

Equalities Statement

Introduction

- 1 The Government is mindful of the importance of considering the impact of changes to FAS on different groups, particularly providers of legally aided services and their clients.
- 2 In considering our duty 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).
- 3 The assessment made of the potential impacts of these proposals 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 the proposals. We will be updating our assessments once we have considered all relevant responses to this consultation.

Methodology

- 4 In line with guidance published by the Equality and Human Rights Commission (EHRC), 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 protected characteristics with those who do not. In this particular instance, the relevant pool is providers of family legal aid services (both barrister and solicitor advocates) and their clients.

Equalities considerations

- 5 In considering our duty under the Equalities Act, we have given due regard to the need to eliminate discrimination, harassment, victimisation and other unlawful conduct, and to advance equality of opportunity and foster good relations.
- 6 The primary objective of the proposed reforms is to ensure that legal aid advocates continue to receive appropriate remuneration for work that is necessary when the current court bundle bolt-on fee schemes become inapplicable. The intention is that this will be done in a way that is cost neutral and avoids introducing unmanageable risks to the stewardship of the legal aid fund. As far as possible within those parameters, it is also intended to focus remuneration on those cases that would previously have attracted a bundle bolt-

on payment and support the aims of the Family Justice Review (FJR) reforms. The Government has identified two potential solutions for achieving this on which it is seeking views. The first involves shifting the basis of payment for bundle bolt-on fees to the Advocates bundle. The second involves redistributing the current total legal aid spend on court bundle bolt-on fees into fixed hearing bolt-on fees.

- 7 These objectives are important. If the Government were not to make any change to FAS then the effect of the PD 27A changes would be a reduction in income to family legal aid advocates. This reduction in income would not, however, necessarily be offset by any reduction in workload or case complexity which is currently expected to continue to remain at a similar level as now. We therefore believe our objectives represent a legitimate means of ensuring appropriate remuneration which we intend to pursue having due regard to the statutory principles of equality and non-discrimination.
- 8 Our initial view is that we do not anticipate that the impact of either of the reform options proposed will be adverse. We do, however, recognise that in trying to maintain cost neutrality overall, it is likely that under the second proposed option, some advocates will receive smaller payments than now for particular cases (although others may receive higher payments and overall, advocates' remuneration should remain at current levels. Although we do not consider this to be a disadvantage, we consider the potential for disproportionate impacts below.

Impact on providers

- 9 We cannot assess or determine the impact on the protected characteristics of those who currently receive remuneration under FAS as such information is not collected. However, we have used survey data on the protected characteristics of barristers practising in family law to examine whether the proposals could have a disproportionate impact on a group sharing a protected characteristic.
- 10 Option 1 would have no impact on the current levels of remuneration. Subject to any controls introduced to manage the content and size of the Advocates' bundle, this would be likely to have no impact on any group sharing a protected characteristic. Under Option 2, all advocates remunerated under the FAS will be impacted as cases currently receiving high bundle bolt-on payments would receive slightly lower remuneration and cases which currently receive a low or zero bundle payment would see an increase in remuneration. The overall impact on a particular advocate therefore depends on the mix of cases which they carry out. The intention, however, is not to lower remuneration but to redistribute the money currently spent on bundle bolt-on payments elsewhere within the FAS scheme.
- 11 Survey data shows that approximately 21%¹ of self-employed barristers work in family law, with 17%² stating this as their main area of practice. Survey data shows that self-employed barristers whose main area of practice is family law are disproportionately likely to be female compared with the population as a whole – 64%³ of self-employed barristers whose main area of practice is family law are female. As a result of the demographic profile of the Bar, this proposal is

¹ Barrister's working Lives – A Biennial Survey of the Bar 2011

² Barrister's working Lives – A Biennial Survey of the Bar 2011

³ Barrister's working Lives – A Biennial Survey of the Bar 2011

therefore likely to impact disproportionately on women. If any disproportionate impact were to result, we consider it justified for the reasons set out below

- 12 Survey data is also held on the ethnicity of self-employed barristers whose main area of practice is Family Law. This shows that 10%⁴ of self-employed barristers practising in Family Law are of BAME ethnicity. This is similar to all self-employed barristers but slightly below the population as a whole.
- 13 No information is collected on the characteristics of solicitor advocates. However, assuming that the characteristics of solicitor advocates are similar to those of barristers then the proposal would disproportionately affect women compared with the population as a whole. Were any disproportionate impact to result, we consider it justified for the reasons set out below.
- 14 In relation to the protected characteristics of gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief and sexual orientation, no information is collected on any of these protected characteristics for barristers providing family legal aid services. It has therefore not been possible to consider the impacts of the proposals in respect of those protected characteristics using statistical analysis. Our initial view is that the nature of the changes 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 appropriate remuneration can be made for work that is necessary in a family case and therefore justifiable.
- 15 We acknowledge that the extent of any remuneration paid under FAS to those providing family legal aid services may be dependant upon the extent to which they rely on income from family law work and the number of cases they are involved in which currently attract a bundle bolt-on fee payment. Although in financial terms we anticipate that our first option would have no impact on individual advocates, we can gauge that under our second option, those advocates who currently claim the highest levels of bundle bolt-on fees in individual cases would receive less in those individual cases in future. However, the intention is that overall we will continue to pay the same amount of remuneration as now. As such, the financial impact of our second option on individual advocates will depend on the specific mix of cases that they undertake. As the nature of court bundle payments is dependent on the type of case the advocate is involved in, we are unable to assess the extent of the impact of the proposed changes on the income of such providers by protected characteristic. In addition, it is difficult to assess the potential impacts of this reform in isolation as other reforms under the FJR programme, for example, the changes to the rules relating to the use of expert witnesses introduced in January 2013 are also likely to have an impact on bundle size and therefore advocate income. Any assessment that could be made, therefore, could be potentially misleading.

Impact on clients

- 16 We do not anticipate any indirect impact on clients as the proposed reforms concern a change in how providers of family legal aid services will be remunerated and neither of the options being considered is expected to impact on the overall level of remuneration for this work. These changes are not therefore expected to have an impact on the sustainability or quality of the family legal aid market.

⁴ Barrister's working Lives – A Biennial Survey of the Bar 2011

Justification

- 17 We believe that the options for making changes to FAS set out in this consultation, which seek to make the minimum changes which are necessary and appropriate in consequence of changes to PD 27A, are a proportionate means of achieving the legitimate aim of ensuring appropriate remuneration to advocates providing family legal aid services.
- 18 We would welcome any relevant information to further inform our analysis and better understand the potential impacts of the proposals. We will be updating our assessments once we have considered all relevant responses to this consultation.

Consultation questions

Q12. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.

Q13. Do you agree that we have correctly identified the range of impacts under each of the proposed reforms set out in this consultation paper? Please give reasons.

Q14. Do you agree that we have correctly identified the extent of the impacts under each of these proposals? Please give reasons.

Q15. Are there forms of mitigation in relation to impacts that we have not considered?