



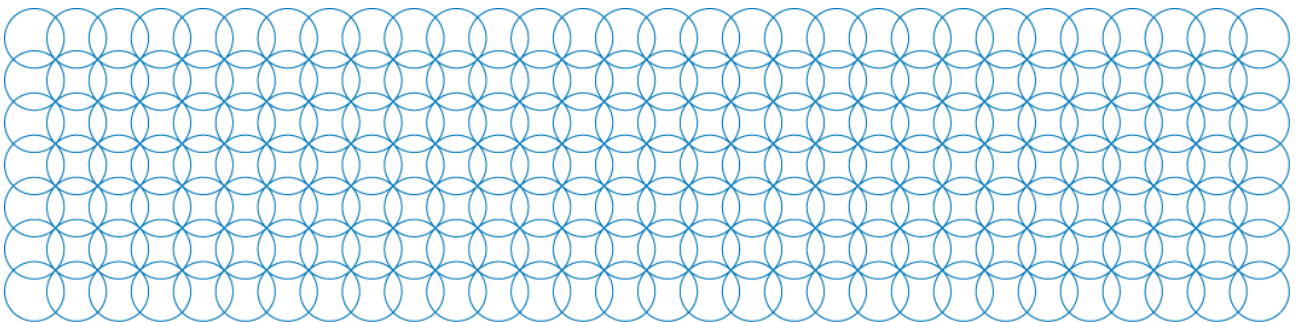
Ministry
of Justice

Housing Possession Court Duty Scheme

Commissioning Sustainable Services

This consultation begins on 20/01/17

This consultation ends on 17/03/17





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of Justice

Housing Possession Court Duty Scheme

Commissioning Sustainable Services

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 20/01/17 to 17/03/17
- Enquiries (including requests for the paper in an alternative format) to:** Tom Bainbridge
Ministry of Justice
3rd Floor, 102 Petty France
London SW1H 9AJ
Tel: 020 3334 6504
Email: HPCDSCons@legalaid.gsi.gov.uk
- How to respond:** Please send your response by 17/03/17 to:
Tom Bainbridge
Housing Possession Court Duty Scheme Consultation
3rd Floor, Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 6504
- Response paper:** A response to this consultation exercise is due to be published by 28/04/17 at: <https://consult.justice.gov.uk/>

Contents

Executive summary	2
Introduction	4
The proposals	5
Questionnaire	10
About you	11
Contact details/How to respond	12
Annex A - List of Proposed Schemes	14
Consultation principles	18

Executive summary

1. The Housing Possession Court Duty Schemes ('HPCDS' or 'Scheme') offer "on-the-day" 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.
2. Court based advice schemes for possession claims have been in existence since the early 1990s¹ seeing a rapid rise following Lord Woolf's "Access to Justice" report and the recommendation that the court and justice system should take a pro-active role in providing professional support. Studies have shown that the schemes add significant value both to those threatened with the loss of their home and to the court system more generally².
3. 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 that basis that funding is provided for many HPCDS's by the Legal Aid Agency ('LAA'). Delivery is by providers (under contracts with the LAA), with each contract aligned to a particular scheme and awarded following a competitive procurement process. There are other sources of funding for similar court based possession advice schemes.
4. In the Government's view, the current approach to contracting with providers for each individual court for HPCDS is unsustainable. Available data indicates that many of the schemes have only small volumes of work and these are unlikely to be commercially viable for providers.
5. The Government is concerned that this is leading to a lack of sustainability of these services. This has been evident in the ongoing incidence of providers pulling out of contracts, which has added to the administrative burden on the LAA and, ultimately, the cost to the taxpayer from re-tendering. Whilst continuity of service has been maintained to date, the LAA are of the view that the better course is to take the opportunity to consolidate provision into fewer, larger contracts, each serving a wider geographic area, which would be more sustainable for providers.
6. In addition, following Her Majesty's Court and Tribunal Service ('HMCTS') reform of the court estate a number of schemes will no longer exist as courts will close and/or work will move to different courts.

1 studies noted their rapid growth from 30 in 1991 to approximately 60 in 1994, meaning that one in four courts had such schemes

2 Bright, Susan and Whitehouse, Lisa, *Information, Advice & Representation in Housing Possession Cases* (April 5, 2014) Report is based on evidence from two surveys carried out in late 2012-early 2013 involving representatives of Housing Possession Court Duty Schemes (HPCDS) in England, and County Court Delivery Managers (DMs) in England and Wales.

7. A consolidated number of larger schemes should provide a better service for those needing advice and increased sustainability for those delivering the services.
8. In moving to fewer larger contracts we will be increasing the potential level of competition for this work and further criteria will be required in order to better distinguish between bidders as there can be only one successful bidder per Scheme. A new competitive tender model based on price and quality is therefore being proposed.

Introduction

9. This paper sets out for consultation a new procurement model for HPCDS designed to maintain universal coverage and provide greater sustainability for those delivering the Scheme.
10. 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.
11. A Welsh language consultation paper is available upon request.
12. An Impact Assessment indicates that those seeking advice and assistance for a Housing Possession Court Duty matter are not likely to be particularly affected. The proposals are unlikely to lead to significant additional costs or savings for businesses, charities or the voluntary sector.
13. Copies of the consultation paper are being sent to:
 - Housing Law Practitioners Association
 - The Law Society of England and Wales
 - Law Centres' Federation
 - Legal Aid Practitioners' Group
 - Advice Services Alliance
 - Shelter
14. The above list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

15. The current legal aid contracts for these Schemes were introduced in April 2013 and throughout the life of the current contracts additional ad hoc procurement activity has been required to maintain sufficient provision across all courts. A number of providers have withdrawn from their contracts and it would appear that the volume of work available within some schemes is not commercially viable. To date it has been necessary for 13 schemes to be retendered in some way and there is concern about the ongoing stability of these services.
16. The need to regularly place contracts to fill emerging gaps in access has resulted in an administrative burden for both providers and the LAA.
17. Previous tenders for these services have been competitive in nature but only based on the ability of providers to demonstrate how they best meet certain quality criteria. This can lead to high levels of costly litigation as has been shown in previous tenders.
18. New HPCDS schedules will come into force from April 2018 alongside the new civil contracts and present an opportunity to consolidate provision into fewer, larger contracts serving a wider geographic area which would be more sustainable for providers.
19. A new competitive tender model based on price and quality with a consolidated number of larger schemes should provide a better service for those needing advice and increased sustainability for those delivering the services. The inclusion of price in a tender process introduces an objective element for the award of contracts.
20. Previously, HPCDS services were remunerated by an administratively set fee. The introduction of an element of price will allow rates to be set closer to the cost of delivering the service, taking into account any economy of scale gained through the award of larger contracts.

Sustainability

21. We propose to consolidate the current number of Schemes allowing for larger and more sustainable contracts for providers.
22. Around half of the current Schemes have very low volumes of work, presenting low economic viability and attractiveness for providers. By moving to larger contracts we hope will provide for increased efficiencies in the delivery of services, greater economies of scale and better value for the tax payer.
23. Moving towards larger schemes formed around a larger group of courts will also accommodate the changes to the court estate as a result of the Government's reform programme.
24. In order to consolidate the number of contracts a review of the current schemes has been undertaken. New groupings of courts have been established to create larger

Housing Possession Court Duty Scheme

Commissioning Sustainable Services

more sustainable schemes. In developing the new groupings consideration has been given to the volume of work going through existing schemes; the location of current courts and the current grouping of courts; local authority areas, including neighbouring local authority areas; and the recently proposed changes to the court estate announced by Her Majesty's Court and Tribunal Service (HMCTS). The new proposed groupings mean that overall scheme numbers will reduce from 117 schemes in 2015/16 to 48 whilst those schemes considered to be "large" in size, over 600 acts of assistance, will make up 60% of proposed schemes.

Scheme size by acts of assistance	Scheme size according to 2013/14 HPCDS acts of assistance	Scheme size according to 2015/16 HPCDS acts of assistance	Scheme size under the proposed consolidated procurement area approach (based on 15/16 HPCDS acts of assistance)
Small: 0 - 270	43 (37.4%)	59 (50.4%)	4 (8.3%)
Medium: 271 - 599	36 (31.3%)	43 (36.8%)	15 (31.3%)
Large: 600 +	36 (31.3%)	15 (12.8%)	29 (60.4%) ³
Total	115	117 ⁴	48

25. A list of the current and proposed schemes is set out at Annex A.

Q1. Do you agree with the proposal to consolidate the number of HPCDS schemes to provide for larger and more sustainable contracts?

Yes

No

Not sure

Please give reasons

Q2 Do you have any specific comments on the changes proposed in Annex A?

Competition

26. In moving to fewer larger contracts we will be increasing the potential level of competition for this work, as there can be only one successful bidder per scheme,

³ Of which 15 are over 1,000 acts of assistance.

⁴ One 13/14 scheme became independently funded in 15/16. Three new schemes were introduced to the LAA scheme in 15/16 when previous independent funding came to an end.

and so clear criteria will be required in order to fairly and effectively distinguish between bidders in what is recognised as a high quality and experienced field.

27. We believe that an approach that includes an element of price will allow providers to bid to deliver services in a way that better reflects the costs in their local area, with economies of scale from an increased potential client base. It will also provide an entirely objective means of helping to fairly distinguish between providers in what we anticipate will be an extremely high quality field of potential providers.
28. In our opinion, the nature of HPCDS work and the manner in which it is delivered to clients at specified courts means that it lends itself to be competitively tendered with price as a factor. For the avoidance of doubt, this is the only area of civil legal aid which we are consulting on in respect of introducing this form of competitive tender as part of the 2018 Civil Legal Aid Contract procurement.
29. Any competitive tender in HPCDS would still include quality criteria that allow for the identification of the best provider to successfully deliver a larger volume of services across a wider geographical area.
30. Providers wishing to undertake this work would still be required to have successfully bid for a 2018 Standard Civil Contract in Housing and Debt. Criteria will be used that consider a provider's ability to deliver these larger contracts, which may require providers to demonstrate that they will have sufficient capacity to deliver the service being tendered. Although contracts will only be awarded to single legal entities, we may consider the use of Sub-Contracting or Agents if appropriate arrangements are in place.
31. We would welcome your views on objective criteria, other than price, that could be used to effectively distinguish between individual bidders in relation to the HPCDS service.

Q3. Should price be introduced as an objective criterion in addition to quality to distinguish between tenders?

Yes

No

Not sure

Please give reasons

Q4. Should we allow the use of Sub-Contracting and/or Agents to deliver HPCDS?

Yes

No

Please give reasons

Q5. What other criteria would effectively distinguish between individual bids?

Please give examples.

32. The Government, as commissioner of legal aid services, would have the assurance that it was paying a price necessary to secure sustainable provision in the longer term, and that the prices it paid achieved best value for money for the taxpayer.

33. Each provider would be remunerated for HPCDS work by way of a unique fixed fee based on the provider's bid price and, where necessary, conditions applied to pricing models to allow for the sustainable use of public funds. This price would cover all costs associated with the delivery of HPCDS advice and representation to an individual. As under current arrangements, the LAA will not pay for travel and waiting time and where HPCDS clients move on to follow on controlled work or licensed work this would be funded under the appropriate fee scheme.

Q6. Do you agree with the proposed remuneration mechanism under the competition model?

Yes

No

Please give reasons

Equalities

34. Section 149 of the Equality Act 2010 places a duty upon public bodies to give due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations for, and between those people with 'protected characteristics'. We would therefore welcome information and views of respondents on the impact these proposals may have on individuals with protected characteristics.

Q7. What do you consider to be the equalities impacts on individuals with protected characteristics of the proposals? Are there any mitigations the Government should consider? Please provide information and evidence where possible.

35. Government departments are challenged to consider any 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.

Q8. What do you consider to be the impacts on families of these proposals? Are there any mitigations the Government should consider? Please give information and evidence where possible.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q1. Do you agree with the proposal to consolidate the number of HPCDS schemes to provide for larger and more sustainable contracts?

Yes

No

Not sure

Please give reasons.

Q2. Do you have any specific comments on the changes proposed in Annex A?

Q3. Should price be introduced as an objective criterion in addition to quality to distinguish between tenders?

Yes

No

Not sure

Please give reasons

Q4. Should we allow the use of Sub-Contracting and/or Agents to deliver HPCDS?

Yes

No

Please give reasons

Q5. What other criteria would effectively distinguish between individual bids?

Please give examples.

Q6. Do you agree with the proposed remuneration mechanism under the competition model?

Yes

No

Please give reasons

Q7. What do you consider to be the equalities impacts on individuals with protected characteristics of the proposals? Are there any mitigations the Government should consider? Please provide information and evidence where possible.

Q8. 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 17/03/17 to:

Tom Bainbridge
Housing Possession Court Duty Scheme Consultation
3rd Floor, Ministry of Justice
102 Petty France
London SW1H 9AJ

Tel: 020 3334 6504

Email: HPCDSCons@legalaid.gsi.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 3 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

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality

Housing Possession Court Duty Scheme

Commissioning Sustainable Services

disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Annex A – Procurement areas

Proposed HPCDS Procurement areas ⁵	Courts covered ⁶
Barnet + Enfield	Edmonton County Court
	Barnet Civil and Family Courts Centre
Barnsley + Doncaster + Sheffield	Barnsley Law Courts
	Doncaster Magistrates Court
	Sheffield Combined Court Centre
Bedfordshire + Cambridgeshire + North Hertfordshire + South Hertfordshire	Luton County Court
	Peterborough Combined Court Centre
	Watford County Court
	Hertford County Court
Berkshire + Buckinghamshire + Oxfordshire	Cambridge County Court
	Banbury County Court
	Oxford Combined Court Centre
	Milton Keynes County Court
	Slough County Court
Birmingham + Herefordshire and Worcestershire	High Wycombe County Court
	Worcester Combined Court
	Hereford Magistrates Court
	Birmingham Civil Justice Centre and Family Courts
Bournemouth and Poole + Dorset	Bournemouth and Poole County Court
	Weymouth Magistrates Court
Bradford + Leeds	Bradford Combined Court Centre
	Leeds Combined Court Centre
Brent	Willesden County Court
Bromley + Croydon	Bromley County Court
	Croydon County Court
City of Bristol, South Gloucestershire and North Somerset + Somerset	Taunton County Court
	South Somerset and Mendip Magistrates Court
	Bristol County Court
	Bath County Court
City of Derby + North Derbyshire	Weston-super-Mare County Court
	Chesterfield Justice Centre
	Derby Combined Court Centre
City of Leicester + Northamptonshire	Northampton Combined Court
	Leicester County Court

⁵ HPCDS procurement area names are based on the amalgamation of the current LAA Housing and Debt procurement area names.

⁶ The courts listed take into account the HMCTS court closure programme and where work will be undertaken from 2018

Housing Possession Court Duty Scheme

Commissioning Sustainable Services

City of Stoke on Trent + Staffordshire + Shropshire	Stafford Combined Court Centre
	Stoke-on-Trent Combined Court
	Telford Magistrates Court
City of Westminster	Central London County Court
Cornwall	Truro County Court
	Bodmin County Court
Cumbria	Barrow-in-Furness County Court
	Carlisle Combined Court Centre
	West Cumbria Magistrates and County Court
Devon + City of Plymouth	Barnstaple County Court
	Torquay and Newton Abbot County Court
	Plymouth Combined Court
Durham	Durham County Court
East Essex + West Essex	Basildon Combined Court
	Southend Crown and Magistrates Court
East Lancashire + West Lancashire	Blackburn County Court
	Burnley Combined Court Centre
	Blackpool County Court
	Preston Combined Court Centre
	Lancaster Magistrates Court
Gloucestershire + Wiltshire	Trowbridge County Court
	Swindon Combined Court
	Gloucester and Cheltenham County Court
	Salisbury Law Courts
Greater Nottingham + North Nottinghamshire	Mansfield Magistrates' and County Court
	Nottingham County Court
Hampshire + Southampton	Aldershot Magistrates Court
	Basingstoke County Court
	Southampton Combined Court Centre
	Winchester Combined Court Centre
Havering	Romford County Court
Hounslow + Hillingdon	Uxbridge County Court
	Brentford County Court
Islington	Clerkenwell and Shoreditch County Court
Kingston-upon-Thames and Richmond upon Thames + Wandsworth	Kingston-upon-Thames County Court
	Wandsworth County Court
Lincolnshire + North East Lincolnshire and North Lincolnshire + City of Kingston upon Hull	Kingston-upon-Hull Combined Court Centre
	Grimsby Combined Court Centre
	Boston County Court
	Lincoln County Court
Liverpool + Wirral & Cheshire	Liverpool Civil and Family Court
	Crewe County Court
	Chester Civil Justice Centre
	Birkenhead County Court

Manchester + Stockport	Stockport Magistrates' and County Court
	Manchester County Court
Mid and South West Kent + North Kent & Medway + The Kent Coast	Thanet County Court
	Canterbury Combined Court Centre
	Medway County Court
	Maidstone Combined Court Centre
	Dartford County Court
Middlesbrough + Darlington	Darlington County Court
	Teesside Combined Court Centre
Newham	Stratford Magistrates Court
Norfolk + Suffolk	Bury St. Edmunds County Court
	King's Lynn Magistrates and Family Court
	Norwich Combined Court Centre
	Great Yarmouth Magistrates and Family Court
North Tyneside + Newcastle	Newcastle-upon-Tyne Combined Court Centre
	North Shields County Court
North West Wales + North East Wales + Central Wales	Caernarfon Criminal Justice Centre
	Wrexham Magistrates' and County Courts
	Mold County Court
	Conwy and Colwyn County Court
	Welshpool and Newtown County Court
	Aberystwyth County Court
	Prestatyn Justice Centre
North Yorkshire	Harrogate Magistrates Court
	Scarborough County Court
	York County Court
	Skipton County Court
Northumberland	Berwick County Court
Portsmouth and IOW ⁷	Portsmouth Combined Court Centre
South East Wales + Rhondda Cynon Taff & Merthyr Tydfil + Bridgend, Cardiff and the Vale Total	Blackwood Civil and Family Court
	Newport (Gwent) Civil and Family Court
	Merthyr Tydfil Combined Court Centre
	Pontypridd County Court
	Cardiff Civil Justice Centre
South Tyneside + Sunderland + Gateshead	Gateshead County Court
	South Shields County Court
	Sunderland County Court
South West Wales + Neath, Port Talbot and Swansea	Port Talbot Justice Centre
	Haverfordwest County Court

⁷ The court based housing possession service run in the Isle of Wight is funded through alternative funding arrangements. It is only listed here as the LAA define Portsmouth and the Isle of Wight as a single area for the current procurement of Housing and Debt advice services

Housing Possession Court Duty Scheme

Commissioning Sustainable Services

	Llanelli County Court
	Carmarthen County Court
	Swansea Civil Justice Centre
Southwark	Camberwell Magistrates Court
St Helens + Wigan	Wigan County Court
	St. Helens County Court
Wakefield + Kirklees	Huddersfield County Court
	Wakefield County Court
Walsall + Dudley + City of Wolverhampton	Dudley County Court
	Walsall County Court
	Wolverhampton Combined Court Centre
Warwickshire + Coventry	Coventry Combined Court Centre
	Nuneaton County Court
	Warwick Combined Court
West Sussex + East Sussex + City of Brighton and Hove	Hastings County Court
	Worthing County Court
	Horsham County Court
	Lewes Combined Court Centre
	Brighton County Court

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 consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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