence of improving access justice is an increased case load for legal aid providers, as more applicants will qualify for legal aid. The implementation timeframes described above will allow us to work with the legal aid agency to prepare for these changes. This will include making changes to digital systems, recruiting additional LAA caseworkers, and substantial work to update and revise means testing guidance for applicants and providers.
482. The administrative requirements which will result from the introduction of the £500 income threshold for applicants in receipt of Universal Credit (UC) was also raised consistently in the consultation responses. We are grateful for the comments from consultees and recognise that removing UC passporting will lead to an increase in the income assessments which have to be carried out. However, automatic passporting has been an interim measure. A key rationale underpinning the MTR is fairness. We remain of the opinion that applicants should generally be treated in the same manner if they have the same means. We have described above our plans to introduce the 'Check if your Client Qualifies' tool to support income assessments. We would also hope that phasing implementation in the way we have proposed will give legal aid providers a reasonable amount of time to plan appropriately for estimated increases in work volumes and for any new application processes. Further to this, many other MTR measures simplify and consolidate means assessments. The measures in this review will create a clear, fair means testing system and place the approach to applicants in receipt of UC on a permanent footing.
483. We acknowledge the concerns raised in relation to the impact on vulnerable groups, including domestic abuse victims. This review has led to a series of material changes to support domestic abuse victims, particularly in the treatment of any property or assets they are not able to access. For further details please see chapter 4 and the descriptions of our inaccessible capital, subject matter of dispute, and equity disregard proposals. The new measure to support victims of domestic abuse in receipt of UC seeking protective orders is described in chapter 3.



## **Other relevant areas of legal aid policy**

484. With regard to criminal legal aid fees, the Government is committed to supporting the legal profession to ensure the legal aid sector is put on a sustainable footing both now and in the future. On 30 November 2022, we published our full response to the Criminal Legal Aid Independent Review (CLAIR) and consultation on policy proposals.
485. We have boosted the system with investment to address the most urgent concerns raised as part of CLAIR; this included uplifts of 15% to most legal aid fee schemes, and increases to fees in s.28 cases in the Crown Court and fees for Special and Wasted Preparation. This, alongside the proposed long-term reforms, is anticipated to increase spend by up to £138m a year. Taking expected criminal legal aid spend to £1.2 billion per year.
486. The sustainability of the provider market for legal aid and the pressures faced by providers was also a common theme in these responses. The Ministry of Justice is undertaking a review of civil legal aid which will consider the civil legal aid system in its entirety. This includes how services are procured, how well the current system works for users and how civil legal aid impacts the wider justice system. The review will seek to develop proposals and draw conclusions from an evaluation of a wide array of sources including an internal evidence gathering exercise and social research on the user journey.

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