



Ministry
of Justice

Housing Possession Court Duty Scheme

Towards a more sustainable service

This consultation begins on 4 October 2019

A decorative graphic in the bottom right corner consisting of a cluster of overlapping triangles in various shades of blue, forming a larger triangular shape.

This consultation ends on 3 January 2020



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of Justice

Housing Possession Court Duty Scheme

Towards a more sustainable service

**A consultation produced by the Ministry of Justice. It is also available at
<https://consult.justice.gov.uk/>**

About this consultation

To:	This consultation is aimed at anyone with an interest in the provision of advice and assistance at housing possession proceedings in civil courts in England and Wales. This will include, but is not limited to, members of the legal profession and their professional representative bodies, members of the judiciary, and legal services regulators.
Duration:	From 4 October 2019 to 3 January 2020
Enquiries (including requests for the paper in an alternative format) and responses to:	James Wrigley Ministry of Justice Civil Legal Aid 10 th Floor 102 Petty France London SW1H 9AJ Tel: 020 3334 2817 Email: james.wrigley@justice.gov.uk
Additional ways to feed in your views:	This report is also available at https://consult.justice.gov.uk/
Response paper:	A response to this consultation exercise will be published in due course.

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Foreword

Housing repossession and homelessness are two of the most serious civic problems that any individual could experience. For many faced with the loss of their home, the fear of having to engage with the legal process means that it is common to attend court without seeking legal advice or representation beforehand.

A core element of support in this area is, and will remain to be, access to publicly funded legal advice and representation. The Housing Possession Court Duty Scheme (the Scheme) offers vital emergency face-to-face advice and advocacy to anyone facing possession proceedings. Anyone in danger of eviction or having their property repossessed can get free legal advice and representation on the day of their hearing, regardless of their financial circumstances.

Legal service providers throughout England and Wales carry out invaluable work every day to deliver this service. Given the vital role the Scheme plays in ensuring access to justice and the timely resolution of legal problems, the sustainability of the service is of paramount importance. This includes ensuring that the Scheme keeps pace with changes in the wider justice system.

Over a number of months, we have considered the way forward to ensure these Schemes are as sustainable as possible, engaging closely with stakeholders to better understand their concerns as well as ensuring they deliver effective access to justice.

This consultation sets out an ambitious new model for the Scheme which will be more financially viable for those providers who deliver it, ensuring the sustainability of this vital service for those who rely on it. Justice is at the forefront of a safe, fair and prosperous society, and taken together I believe that these proposals, as a package, represent a responsible and practical response to the issues emerging from the evidence gathering we have undertaken.

I encourage a wide range of people and organisations to respond to this consultation because it is important that we hear and consider all points of view.

We will consider all responses carefully and will publish the Government's response to the consultation later in due course.

Wendy Morton MP, Parliamentary Under-Secretary of State for Justice

Executive summary

1. The Scheme offers “on the day” emergency face-to-face advice and advocacy to anyone facing possession proceedings in court. This means that anyone in danger of being evicted from their home or having their property repossessed can get free legal advice and representation on the day of their court hearing, regardless of their financial circumstances. The Scheme plays a vital role in ensuring access to justice for these individuals.
2. Civil legal services in respect of housing possession are within the scope of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and it is on this basis that funding is provided for many of these Schemes by the Legal Aid Agency (LAA), an executive agency of the Ministry of Justice.
3. Delivery of the service is by legal aid providers – both solicitor firms and third sector organisations – who hold contracts with the LAA. Each contract is aligned to a particular Scheme and awarded following a competitive procurement process to ensure both quality of advice and value for the taxpayer. Not all Schemes are funded through the LAA, as there are a small number of similar court based possession Schemes that are funded by local authorities or charities.
4. Given the vital role these Schemes play in ensuring access to justice and the timely resolution of legal problems, the sustainability of the service is of paramount importance. The Government is concerned that these services are not currently sustainable, evidenced by the ongoing incidence of providers pulling out of contracts. Whilst continuity of service has been maintained to date, there is a risk that gaps in service provision may appear which has the potential to have a negative impact on the clients who rely upon this vital service. In addition, the necessity of regularly re-tendering the service following the withdrawal of a provider adds to the administrative burden on the LAA and does not provide value for money for the taxpayer.
5. In addition to this, the wider landscape in which the Scheme is operating is changing. The HMCTS Reform programme is transforming the processes through which people resolve their legal problems and interact with the justice system, whilst in recent years HMCTS have also undertaken substantial reform of the court estate. Beyond justice policy, recent reforms to the welfare system, including the ongoing roll-out of Universal Credit, have also had an impact on how services such as the Scheme need to be delivered. To ensure the Scheme provides as effective a service as possible, it is important that the policy behind the Scheme takes into account changes such as these.

6. Over a number of months, we have been considering the way forward to ensure these Schemes are as sustainable as possible going forward. We recently undertook a stakeholder survey to inform this consideration, allowing interested parties to give their views on the current Scheme. We aimed for this survey to provide a platform for providers to offer their experience of working with clients and concerns first-hand, and assist us in shaping our future approach to contracting for these services. We asked respondents for their views on what works well, what could work better, and what they felt should change; as well as how the delivery of Schemes had been affected by wider changes, and what we could do to ensure the delivery of the Scheme remained attractive and provided the best possible service to clients.
7. We received 128 responses to this survey. Whilst the majority of the responses to this survey came from providers who held a current Housing Possession Court Duty Scheme contract, we also received responses from recently withdrawn providers, organisations interested in bidding for a Scheme in the future, individual advisers involved in the delivery of the service, and members of the judiciary.
8. These responses have helped us to determine a number of common themes around what needs to be addressed. These include concerns around the current level of remuneration and the cost of travel making the Scheme less financially viable for providers, and concerns that large geographical areas and logistical difficulties in rural areas make the Scheme difficult to deliver. Respondents also raised a number of issues beyond legal aid, such as the impact of the roll-out of Universal Credit and HMCTS' reforms to the court estate.
9. We have used these survey responses to identify a number of proposals which we believe will ensure that the Scheme is sustainable at the same time as offering the best possible service to clients into the future.
10. The proposals are set out in detail in this consultation, but in summary we propose the following changes to the Scheme:
 - Contracting for individual courts rather than larger geographical areas;
 - Allowing providers to claim for the Scheme fee in addition to the follow up Legal Help fee;
 - The introduction of a set attendance fee for all Schemes in place of the existing nil session payment; and,
 - The introduction of reasonable costs for travel as part of the competition element of the bid.

11. The rationale for proposing these key changes is set out in the paper that follows, but we believe that combined they will ensure that the Scheme is financially viable and logistically deliverable into the future, maintaining this vital service for those clients who rely upon it.

Introduction

12. This paper sets out for consultation a new model for the Scheme which the government believes will be financially viable and logistically deliverable for providers. We believe the proposals set out in this consultation paper will ensure the sustainability of this vital service for the clients who rely upon it.
13. The consultation is aimed at anyone with an interest in the provision of civil legal services in respect of housing matters within England and Wales, including, but not limited to, members of the legal profession and their professional representative bodies, members of the judiciary, and legal services regulators.
14. We have considered the implications for Welsh language in the development of these proposals and published a Welsh language version of the consultation on the Government's website
15. This paper contains a series of questions which seek views on our proposals for reform. Alongside this paper, we have published an Impact Assessment, which sets out the estimated impact the proposals would have if they were implemented. We also invite respondents to provide evidence that could help us consider the potential impact on individuals with protected characteristics, in line with our responsibilities under the Equality Act 2010.
16. Copies of the consultation paper are being sent to:
 - Housing Law Practitioners Association
 - The Law Society of England and Wales
 - Law Centres Network
 - Legal Aid Practitioners' Group
 - Advice Services Alliance
 - Shelter
 - Citizens Advice
17. This list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the proposals set out in this paper.
18. Details of how to respond are set out on page 31. The deadline for responses is 3 January 2020. The government will consider the responses to this consultation and intends to publish a response in due course.

Background

19. In developing the proposals set out in this consultation, we undertook a survey to better understand the views of representative bodies and the wider market on future contract development. In addition to this survey, we also held a roundtable meeting with stakeholders to assist in our understanding of the issues.
20. We received 128 responses to the survey. The majority of responses to this survey came from providers who held a current Housing Possession Court Duty Scheme contract but we also received responses from recently withdrawn providers, organisations interested in bidding for a contract in the future, individual advisers involved in the delivery of the service, and members of the judiciary.
21. We have listened carefully to the feedback received, both in the survey and stakeholder meeting, when developing the proposals outlined in this consultation paper.

Summary of feedback

22. The feedback from the survey consisted of a broad range of topics, some of which concerned legal aid policy and the direct operation of the Scheme; but also, wider changes in the justice system such as HMCTS' reform of the court estate; as well as the impact of other government department's policy changes, such as changes to the welfare benefit system.
23. The key themes raised during the survey are outlined below.

Number of courts included within a Scheme

24. A majority of respondents to the survey responded that the requirement for a provider to sometimes deliver the service at multiple courts within a single Scheme made undertaking the service less attractive.
25. The reasons given for this were that long travel distances made delivery of the service logistically difficult, and less financially viable given the costs associated with travelling, and that this often meant that clients were not always able to easily attend follow ups, meaning a less effective service. It was also noted that it could be difficult for some organisations, particularly smaller ones, to manage larger Schemes.

Geographic characteristics

26. Linked to the above, respondents also raised concerns about Schemes based in large geographical areas and the difficulty of delivering the service in these areas, particularly on account of longer travel distances and the effects of this as outlined above. It was felt that this issue was particularly acute in rural areas, which may not have the same public transport infrastructure as more urban areas, and in areas affected by HMCTS' reform to the court estate.
27. Respondents also raised the issue of lower volumes in rural areas and the effect this had on the financial viability of delivering the service in these areas. It was suggested that increasing remuneration could help overcome these difficulties.

Remuneration

28. Respondents cited the level of remuneration offered for delivering the Scheme as a key factor in the attractiveness of delivering the Scheme. A high proportion said that remuneration was a key consideration in whether they would bid to deliver the Scheme in the future, and that better remuneration would make them more likely to bid.

Legal aid scope

29. Respondents also suggested that the scope of the wider legal aid Scheme had an impact on the nature of the follow up advice they were able to provide, for example welfare benefits matters not being in scope when these issues are often said to interact with housing possession matters.
30. Some respondents also called for the reintroduction of early legal advice, to resolve these issues before they reached possession proceedings. It should be noted that in the Legal Support Action Plan, published in February 2019, the Ministry of Justice committed to piloting face-to-face early legal advice in a specific area of social welfare law to test the impact of early legal advice in promoting early resolution.

Court Listing

31. A further common theme identified from the survey was court listings, and the perception of extensive listings leading to confusion and poor management of the system. Listing is a judicial function and is therefore outside the scope of the Scheme's policy development, but we are working with HMCTS to understand this issue better.

Changes to the welfare benefits system

32. A number of respondents also raised changes to the welfare benefits system over a number of years, and said that this had had an impact on the Scheme.

The proposals

33. Taking into account the feedback outlined above, we have developed a series of proposals to address concerns with the current Scheme. The Government's proposals can be grouped into two main themes – the approach to contracting for the Scheme and remuneration. We believe these proposals will together ensure the sustainability of this vital service for the clients who rely upon it.

Approach to contracting

34. Our survey identified concerns over larger geographical areas, and a strong preference for smaller contracts with local arrangements. It was suggested that smaller contracts would enable, where required, a simpler more practical approach to delivering follow up advice and that it would make Schemes easier to manage for smaller organisations.

35. By contracting for individual courts, with a single provider for each of these courts, this would allow for providers with greater proximity to the court to travel with greater ease and at lower cost, and smaller Schemes would likely be easier for providers to manage. Based on the evidence provided in response to our survey, we expect that less travel as a result of contracting for individual courts will make delivery of the Scheme more attractive for providers and will lead to more providers bidding to deliver this service in the future.

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

37. Although we believe that contracting for individual courts is a practical and pragmatic approach to ensuring the sustainability of the Scheme, we appreciate that some providers will still be interested in delivering the Scheme at multiple courts. We intend for the Scheme to be tendered in a way in which prospective providers will be able to bid to deliver the service at multiple courts, if they wish.

38. We appreciate that this approach may still present certain risks, given that by nature of the particular characteristics of certain courts – those in more rural areas perhaps – these may still be less attractive to providers. We are also aware that there could be specific concerns in courts where the average number of clients seen per session is

particularly low, which is why we have looked to address these issues through changes to the remuneration mechanism. These proposals are outlined later in this paper.

Question One. Do you agree with our proposed approach to tender for individual courts? If no, please suggest an alternative and provide supporting evidence.

Agents delivering the Scheme

39. The LAA generally only contract with one individual legal entity per Scheme, except in very particular circumstances. However, the LAA currently permits providers to deliver some of the service through agents.
40. Where agents are used, all staff delivering services must meet the essential experience requirement of being appropriate advisers who, in the course of their work, conduct a minimum of twelve hours of casework per week. We intend to continue on this basis, and the same policy principles of remuneration would apply to agents as they would for providers making the referral. It remains the case that if provision of the service is delegated to an agent, providers will continue to be responsible for all the services delivered by an agent, and any referral payment is agreed between the two.

Question Two. Do you agree that we should continue to allow the use of agents to deliver the Scheme in the same way as we do now? If no, please suggest an alternative and provide supporting evidence.

Remuneration

41. A high proportion of respondents to the survey said that remuneration was a key consideration in whether they would bid to deliver the Scheme in the future, and that better remuneration would make them more likely to bid. Linked to this, many respondents said that the wider issues such as the cost of travel to court to deliver the Scheme and low volumes of work in certain courts impacted on the financial viability of delivering the Scheme.
42. We have considered these concerns and developed several proposals which we believe will address them and make the Scheme more sustainable, ensuring access to justice for those that rely on it.

Introducing an attendance fee

43. Under the current Scheme, where no clients are seen during a Housing Possession Court Duty Scheme session, then the provider receives a nil-session fee. This is equivalent to what the provider would have been paid had they seen just one client during the session – the fee is currently set at £75.60 in London and £71.55 outside of London. It is paid on the basis that despite not having seen any clients, providers have attended court and made themselves available and therefore should be remunerated in some way for their time.
44. Respondents to our survey said that it was difficult to successfully deliver the Scheme at courts with low volumes, because the payment for low volumes of work did not always adequately cover the costs of delivering the service. Given that the courts with the lowest volume of cases tend to be in rural areas, particularly rural Wales, the cost of delivering the service is also likely to be higher in these areas due to travel costs. This issue has the potential to lead to coverage gaps, leading to a worse service for clients.
45. We have considered the best way to respond to this issue, and we propose introducing an attendance fee in place of the existing nil session fee. We propose that this attendance fee would be set at £151.20 in London and £143.10 outside of London, the equivalent of what a provider would receive having seen two clients under the current Scheme. Under our proposed new approach to remunerating for the Scheme, providers would receive this fee if they saw one or two clients during a single session, or if they attended court for a nil session.
46. For each client a provider saw beyond the two clients covered under the attendance fee, they would receive a single client fee on top of the attendance fee. So, if, for example, a provider outside of London saw three clients during a session, they would receive a payment of £214.65 and a provider in London would receive £226.80. We

believe that this is a fair and equitable approach to ensure that delivery of the Scheme is financially viable regardless of the court in which it is being delivered.

Question Three. Do you agree with our proposal to introduce an attendance fee in place of the existing nil session fee? If no, please suggest an alternative and provide supporting evidence.

Question Four. Do you agree that this attendance fee should be equivalent to the fee if the provider had seen two clients during the session? If no, please suggest an alternative fee and provide supporting evidence.

Fees for follow on work

47. Under the current Scheme, if a provider sees a client under the Scheme and then subsequently opens a Legal Help matter, they are only allowed to claim the Legal Help fee, despite having also done some work under the Scheme.
48. Respondents to our survey said that after the court hearing a significant amount of follow up work is often necessary, but that under the current contractual arrangements a decision has to be made as to whether to claim the Scheme fee or a Legal Help matter start.
49. Generally, the number of cases which progress to Legal Help is extremely low across all Schemes. It is not clear from the data available what the reasons for this are. Respondents to the survey said that the ability to claim for the Scheme fee in addition to opening a Legal Help matter start would make delivering the Scheme more attractive and would make them more likely to bid. It could also lead to a better service for clients by increasing the availability of follow up advice. Therefore, we propose changing the current contract so that providers can claim the Scheme fee in addition to any follow up Legal Help fee. We believe this will make delivering the service more attractive, therefore making the Scheme more sustainable and ensuring continuity of service for clients.

Question Five. Do you agree with the proposal to allow providers to claim the Scheme fee in addition to the fee for any follow up Legal Help matter? If no, please suggest an alternative and provide supporting evidence.

Travel

50. Under the current model, providers are not compensated by the LAA for travel time to deliver this work. However, the time taken to travel to deliver this work, and the cost of this travel, was a theme raised frequently in our survey. Respondents were concerned that certain areas of the country present a greater challenge in respect of time, cost and distance in respect of travel, whilst also wasting valuable time that could be better utilised advising clients.
51. We recognise that due to the nature of the Scheme, and unlike most other categories of law, there is a necessity to travel, which was made very clear in the responses to the survey. As such, we believe that adapting the Scheme so that providers are paid reasonable costs for their travel might assist in creating a more sustainable and attractive service.
52. We have considered setting a standard payment for travel time, however we consider that this would be difficult because it would not reflect the actual costs of delivering the service, or the differing costs of travel in different parts of the country.
53. As such, we propose tendering for travel time relating to the delivery of the Scheme on a price competitive basis by asking prospective providers to factor expected travel costs into their tender bid. This would allow for travel payments to be set by the market. It would also for the prospective provider to determine whether or not it would be appropriate to factor travel time into their bid, and at a cost they determine to be reasonable when taking into consideration the wider aspects of their bid.
54. This work has traditionally been awarded through a competitive procurement process and whilst we acknowledge that price competition proved unpopular during the tender, we intend that this form of competition would only apply to the travel costs element. We anticipate that the assessment of quality criteria would continue to form the most significant proportion of the overall score bidders receive, however being able to factor reasonable travel costs into bids is a new proposal which we believe will allow providers to more accurately reflect the cost of delivering the Scheme and be beneficial for the overall sustainability of the service. We also believe that price competition is the fairest and most administratively simple way to do this.

Question Six. Do you agree with the proposal to introduce reasonable costs for travel as part of the competition bid? If no, please suggest an alternative and provide supporting evidence.

Question Seven. Do you agree with the proposal to tender for contracts on a quality competitive basis, with travel costs factored in on a price competitive basis? If no, please suggest an alternative and provide supporting evidence.

Impact Assessment

55. The Impact Assessment accompanying this consultation document provides monetised details of the anticipated impacts of implementing these proposals. We would welcome information and views on this to help us improve the quality of our assessment.
56. We will publish a government response to this consultation in due course which will set out those reforms we intend to implement. At that stage we will also publish a revised Impact Assessment setting out revised estimates in light of any changes to the policy following the consultation.

Question Eight. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Equalities Impacts

57. This Equalities Statement considers the likely equality impacts on providers and clients from the proposals set out in this consultation. The proposals seek to make the Scheme more attractive and financially sustainable for those providers who wish to undertake it and therefore ensure access to justice for clients that rely on it.

58. For each proposal we have, as far as possible, on the basis of the latest available evidence, indicated what the likely equalities impacts are in this Equality Statement. We have invited stakeholder feedback on each of these proposals and their impacts in the consultation and have also asked two specific equalities questions.

Equality duties

59. Section 149 of the Equality Act 2010 requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and,
- foster good relations between people who share a protected characteristic and those who do not.

60. Paying 'due regard' needs to be considered against the nine 'protected characteristics' under the 2010 Act. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

61. This is an ongoing duty, and as part of this obligation we have made an initial assessment of the impact of our proposals on people with protected characteristics.

Methodology to determine discrimination potential

62. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposals has been to identify the individuals whom the proposals would impact (the 'pool'), and then draw comparisons between the potential impacts of the proposals on those who share particular protected characteristics, with those who do not share those characteristics.

63. Guidance from the EHRC states that the pool to be considered at risk of potential indirect discrimination should be defined as those people who may be affected by the policy (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

64. The primary pool of individuals affected by the proposals will be providers who undertake Housing Possession Court Duty Scheme work and their agents, including Not for Profit providers of the Housing Possession Court Duty Scheme. However, the proposals will also affect individuals seeking advice and representation under the Scheme.

Available data

65. Housing Possession Court Duty Scheme services in England and Wales are delivered through various providers. We have limited availability of information on these legal aid providers. In January and February 2015, the LAA carried out an online survey to learn more about the providers doing legal aid work¹. The survey was sent to all 2,262 legal aid providers (across the entire legal aid market) to complete between 19 January and 27 February 2015. 644 providers completed the survey, a response rate of 28%. The survey asks about the protected characteristics of those who have ownership or managerial control of the firm (2,057 people), not the total headcount of the firms who responded (13,578).

66. This limited response rate, the age of the data, and the fact that the data spans the entire legal aid market, rather than just those delivering the Scheme, significantly limits our ability to draw meaningful conclusions. The information gathered through this survey indicated that in the positions of managerial control, there was an over representation of males, when compared to the general population, as well as an over representation within the age group 40-59.

67. Data on the incidence of legal problems amongst people with protected characteristics is limited. However, the government holds certain data on the demographics of people granted legal aid.

68. The clients of the Housing Possession Court Duty Scheme in 2018-19 were²:

- 61% female – above the proportion in the general population (51%³);

¹ Ministry of Justice, Legal Aid Statistics in England and Wales: January to March 2015, available at: www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015

² Legal Aid Agency Housing Possession Court Duty Scheme client data 2018-19

³ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-and-female-populations/latest>

- 23% from a BAME background – above the proportion in the general population (14%⁴);
- 27% with a disability – above the proportion in the general population (21%⁵);

69. The clients awarded Legal Help in 2018-19 in the housing category were⁶:

- 61% female – above the proportion in the general population (51%⁷);
- 24% from a BAME background – above the proportion in the general population (14%⁸);
- 45% with a disability – above the proportion in the general population (21%⁹);
- 26% aged between 25-34 – above the proportion in the general population (14%¹⁰).

70. The clients awarded civil representation in 2018-19 the housing category were¹¹:

- 58% female – above the proportion in the general population (51%¹²);
- 35% from a BAME background – above the proportion in the general population (14%¹³);
- 45% with a disability – above the proportion in the general population (21%¹⁴);

⁴ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

⁵ Department for Work and Pensions Family Resources Survey 2017-18

⁶ Legal Aid Statistics Quarterly (January to March 2019), tables 11.1-11.5

⁷ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-and-female-populations/latest>

⁸ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

⁹ Department for Work and Pensions Family Resources Survey 2017-18

¹⁰ Calculated from ONS 2011 census data for population for each age to give figures for 25-34 age range for comparison.

¹¹ Legal Aid Statistics Quarterly (January to March 2019), tables 11.1-11.5

¹² <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-and-female-populations/latest>

¹³ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

¹⁴ Department for Work and Pensions Family Resources Survey 2017-18

- 24% aged between 25-34 – above the proportion in the general population (14%¹⁵).

71. Below we have highlighted the equalities considerations, impacts and mitigations of the proposals in this consultation. In accordance with our legal duties, we will continue to consider the equalities impacts as we continue to develop these proposals, and we will publish an updated equalities assessment alongside our consultation response.

72. We also welcome the views of respondents to the consultation on the likely equalities impacts of these proposals. The Government acknowledges that there are gaps in the data collected about the protected characteristics of those who provide publicly funded legal services and of those who are granted legal aid. We would welcome any empirical data that respondents can provide covering this.

Contracting for individual courts rather than larger geographical areas

Eliminating unlawful discrimination

Direct discrimination

73. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to allow for providers to travel to court with greater ease and at lower cost, and for the Schemes to be easier for providers to manage, and the proposal will not treat anyone differently because of a protected characteristic. This will also ensure that there continues to be sufficient coverage across the country for Housing Possession Court Duty Scheme work, ensuring that individuals are able to access to justice.

Indirect discrimination

74. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

75. The data outlined above indicates that males may be over represented within legal aid providers, when compared to the general population, meaning that males may benefit more from this proposal than females.

76. The available data also indicates that females, individuals from a BAME background, and individuals with a disability are over represented among those who receive legal aid for housing matters when compared to the general population. This means that any benefits for clients arising for this proposal – for example benefiting from the local

¹⁵ Calculated from ONS 2011 census data for population for each age to give figures for 25-34 age range for comparison.

knowledge of providers as outlined in the consultation paper – may be disproportionately witnessed by individuals who fall into these groups.

77. If this proposal achieves the policy aim of making the Scheme more financially viable to deliver, then many clients of Not for Profit providers of the Scheme may benefit from the increased availability of ‘wrap around’ advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.

78. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to result in any disadvantage for clients with protected characteristics. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposal is justified as a proportionate means to achieve the policy aim of a more sustainable service.

Advancing Equality of Opportunity

79. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

80. As indicated above, the proposals are aimed at improving the sustainability of the Scheme. It is therefore likely that providers and clients will benefit from a sustained level of delivery of the service. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the Scheme, and that females, individuals from a BAME background and individuals with a disability are likely to be over represented amongst clients of the Scheme when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.

81. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposals are justified as part of a proportionate means to achieve the policy aim of a more sustainable service.

Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments

82. We recognise that clients with disabilities are likely to use the Scheme and will continue to ensure that reasonable adjustments are made by providers and HMCTS.

Fostering Good Relations

83. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and Victimisation

84. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Allowing providers to claim for the Scheme fee in addition to the follow up Legal Help fee

Eliminating unlawful discrimination

Direct discrimination

85. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to make delivering the Scheme more attractive, therefore making the Scheme more sustainable and ensuring continuity of service for clients. The proposal will not treat anyone differently based on a protected characteristic.

Indirect discrimination

86. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

87. The data outlined above indicates that males may be over represented within legal aid providers, when compared to the general population, meaning that males may benefit more from this proposal than females.

88. The available data also indicates that females, individuals from a BAME background, and individuals with a disability are over represented among those who receive legal aid for housing matters when compared to the general population. Therefore, if this proposal leads to a better service for clients by increasing the availability of follow up advice, and ensuring the continuity of advice and representation for individuals involved in possession proceedings, individuals who fall into these groups will benefit more than the general population.

89. If this proposal achieves the policy aim of making the Scheme more financially viable to deliver, then many clients of Not for Profit providers of the Scheme may benefit from the increased availability of 'wrap around' advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.

90. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to result in any disadvantage for clients with protected characteristics. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposal is justified as part of the proportionate means to achieve the policy aim of a more sustainable service.

Advancing Equality of Opportunity

91. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

92. As indicated above, the proposals are aimed at improving the sustainability of the Scheme. It is therefore likely that providers and clients will benefit from a sustained level of delivery of the Scheme. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the Scheme, and that females, individuals from a BAME background and individuals with a disability are likely to be over represented amongst clients of the Scheme when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.

93. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposals are justified as part of a proportionate means to achieve the policy aim of a more sustainable service.

Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments

94. We recognise that clients with disabilities are likely to use the Scheme and will continue to ensure that reasonable adjustments are made by providers.

Fostering Good Relations

95. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and Victimisation

96. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

The introduction of a set attendance fee for all Schemes in place of the existing nil session payment

Eliminating unlawful discrimination

Direct discrimination

97. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to make delivering the Scheme more financially viable for providers, and therefore to make the service as a whole more sustainable for clients. The proposal will not treat anyone differently based on a protected characteristic.

Indirect discrimination

98. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

99. The data outlined above indicates that males may be over represented within legal aid providers, when compared to the general population, meaning that males working for legal aid providers may benefit more from this higher fee than females.

100. The available data also indicates that females, individuals from a BAME background, and individuals with a disability are over represented among those who receive legal aid for housing matters when compared to the general population. Therefore, if this proposal leads to a better service for clients by avoiding potential coverage gaps then individuals who fall into these groups – particularly those who live in more rural areas – could benefit more than the general population.

101. If this proposal achieves the policy aim of making the Scheme more financially viable to deliver, then many clients of Not for Profit providers of the Scheme may benefit from the increased availability of ‘wrap around’ advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.

102. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to result in any disadvantage for clients with protected

characteristics. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposal is justified as part of the proportionate means to achieve the policy aim of a more sustainable service.

Advancing Equality of Opportunity

103. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
104. As indicated above, the proposals are aimed at improving the sustainability of the Scheme. It is therefore likely that providers and clients will benefit from a sustained level of delivery of the Scheme. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the Scheme, and that females, individuals from a BAME background and individuals with a disability are likely to be over represented amongst clients of the Scheme when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.
105. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposals are justified as part of a proportionate means to achieve the policy aim of a more sustainable service.

Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments

106. We recognise that clients with disabilities are likely to use the Scheme and will continue to ensure that reasonable adjustments are made by providers.

Fostering Good Relations

107. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and Victimisation

108. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

The introduction of reasonable costs for travel as part of the competition bid

Eliminating unlawful discrimination

Direct discrimination

109. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to make delivering the Scheme more financially viable providers, and therefore to make the Scheme as a whole more sustainable for clients. The proposal will not treat anyone unlawfully based on a protected characteristic.

Indirect discrimination

110. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

111. The data outlined above indicates that males may be over represented within legal aid providers, when compared to the general population, meaning that males may benefit more from receiving payment for travel time than females.

112. The available data also indicates that females, individuals from a BAME background, and individuals with a disability are over represented among those who receive legal aid for housing matters when compared to the general population. Therefore, if this proposal assists in creating a more sustainable service which leads to greater availability and greater quality of advice for clients, then individuals who fall into these groups may benefit more than the general population.

113. If this proposal achieves the policy aim of making the Scheme more financially viable to deliver, then many clients of Not for Profit providers of the Scheme may benefit from the increased availability of 'wrap around' advice and services offered by these providers. As above, individuals with protected characteristics are likely to over represented amongst these clients.

114. Even though certain protected groups are over represented in the groups affected by this proposal, our policy proposals would not be indirectly discriminatory because they are not likely to result in any disadvantage for clients with protected characteristics. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposal is justified as part of the proportionate means to achieve the policy aim of a more sustainable service.

Advancing Equality of Opportunity

115. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
116. As indicated above, the proposals are aimed at improving the sustainability of the Scheme. It is therefore likely that providers and clients will benefit from a sustained level of delivery of the Scheme. As outlined above, data indicates that males are likely to be over represented amongst legal aid providers delivering the Scheme, and that females, individuals from a BAME background and individuals with a disability are likely to be over represented amongst clients of the Scheme when compared to the general population. We consider that overall the proposals are likely to continue to meet the needs of clients with protected characteristics.
117. We think that any benefits that are witnessed disproportionately by a specific group as a result of this proposals are justified as part of a proportionate means to achieve the policy aim of a more sustainable service.

Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments

118. We recognise that clients with disabilities are likely to use the scheme and will continue to ensure that reasonable adjustments are made by providers.

Fostering Good Relations

119. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and Victimisation

120. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Monitoring and Evaluation

121. Going forward, we will continue to monitor the equalities impacts of these proposals. We will update this equalities statement as necessary and publish the revised version alongside our consultation response.
122. Any final decision will include the evidence of impact from the Equality Statement. We will continue to pay ‘due regard’ to the Public Sector Equality Duty as the proposals are implemented and will consider the most effective ways of monitoring equalities impacts.
123. We would also welcome the views of respondents to the consultation on the likely equalities impacts of these proposals.

Question Nine. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views.

Question Ten. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please give data and reasons.

Family Test

124. The Family Test is an internal government challenge to departments to consider the impacts of their policies on promoting strong and stable families. We would welcome information and views of respondents on the impact these proposals may have on families.

Question Eleven. What do you consider to be the impacts on families of these proposals? Are there any mitigations the government should consider? Please give data and reasons.

Questionnaire

Question One. Do you agree with our proposed approach to tender for individual courts? If you do not agree, please give reasons for your view and set out any alternative options.

Question Two. Do you agree that we should continue to allow the use of agents to deliver the Scheme in the same way we do now?

Question Three. Do you agree with our proposal to introduce an attendance fee in place of the existing nil session fee?

Question Four. Do you agree that this attendance fee should be equivalent to if the provider had seen two clients during the session? If no, please suggest an alternative and provide supporting evidence.

Question Five. Do you agree with the proposal to allow providers to claim the Scheme fee in addition to the fee for any follow up Legal Help matter?

Question Six. Do you agree with the proposal to introduce reasonable costs for travel as part of the competition bid?

Question Seven. Do you agree with the proposal to tender for contracts on a quality competitive basis, with travel costs factored in on a price competitive basis?

Question Eight. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Question Nine. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views.

Question Ten. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please give data and reasons.

Question Eleven. What do you consider to be the impacts on families of these proposals? Are there any mitigations the government should consider? Please give data and reasons.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 3 January 2020 to:

James Wrigley

Ministry of Justice

Civil Legal Aid

10th Floor

102 Petty France

London SW1H 9AJ

Tel: 020 3334 2817

Email: james.wrigley@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.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from [email/telephone number of sponsoring policy division].

Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months' time. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

By responding to this consultation, you acknowledge that your response, along with your name/corporate identity will be made public when the Department publishes a response to the consultation in accordance with the access to information regimes (these are primarily the Freedom of information Act 2000(FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the Department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be ‘forgotten’ under data protection legislation, if Department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example ‘local business owner’, ‘member of public’). Alternatively, you may choose not to respond.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1__.pdf



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