



Ministry  
of Justice

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Ms Holly Padfield-Paine and Mr James Kenrick  
Co-Chairs, JustRights  
c/o Law Centres Network  
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31<sup>st</sup> October 2013

Dear Ms Padfield-Paine + Mr Kenrick

## ENSURING ACCESS TO JUSTICE FOR CHILDREN AND YOUNG PEOPLE

Thank you for your letter of 7 October to Lord McNally, setting out your concerns about the impact of the Government's legal aid reforms. I am responding as Minister now responsible for this area. Throughout the development of these proposals we have been clear that limited public funds will, in future, be deployed in support of those in greatest need. The *Transforming Legal Aid* consultation and the subsequent *Transforming Legal Aid: Next Steps* document set out clearly how we propose to achieve this.

I have not sought to address every point of detail in your letter and the annex, but have sought to respond below to each of the general themes.

### Impact of Judicial Review Proposal on Young People

We have listened carefully to the views of respondents as part of the Legal Aid Transformation consultation paper. We recognise concerns raised that our proposal, as set out in that consultation paper, would affect meritorious cases which issue but do not reach the point of a Court decision on permission. We therefore propose to introduce a discretion to permit the Legal Aid Agency to pay providers in certain cases which conclude prior to a permission decision. As part of this proposal we have invited respondents to provide evidence on any affected groups.

### Impact of Judicial Review Proposal on Vulnerable People

We consider that limited legal aid resources should be targeted at those judicial review cases where they are needed most, if the legal aid system is to command public confidence and credibility. Our objective is to ensure that the meritorious cases are funded, including for vulnerable clients. Providers acting for vulnerable clients in genuinely strong cases will still be paid for the whole case, either because they get their costs from the defendant, or because the case is granted permission, or because if the case settles in their favour and they cannot get costs, they can apply to the LAA for payment under our revised proposal. The proposal would only apply to

issued proceedings and legal aid would continue to be paid for the earlier stages to engage in pre-action correspondence and to investigate the strength of the claim.

### **Potential for Additional Costs Arising from Residence Test**

We do not believe it is fair that people without a strong connection to the UK, such as those who have barely stepped over the border, should be eligible for civil legal aid when it is funded by taxpayers' hard-earned money. However we have listened to views on our original consultation and built in further safeguards.

Legal aid will remain available for asylum cases, which will account for the vast majority of cases brought by unaccompanied children. Victims of trafficking, including children, will also be able to get funding for legal advice in relation to immigration or damages claims in connection with their trafficking or exploitation.

Councils have a duty to secure accommodation for those households who are eligible, homeless through no fault of their own and in priority need. Legal aid should not be needed to ensure someone has a roof over their head. The figures quoted in the NRPF report are very small and we do not accept they significantly raise the costs for councils.

### **Impact of Residence Test on Vulnerable People**

The Government has carefully considered the responses to the consultation. We continue to believe that in principle, individuals should have a strong connection to the UK in order to benefit from the civil legal aid scheme and that the residence test we have proposed is a fair and appropriate way to demonstrate that connection.

We have also concluded that the test will not apply to individuals in types of case which broadly relate to an individual's liberty, where the individual is particularly vulnerable or where the case relates to the protection of children.

The residence test is intended to deliver a legal aid system that is not only fair to the people who use it, but also fair to the taxpayer who pays for it. The modifications we have set out will protect the most vulnerable groups and priority matters, but we believe that individuals should in principle have a strong connection to the UK in order to benefit from the civil legal aid scheme.

### **Impact of Borderline Merits Proposal on Children**

The Government has carefully considered the impacts of the proposal. We published an impact assessment and equalities analysis at the outset of the consultation and updated this assessment alongside the consultation response.

### **Prison Law**

For those cases removed from the scope of criminal legal aid for prison law we consider the complaints and discipline procedures in youth secure establishments are effective and easy-to-use means of redress for all young offenders; civil legal aid may also be available, subject to means and merits. Those involved in these processes are experienced at helping young offenders present their arguments appropriately and, where needed, reasonable adjustments will be made. Specialist advocacy services are also available for young offenders to help them navigate these systems if needed. To reinforce compliance with current requirements in terms of complaints systems, and to ensure staff and young people in custody are aware of the changes, the National Offender Management Service (NOMS) will be outlining the changes to young offenders, staff and Governors in a series of communications. The Youth Justice Board wrote to Secure Training Centres in September outlining

this message, and the Ministry of Justice will be liaising with the Department for Education to ensure the same message reaches Secure Children's Homes.

If a young offender is dissatisfied with the outcome of their complaint, there are a number of routes they can take. Young people in Secure Training Centres can refer a complaint to the statutory monitor and can now take their complaint to the Prison and Probation Ombudsman (PPO). Young people in Secure Care Homes can also refer a complaint to their Local Authority, while those in Young Offender Institutions can refer their complaint to both the PPO and the Independent Monitoring Board (IMB). The Monitor, PPO and IMB can all make recommendations on behalf of the young person and will work with the establishment to put these measures in place. Civil legal aid may also be available, subject to means and merits.

In regards to your concerns about the cost savings from these changes to criminal legal aid for prison law, it is correct that prison law makes up a relatively small proportion of the overall spend on criminal legal aid. However, the amount spent on prison law, both in terms of total cost and as a proportion of total legal aid spending, has increased markedly over time. The proposals aim to target public resources at the cases that require legal aid, in order to ensure the public can have confidence in the scheme.

### **Impact of Fee Reforms on Family Cases**

The claim that the resultant effect of a fee cut will be a decline in the quality of legal services has been made in relation to all reforms that have been proposed to civil legal aid remuneration since the introduction of the fixed fee scheme in 2007. However, there remains a significant number of providers working in this area who, where they represent children, must independently demonstrate that they meet the necessary quality standards for undertaking such work by being registered on the Law Society's Children's Panel.

Although a joint MoJ, Legal Services' Board and Law Society survey "*A time for change: solicitors firms in England and Wales*" suggested that approximately one third of legal aid firms were considering withdrawing from legal aid, this was not borne out by the 2013 civil legal aid tender. The results of this showed that overall more firms were willing to undertake legal aid work than were currently working in the sector despite a significant reduction in the amount of work available as a result of the implementation of the Legal Aid Sentencing and Punishment of Offender (LASPO) scope reforms. The impact of the reduction in the representation fee is dependant on the reaction of individual solicitor firms. It was considered, however, that sufficient providers were likely to remain in the market to deliver the necessary services needed in the future.

### **Fee Reforms and Workload in Family Proceedings**

The Family Justice Review (FJR), Final Report published in November 2011, outlines the measures being taken to ensure that family justice is more respondent and efficient to those who find themselves in the system. One of the key findings of the report was the fact that unnecessary and inappropriate expert reports were being commissioned, usually in public law family cases, which increased the duration of care proceedings. Where no or fewer experts were used the length of care proceedings decreased significantly. This evidence was presented in the 2011 Family Justice Children's Proceedings – Review of Public and Private Law Case files in England and Wales. In limiting the use of experts to those cases where there was a real need, combined with other reforms seeking to streamline court processes including reducing the number of hearings, then a reduction in the amount of work required by a solicitor in care proceedings should follow. The latest court statistics show that the average duration of court proceedings has fallen to 42 weeks, from 54

weeks since the beginning of 2012. This is expected to decrease even further as the FJR reforms take effect. In terms of hearings, any reduction in the number held will lead automatically to a reduction in advocacy costs, as these are calculated on the basis of hearing fees. In contrast, however, the fee paid to solicitors for their work on a care case will not as it is fixed.

Given the Government's overall commitment to ensure value for money to the public purse, the fees paid for any service should be reflective of the amount of work being undertaken. With benefits accruing from the FJR reforms, the current representation fee no longer achieves value for money. A 10% reduction, therefore, would be a reasonable reflection of the efficiencies being gained through the implementation of FJR reforms.

### **Fee Levels in Family Proceedings**

Although it is correct to say that the hourly rates that will apply will be lower where the escape threshold is reached for representation in care proceedings when compared with those for Licensed work, the fees for Licensed Work tend to be higher overall. The majority of care cases are currently covered by the Care Proceedings Graduated Fee Scheme (CPGFS), with solicitors being paid a fixed fee for representation (excluding advocacy), depending on the number of parties involved in a case, the type of party and the geographical location of the provider.

Where the complexity of a case is such that the time and cost involved exceeds two times the fixed representation fee, providers are able to escape the fixed fee regime and claim hourly rates, subject to assessment by the Legal Aid Agency. The current escape threshold for the fixed representation fee is much lower than that for other types of Licensed work, where a case must reach three times the relevant fee before hourly rates apply. The lower threshold which applies to the escape threshold for representation in care proceedings was devised as a control mechanism to prevent large numbers of cases escaping into hourly rates in order to retain the credibility of the fixed fee regime, whilst also retaining the incentive to take on complex cases.

### **Prioritising Child Protection**

Child protection remains a critical priority across Government, with cross-Government agencies working together to safeguard and promote child welfare. In addition, reforms stemming from the Family Justice Review places children at the heart of the family justice process, so that focus is centered directly on their needs.

### **Access to Legal Aid by Children and Young People following the Legal Aid, Sentencing and Punishment of Offenders Act**

The UK system of legal aid continues to be one of the most generous in the world. LASPO was designed to focus cases on the most important; in broad terms those where life or liberty was at stake, where there was a serious risk of harm or where there was a risk of homelessness.

In terms of young people, children who are party to family proceedings remain in scope, as do all public law family proceedings and family cases where there is a risk to the child. More generally, the approach we have taken means that approx 97% of spend on children from the pre-LASPO scheme remains in scope. In addition of course, where not providing legal aid would represent a breach of an individual's ECHR rights or an enforceable right under EU law, exceptional funding will be available.

I hope this has gone some way to re-assuring you about the impact of our proposals and that considerable thought has gone into ensuring that we continue to provide appropriate support to vulnerable groups.

*Yours sincerely*

*Shailesh Vara*

**SHAILESH VARA**

