

# Equalities Statement

## Policy Summary

- 1 The Government is mindful of the importance of considering the impact of changes to the legal aid remuneration schemes, particularly the effects on providers of legally aided services and their clients.
2. Part 1 of the Antisocial Behaviour, Crime and Policing Act 2014 (ASBCPA) amends Schedule 1 to the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) to provide that Part 1 injunctions will fall within the scope of civil legal aid. The Government's primary objective, therefore, is to ensure that appropriate legal aid providers can continue to undertake this type of work when it becomes subsumed into Part 1 ASBCPA. In addition, the Government aims to ensure that appropriate remuneration is made to legal providers that reflect the payment for services undertaken at the same or similar levels to that which they receive now, where possible.
3. On implementation of Part 1 ASBCPA, criminal legal aid providers will effectively become ineligible for work on Part 1 injunctions except in breach matters. Civil legal aid providers would be restricted to those matters which are currently within scope of the civil legal aid contract (i.e. current ASBI matters). Other anti-social behaviour matters covered by a Part 1 injunction (i.e. ASBO matters) would not fall within the scope of the civil legal aid contract, nor are there any means in which remuneration could be made to civil providers for this work. If Government were not to make any changes to the legal aid contracts or remuneration schemes then it would be in breach of its duty under LASPO to provide legal aid (in respect of non-housing related injunctions). The Government therefore propose that:
  - providers holding a civil or criminal contract<sup>1</sup> may provide civil legal aid services for an application or appeal of a Part 1 injunction and would be remunerated at the applicable standard civil legal aid rates for legal help and legal representation in housing matters, including travel and waiting time<sup>2</sup> (where appropriate), and
  - providers holding a criminal contract<sup>3</sup> may provide representation for contempt proceedings on breach of a Part 1 injunction and would be remunerated at the applicable criminal legal aid rates payable for representation in proceedings for breach of a magistrates' court order, plus travel and waiting time<sup>4</sup> (where appropriate) for county court proceedings.
4. The assessment made of the potential impacts of the consequential changes necessary to legal aid legislation as a result of the implementation of Part 1 of

---

<sup>1</sup> The Legal Aid Agency contracts referred to are the 2010 Standard Civil Contract, the 2013 Standard Civil Contract, the 2014 Standard Civil Contract, the 2010 Standard Crime Contract and the Own Client Crime Contract 2015.

<sup>2</sup> The applicable rates are set out in the Civil Legal Aid (Remuneration) Regulations 2013 (as amended). For controlled work, the housing rate shown in Schedule 1, Table 1 and Schedule 1, Part 2, Table 7(e) applies and for licensed work, the rates shown in Schedule 1, Part 3, Table 10(a) apply. These rates are applicable to all advocates except barristers in independent practice, who are remunerated on the basis of the rates shown in Schedule 2. The rates applicable to the Youth Courts, where counsel is assigned to a hearing, would be those that apply for County Courts. Where counsel is assigned in the Crown Court, the applicable rates will be those that apply to the High Court

<sup>3</sup> The Legal Aid Agency contracts referred to are the Standard Crime Contract 2010 and the Own Client Crime Contract 2015.

<sup>4</sup> Paragraph 5, Schedule 4, Criminal Legal Aid (Remuneration) Regulations 2013 (as amended). It should be noted, however, that these rates may change next year as a result of the Legal Aid Transformation criminal litigation reforms set out in Transforming Legal Aid – Next Steps: Government Response (available at: <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/results/transforming-legal-aid-next-steps-respons.pdf>).

the ASBCPA can be found below and should be read in conjunction with the proposals. We would welcome any relevant information to further inform our analysis and better understand the potential impacts of these proposals. We will be updating our assessments once we have considered all relevant responses to this consultation.

## **Equality Duties**

- 5 In considering our Public Sector Equality Duty (PSED) under the Equalities Act 2010, we have given due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
  - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
6. Paying 'due regard' to the PSED needs to be considered against the "protected characteristics" under the Equalities Act – namely age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation (as relevant).

## **Equalities considerations**

### **Discrimination and other prohibited conduct**

7. Direct discrimination occurs when a person treats another less favourably than they would treat others because of a protected characteristic. Our assessment is that the proposals, which seek to ensure appropriate provision of services and remuneration for legal aid services, are not directly discriminatory within the meaning of the Equality Act as they apply equally to all providers and clients irrespective of whether or not they have a protected characteristic. We do not consider therefore that the proposals would directly result in people being treated less favourably because of the protected characteristic.
8. Indirect discrimination arises where an institution does something which on the face of it, appears to be neutral in terms of equality issues but which in terms of its impact particularly disadvantages people with a protected characteristic. Our initial view is that we do not anticipate that the reforms proposed will particularly disadvantage people with a protected characteristic under the Equality Act. We do, however, recognise that some providers may argue that in breach proceedings the applicable rates of remuneration should be the civil legal aid rates on the basis that breach proceedings will be heard mainly in the county court. Currently in terms of anti-social behaviour matters, breach proceedings progressed in the majority of cases usually concern ASBO issues. On implementation of Part 1 of the ASBCPA, the majority of breaches are likely to continue to relate to ASBO-type matters and, as the burden of proof required will remain the same (i.e. proof beyond reasonable doubt), it is therefore not expected that this will result in additional work compared to that undertaken by a legal aid provider on an ASBO breach case, albeit that there may be a change in court venue. As a result, continuing to remunerate legal aid providers at the rates applicable in what are currently ASBO proceedings is not expected to

present any disadvantage to either legal aid providers or their clients. We have, however, considered the potential for disproportionate impacts below.

9. Overall, our initial view is that the proposed reforms represent a proportionate means of ensuring civil legal services are available for Part 1 injunctions by ensuring appropriate access to and remuneration for work on Part 1 injunctions which we intend to pursue having due regard to the statutory principles of equality and non-discrimination set out in the PSED.
10. We do not consider that the reforms proposed will give rise to discrimination arising from a disability or a failure to comply with a duty to make reasonable adjustments. Nor do we consider that these reforms will have any impact on instances of harassment or victimisation.

### **Advancing equality of opportunity**

11. We have considered the implications of the proposals for the advancement of equality of opportunity. Our view is that the reforms proposed, as they concern remuneration to providers, are unlikely to undermine attainment of those objectives.

### **Fostering good relations**

12. Although consideration has been given to this objective, our initial view is that it is unlikely to be of particular relevance to the reforms proposed which focus on ensuring appropriate remuneration for legal aid services.

### **Impact on providers**

13. We cannot assess or determine the impact on those with protected characteristics who currently receive remuneration under the civil and criminal legal aid schemes in respect of anti-social behaviour proceedings as such information is not collected separately. However, we have used Legal Services Research Centre<sup>5</sup> data on the protected characteristics of legal aid providers in considering whether the proposals could have a disproportionate impact on a group sharing a protected characteristic.
14. Under the Government's proposed reforms, civil legal services would be available to clients requiring legal help or representation in anti-social behaviour matters, subject to the applicant meeting the civil means and merits criteria for full representation. Work on Part 1 injunctions (where this relates to an application or appeal) will be undertaken by providers holding either a civil or criminal contract, with remuneration made on the basis of the standard civil rates (including travel and waiting) applicable in ASBI proceedings for legal help and representation. This, however, represents an increase in remuneration for those holding a criminal legal aid contract in comparison to that for applications and appeals in ASBO matters. For breach proceedings, while the majority will be heard in the county courts, the matters that need to be considered in such cases are generally more straight forward than at the initial application, i.e. whether the individual did or did not do what they were required to do. These proceedings will constitute criminal proceedings for purposes of legal aid and therefore

---

<sup>5</sup> The Legal Services Research Centre (LSRC) provider data is collected to support their Routine Diversity Monitoring of the Supplier Base Reports. The survey was undertaken in 2010 and represents the diversity profile of those managing/controlling legal aid providers' offices.

continue to be carried out by criminal providers on the basis of the fixed fees applicable for representation in the magistrates' court, which reflect the process that applies in ASBO proceedings now. Additional remuneration will, however, be automatically payable to criminal legal providers for travel and waiting time for breach proceedings associated with Part 1 injunctions held in the county court.

15. The impact on those providing legal aid services will depend on the type of anti-social behaviour matters they are involved in and whether their overall caseload involves a low or high proportion of cases that relate to these issues. The intention is to ensure civil legal services are available for Part 1 injunctions with remuneration which is of an appropriate and reasonable level. Remuneration will, therefore, be at the same or a similar level to that payable now in ASBI or ASBO proceedings. The proposed reforms will, however, have a greater impact on criminal providers on the basis that their level of remuneration for Part 1 applications and appeals will change, as will the venue that they normally conduct such proceedings. As remuneration will be higher for applications and appeals than for ASBOs currently and travel and waiting costs will be payable for appearing in the county court, we do not consider this to be disadvantageous. Whilst all providers will be treated equally, survey data<sup>6</sup> suggests that the proportion of firms with BAME or male managerial is higher for firms with criminal contracts than for firms in other areas of law so the proposed reforms could have a disproportionate impact on these groups. To the extent that the proposed reforms do have a disproportionate impact, we consider the impact to be justified for the reasons below.
16. We also acknowledge that where counsel is assigned, the only impact will be on those who are assigned to proceedings relating to an application for or an appeal against a Part 1 injunction. Although the number of criminal counsel involved in such proceedings is currently extremely low and unlikely to increase, the main impact will be an increase in the level of remuneration paid to them for these cases. We therefore consider that there is no disadvantage. Whilst all criminal counsel will be treated equally, survey data<sup>7</sup> shows that where barristers spend most of their working time in this area, men, and individuals of white ethnicity, are over represented in criminal work when compared to the general population. If any impact were to arise, these groups may be disproportionately impacted. The same survey also suggests that there is a greater proportion of female and BAME barristers among the more junior members of the Bar. If the services of junior barristers were allocated to these proceedings more frequently than other barristers, then any impact may disproportionately affect female and BAME barristers. Our initial view is that the nature of the changes proposed are such that they are unlikely to put people with protected characteristics at a particular disadvantage and in any event, any such disadvantage would be a proportionate means of achieving the legitimate aim of ensuring access and appropriate remuneration for work undertaken on Part 1 injunctions.

---

<sup>6</sup> The Legal Services Research Centre (LSRC) provider data is collected to support their Routine Diversity Monitoring of the Supplier Base Reports. The survey was undertaken in 2010 and represents the diversity profile of those managing/controlling legal aid providers' offices. See: <http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2011/2011-Diversity-Report.pdf>

<sup>7</sup> Barristers' working lives – A second biennial survey of the bar, 2013. See: [https://www.barstandardsboard.org.uk/media/1597662/biennial\\_survey\\_report\\_2013.pdf](https://www.barstandardsboard.org.uk/media/1597662/biennial_survey_report_2013.pdf)

## **Impact on clients**

17. We do not anticipate any indirect impact on clients as the proposed reforms concern a change in how providers of legal aid services will be remunerated for Part 1 proceedings. As the reforms should ensure that necessary services remain available and are not expected to adversely affect providers, we do not expect there to be any impact on the sustainability of the legal aid market or the quality of legal services provided on anti-social behaviour matters.

## **Methodology**

18. In assessing the potential for particular disadvantage resulting from the reforms proposed, we have sought to identify the individuals on whom the proposals will have an impact (the pool) and draw comparisons between the potential impacts of the proposals on those who share particular characteristics with those who do not. In this particular instance, the relevant pool is providers of civil and criminal legal aid services (both barrister and solicitors) and their clients.

## **Gathering further evidence**

19. The Government's proposed options for making changes to the legal aid contracts and remuneration schemes are a necessary consequence of the implementation of Part 1 ASBCPA and the changes it makes to Schedule 1 of LASPO. The Government believes the reforms proposed are a proportionate means of achieving the legitimate aim of ensuring legal aid services are available (to eligible individuals) for Part 1 injunction proceedings. We believe the reforms proposed are a proportionate means of achieving this as it enables appropriate providers to provide legal services where required for applications, appeals and breach of Part 1 injunctions and be remunerated for such at an appropriate level.
20. We would welcome any relevant information to further inform our analysis and better understand any potential equality impacts of the proposals. We will be updating our assessments once we have considered all relevant responses to this consultation.