

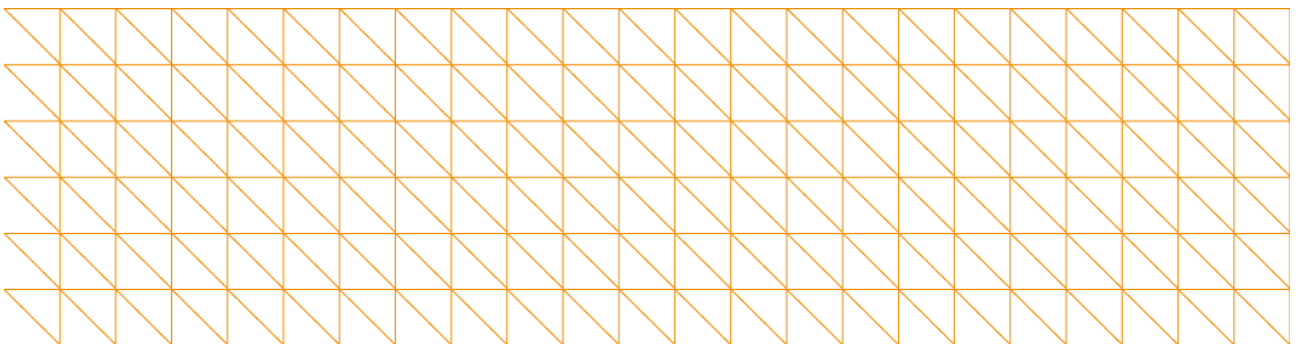


Ministry
of Justice

Supporting the introduction of the single Family Court – Changes to the family legal aid remuneration schemes

Response to consultation

Published: 29 January 2014





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Response to consultation carried out by the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>

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Chapter 1: Executive summary

Introduction & Case for reform

- 1.1 Currently, the family legal aid payment schemes use tier of court as one of the proxies for case complexity, with remuneration for legal aid services made on the basis of the tier of court in which proceedings are heard or disposed, with higher rates being paid in the higher levels of court. In 2014, County Courts and Magistrates' Courts will cease to hear family proceedings. Instead, the new, single Family Court (FC) will become the national court for most family proceedings in England and Wales. Judges capable of sitting in the new FC include lay Justices, District Judges, Circuit Judges and High Court Judges. A full list is contained in s31C of the Matrimonial and Family Proceedings Act 1984 (inserted by Schedule 10 to the Crime and Courts Act 2013). The High Court will still be able to hear family proceedings, but will primarily deal with those matters that are reserved for the High Court, including those that concern its inherent jurisdiction. In the new FC, cases will be heard on the basis of the most appropriate level of judge needed for the particular case. Changes to the family legal aid remuneration framework are therefore necessary to ensure that the legal aid scheme reflects the new court system.
- 1.2 The Government consulted on a proposal to change the current family legal aid fee payment schemes in October 2013. These changes were considered necessary to ensure the effective introduction of the new FC. This document reflects the responses that we have received to that consultation and describes how the Government intends to proceed.

The consultation process and outcome

- 1.3 The proposal to change the family legal aid payment schemes was developed in conjunction with the professional bodies representing legal professionals in the family legal aid sector. It was intended, as far as possible, to be cost-neutral and therefore have no impact on legal aid recipients or those providing family legal aid services. The Government specifically welcomed responses from persons directly affected by the proposed reforms.
- 1.4 The Government received 12 responses to its consultation, the majority of which were from representative bodies or providers of family legal aid services. The overwhelming majority of respondents supported the proposed changes to the current family legal aid fee payment schemes. The Government has therefore decided to press ahead with this reform.
- 1.5 In anticipation of likely changes to Practice Direction (PD) 27A,¹ the Government also sought initial views on potential changes to the current system of bolt on fees for court bundles, payable under the Family Advocacy Scheme (FAS). Although some respondents felt unable to give a particular view as the final proposed changes to PD 27A were not available, a number of respondents supported the concept of a "shadow bundle" based on some or all of the material involved in a case. While the Government does not consider that this particular option represents

¹ http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27a

a viable way forward, the views of respondents have been helpful in identifying the issues and it intends to bring forward alternative proposals for consultation for changes to the system of bolt on fees in respect of court bundles shortly.

Future work

- 1.6 As signalled in our consultation, we will consider what action is needed in respect of potential necessary wider changes to the family legal aid payment schemes that may be required as a consequence of procedural and other operational changes within the new FC, for example those stemming from implementing the revised Public Law Outline (PLO), once any impacts resulting from these are known.

Overall impact

- 1.7 The changes set out in this response are intended to ensure, as far as possible, that family legal aid providers or advocates continue to receive the same level of remuneration for work that they must undertake on cases within the new FC whilst being cost neutral to the legal aid fund. The Government accepts that in developing these reforms, there could be a small cost to the legal aid fund as a result of the harmonisation of the role of a District Judge (DJ) in family proceedings. As recommended by the Family Justice Review, District Judge (Magistrates' Court) (DJ(MC)) will have the same powers and be able to hear cases at the same level as DJs rather than, as currently, hear cases at the same level as lay Justices. Similarly, there could be a potential small cost to providers of legal aid services as a result of the planned extension of the remit of legal advisers which could, as a consequence, mean they hear more cases than they do now. However, in practice we do not expect that to occur and therefore for there to be any measurable impact. Overall, we do not expect there to be any significant impacts on current legal services and therefore on the legal aid fund.

Chapter 2: Response to consultation

- 2.1 This Chapter sets out the Government's response to the consultation paper "*Supporting the introduction of the single Family Court – Proposed changes to family legal aid remuneration schemes*".
- 2.2 A detailed summary of the key issues raised in the consultation responses and our detailed response to those are set out in **Annex A**.

Family legal aid scheme framework

- 2.3 The consultation paper proposed amending the current family legal aid scheme framework (i.e. the Care Proceedings Graduated Fee Scheme, the Private Family Law Representation Scheme and FAS to link the fee levels within the affected family legal aid schemes to the level of judge hearing the case (rather than the tier of court). This would then be consistent with the structure of the new FC when it comes into effect in Spring 2014.
- 2.4 The Government is proceeding with the proposed change to the family legal aid scheme framework for payment of family legal aid services, which will link remuneration to the level of judge.² In the case of FAS, remuneration will therefore be based on the level of judge conducting the hearing. For the Care Proceedings Graduated Fee Scheme and the Private Family Law Representation Scheme remuneration will be based on the level of judge conducting the hearing where proceedings conclude.
- 2.5 Full details of the rates payable under the relevant schemes for each level of judge are set out at **Annex B**.
- 2.6 It is intended that this reform will be implemented through secondary legislation and contract amendments to take effect when the new FC is implemented.

Court bundle payments

- 2.7 The consultation document sought initial views on possible changes to the current system of bolt on fees payable under the FAS in the light of potential changes to PD 27A which would limit the size of court bundles. While it has not reached a conclusion on the changes that it intends to introduce at this stage, the Government remains firmly of the view that, as set out in paragraph 4.5 of the consultation paper, linking the court bundle bolt-on fee to the amount of material involved in preparing the case, as suggested by a number of respondents, would introduce an unmanageable risk that legal aid providers or advocates would routinely claim higher bolt-on fees than is currently the case and is therefore not a viable solution. Instead, the Government intends to bring forward alternative proposals for consultation shortly.

² For the purposes of this document, references to "judge" include Justices' Clerks and their Assistants.

Wider changes

- 2.8 A number of respondents suggested that wider changes would be needed as a result of the expected impact of piloting the revised Public Law Outline (PLO) and other changes to procedure and practice in the FC that could impact on the work that legal aid providers or advocates were required to do. Whilst not relevant to the proposals in this consultation, which is limited to those changes necessary to ensure that the family legal aid payment schemes reflect the structure of the new FC, as set out in the consultation document the Government intends to consider any potential wider changes once sufficient information is available to enable any changes to be modelled. These suggestions will be considered as part of that process.

Chapter 3: Equality Statement

- 3.1 The Government is mindful of the importance of considering the impact of any changes of policy on different groups and, in this particular case, the effects on legal aid providers or advocates.
- 3.2 In accordance with its duties under the Equality Act 2010, the Government has considered the impact of the proposed changes to the family legal aid scheme framework on legal aid providers and advocates in order to give due regard to the need to eliminate unlawful conduct, advance equality of opportunity and foster good relations.³
- 3.3 Our initial analysis concluded that there would be no adverse impact or particular disadvantage as a result of the change proposed to the framework of the family legal aid scheme but we invited views from respondents to the consultation on this. Respondents did not raise any specific comments on the equality impacts of these particular proposals, nor does the proposed expansion in the use of legal advisers alter our conclusions. Our assessment, which anticipated no equality impacts on clients, legal aid providers or advocates as the change proposed was intended to be a cost neutral change to the structure of the scheme, continues to remain the same. The proposal applies to all people, irrespective of protected characteristics. We do not therefore consider that it gives rise to direct discrimination or discrimination arising from a disability. We do not anticipate that the change proposed will affect the level of remuneration to legal professionals providing family legal aid services. We do not therefore anticipate any disproportionate impact on those with protected characteristics. Given that the change proposed is being made as a direct consequence of the implementation of the new FC and the current remuneration framework relies on a court structure that will become inapplicable on implementation of the new FC, we consider that were there any disparate impact, it would be proportionate to the legitimate aim of ensuring the payment mechanism reflects the new structure that will apply.⁴
- 3.4 The Government notes that a number of respondents have highlighted equality issues relating either to consequences stemming from the implementation of the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) or the implementation of the single FC/FJR programme generally. The equality issues raised in connection with LASPO are unrelated to this proposal. Moreover, they all

³ Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have '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).

⁴ With respect to the need to promote equality of opportunity and good relations, we consider that the proposal is unlikely to undermine the attainment of those objectives. For the most part, we do not consider changes in legal aid remuneration to be relevant to the need to advance equality of opportunity or foster good relations among the professions, which is primarily the responsibility of the professions' regulatory bodies.

concern impacts relating to those on legal aid clients. No impact is anticipated on legal aid clients as a result of this proposal. The sole change being made is to the remuneration framework for the provision of legal services. As the change proposed is not intended to alter the remuneration which family legal aid providers or advocates currently receive, there should be no affect on the quality or availability of services and therefore no impact on legal aid clients.

- 3.5 Impacts stemming from the FJR programme, including the implementation of the new FC will be subject to separate assessment. The effects of the FJR programme and the FC could have additional implications for the legal aid scheme in future, for example when a final position is known on the PLO. These will be considered further once sufficient information is available to enable any changes to be modelled.

Annex A: Response to Consultation

1. This Annex sets out the Government's response to the consultation paper "*Supporting the introduction of the single Family Court – Proposed changes to Family legal aid remuneration schemes*".

Family legal aid scheme framework

2. The consultation sought views on proposed changes to the current family legal aid scheme framework that would link remuneration to the level of judge rather than tier of court.
3. The consultation asked:
 - Q1: Do you agree with the proposal to tie the level of payment in the affected schemes to level of judiciary instead of tier of court? Please give reasons**
 - Q2. Do you consider that there is a suitable alternative that would deliver the necessary changes in line with the aims set out in paragraph 2.8 of the consultation paper? Please give reasons.**

Key issues raised

4. Generally, the majority of respondents supported the Government's proposal to link remuneration to the level of judge hearing a case. There were, however, a number of points made where clarity was requested particularly concerning the level of remuneration for hearings conducted by legal advisers (Justices' Clerks and Assistant Justices' Clerks). Currently, legal advisers may perform certain functions of a single justice in the Family Proceedings Court (FPC) which may include conducting hearings. Although the assumption of respondents was that remuneration would be made at the same level as lay Justices, they expressed concern that this was not clear from the consultation.
5. In addition, while supporting the Government's proposal, Resolution raised concerns about the remuneration of advocates where a particular hearing or hearings were heard by a judge of a different level to the one to which the case was allocated. In this context they argued that, as now, payment for the advocate needed to be linked to the level of judge for each hearing rather than the judge allocated to the case. This was necessary to ensure that payments, as now, continued to reflect the complexity of the issues being considered at each hearing.
6. One respondent suggested that remuneration based on the level of judge was a poor proxy for complexity. For example, it was highly likely that given the limited court/judicial resources, cases heard by lay Justices would be no less complex than cases heard by DJs. An alternative suggestion for measuring complexity would be to create a system of complexity scoring.
7. One respondent also suggested that cases allocated to Circuit Judges (CJs) should be remunerated at a higher level as such judges currently tended to hear more complex cases than other judges in the County Court.

8. A general view across respondents was the need to undertake a review of the scheme's operation in future to see if it has achieved cost neutrality.

Government response

9. As set out in the consultation document, the proposed reform to the remuneration framework is strictly limited to that necessary to reflect the structure of the new FC. These changes, developed in conjunction with representation bodies from the legal profession, aim to ensure that these consequential changes are, as far as possible, cost neutral, reflect current payment levels and structure and avoid introducing unmanageable risks to the stewardship of the legal aid fund. This is particularly relevant given both the current financial climate and other wider reform and efficiency measures which are yet to have an impact. As such, we are not revising the current basis by which complexity is measured. Nor are the proposed reforms intended to take account of any other amendments that may be required as a result of changes to procedure and practice in the new FC. These will be considered in the future when there is information available on how the new FC is operating.
10. In the absence of any robust and objective means of measuring complexity in family cases that can be applied consistently whilst delivering certainty of outcome for both legal aid providers or advocates and the legal aid fund, the current family legal aid remuneration schemes use the level of court conducting the relevant hearing as one proxy for complexity. This not only provides a simple and easily understandable system for legal aid providers and advocates, but also enables the system to appropriately reflect individual case management decisions which take complexity into account on a case by case basis. Whilst the Rules setting out provision on the distribution of business and the composition of the FC are yet to be made by the President of the Family Division and allowed by the Lord Chancellor, the policy intention is that complexity will not be defined in the Rules and that the Rules will not be unduly prescriptive. The intention is for there to be flexibility for allocation teams to continue to exercise discretion at a local level as to the level of judge assigned to the hearing based on the circumstances of the individual case. As such, it will be essential that the basis of remuneration under the family legal aid schemes remains sufficiently flexible to accommodate this.
11. In relation to requests for clarity on the levels of payment that would be made for hearings conducted by specific levels of judge, the intention is that these should reflect current practice. In this context, therefore, the same fee would apply to a case heard before a legal adviser as for a case heard before lay justices, reflecting the relatively less complex nature of these hearings. Although the Government notes that there could be a small cost to providers of legal aid services as a result of the planned extension of the remit of legal advisers which could, as a consequence, mean they hear more cases than they do now, in practice this is not expected to occur. The impact on providers of legal aid services is not expected to be measurable. In addition, while it is expected that there will be less need to transfer cases between different levels of judge, as now, where a case is heard before a different level of judge to the one allocated to the case, advocates will be remunerated at the rate appropriate to the judge presiding at the particular hearing under FAS. The level of payment to a solicitor under the Care Proceedings Graduated Fee Scheme will be determined on the basis of the level of judge before whom the final hearing is held. As is currently the case, the same approach as that taken under the Care Proceedings Graduated Fee Scheme will be maintained in

respect of payments to legal aid providers or advocates generally under the Private Family Law Representation scheme.

12. There is no intention that the introduction of the new FC will necessarily lead to CJs hearing more complex cases than would otherwise be the case. Given that the proposed reforms are intended to operate on a cost neutral basis with a view to ensuring that legal aid providers or advocates continue to be remunerated at the same rate as now for work that needs to be done in the new FC, there is no justification for changing the current rates payable for cases heard before CJs in that court.
13. The proposed reforms set out in the consultation document were intended to deliver the minimal changes necessary to ensure that the family legal aid remuneration schemes could operate successfully in the light of the structure of the new FC. Taking account of all the available information, the Government remains satisfied that the proposed reforms, which would link remuneration under the family legal aid schemes to the level of judge conducting the relevant hearing rather than the level of court, is the most cost-neutral mechanism for ensuring appropriate remuneration to legal aid providers or advocates following the introduction of the new FC.
14. The Government recognises, however, that the family justice system is undergoing a programme of radical reform and that further changes may be needed. Going forward, the Government intends to work with the representative bodies to ensure that the family legal aid schemes continue to provide appropriate remuneration for work necessarily done. Where wider change impacts on the family legal aid schemes, requiring any further restructuring of the current remuneration framework or altering the level of remuneration are identified, the intention would be to consider what further action may be necessary once the detail on the impact of the changes becomes clear and can be effectively modelled.

Conclusion

15. The Government intends to proceed with its proposal to link payments under the:
 - (a) Care Proceedings Graduated Fee Scheme and the Private Family Law Representation Scheme to the level of judge presiding at the final hearing; and
 - (b) FAS to the level of judge presiding at each separate hearing.
16. Any hearings taken by a Justices' Clerk or Assistant Justices' Clerk would be remunerated at the same rate as those hearings conducted by lay Justices.
17. The revised framework that will apply is set out at **Annex B**.
18. It is intended that the revised framework will come into force, subject to Parliamentary approval, by way of secondary legislation and contract amendments to coincide with the implementation of the FC.

Court bundle payments

19. The consultation sought initial views on possible changes to the bolt-on fees currently paid to advocates under FAS as a result of likely changes to the size of court bundles.

20. The consultation asked:

Q3. Do you agree that the current system of bolt-on fees for court bundles payable under the FAS should be amended in the light of expected changes to the size of court bundles? Please give reasons.

Q4. Do you consider that a potential way ahead might be to eliminate separate court bundle payments and consider setting a new bolt on fee on the same principle as the other current bolt-ons for complexity in the FAS instead? Please give reasons.

Q5. Do you consider that there are any other suitable alternatives that would satisfy the aims set out in paragraph 2.8 in this paper? Please explain.

Key issues raised

21. Respondents generally agreed that the current system of bolt-on fees for court bundles would need to be changed in light of potential amendments to PD 27A on the basis that simply reducing the size of the bundle that could be submitted to court would be unlikely to affect the complexity of a case. However, while all supported the need to ensure that legal aid providers or advocates were remunerated appropriately some argued that more detail was needed about the nature of the potential change before any decisions could be taken as to how the current system should be revised.

22. Respondents broadly agreed that complexity was not limited solely to those limited factors captured by the separate complexity bolt on fee and that it would be preferable to retain some form of separate payment to appropriately remunerate advocates in those cases where there was a substantial amount of reading/documentation. While the Law Society took the view that merging the bundles bolt on payment with the complexity bolt on fee might be feasible, both they and the Family Law Bar Association (FLBA) took the view that careful modelling would be required to ensure that the level of payment received by advocates was not inappropriately reduced.

23. While there were some differences in detail, the representative bodies generally favoured linking bundle payments to a “shadow bundle” made up of a full index of all the papers served on parties and/or all the necessary reading undertaken by the advocate in preparing the case that could be certified by the judge at the relevant hearing. In this context, the FLBA and the Bar Council suggested that any payments made under such a system should reflect the total amount of reading necessarily undertaken by the advocate and not be limited by the current thresholds.

Government response

24. The key considerations governing bolt on payments under FAS are that they must have an objective measure and be subject to independent verification. The current bundle bolt on achieves this by linking payment to material that the judge needs to consider at the hearing which the judge can then certify on the Advocates Attendance Form.

25. The likely changes to be made to PD 27A indicated by the President of the Family Division may mean that it will not be possible to retain the bundles bolt on fee in its

current form.⁵ The court bundle bolt on currently provides for remuneration where the material required to be seen by the judge is 351 pages or more. If court bundles are restricted to 350 pages or less, the bolt on payment will become inapplicable. While the Government notes legal aid providers' and advocates' concerns that linking payment to other existing measures of complexity could impact on some legal aid providers or advocates, as set out in paragraph 4.5 of the consultation paper, it does not consider that linking payment to the amount of material that legal aid providers or advocates have to consider to prepare for a case would deliver the level of control necessary to protect the legal aid fund.

26. The use of a "shadow bundle" which could include, for example, all of the papers served on parties or read by the advocate, could also significantly extend both the number of cases that would qualify for bolt-on payments and also the size of bundles in those cases that currently qualify for a bundle bolt on fee as it would include material that does not currently form part of the court bundle. Therefore, the overall cost of payments to the legal aid fund would increase. However, it is not clear that either changes to PD 27A or any other procedural changes potentially being introduced into the new FC will require advocates to undertake additional work overall and therefore that any increase in remuneration as proposed by some respondents would be justified.
27. In addition, it is unclear how the necessary independent verification required for any bolt-on fee could be delivered. While the Government notes the suggestion by respondents that any "shadow bundle" could be verified by the judge or legal adviser at the relevant hearing, it is unclear how this would be done without imposing an additional burden on the judiciary or the court. The current court bundle fee is paid on the verification of the judge or legal adviser who has seen and considered the material in the court bundle as part of the hearing process itself. The only way to deliver an equivalent level of independent verification for any payment based on a "shadow bundle" would therefore be for the judge or legal adviser to see and consider the contents of each "shadow bundle". However, as set out in paragraph 4.7 of the consultation paper, the President has indicated that he wants to ensure that the judiciary are not undertaking unnecessary work in the disposal of cases. The contents of any "shadow bundle" would not be relevant to the hearing itself and, therefore, any verification of such a bundle would clearly represent additional work for the judiciary. Given the purpose behind planned changes to PD27A and the need to ensure that the court is fully focussed on the efficient disposal of cases within the proposed 26 week time limit, the Government is not persuaded that this could be justified.
29. Taking account of all of the available information, the Government recognises that retaining a separate mechanism for remunerating cases that do not necessarily contain the specific factors captured by the separate complexity court bundle bolt-on fee would help to ensure appropriate remuneration for cases. However, while it has not reached a conclusion on the changes that it intends to propose at this stage, it remains firmly of the view that, as set out in paragraph 4.5 of the consultation paper, linking the current bundle bolt-on fee to the amount of material involved in preparing the case as suggested by a number of respondents, would introduce an unmanageable risk that providers of legal aid services would routinely claim higher

⁵ See View from the President's Chamber (6); <http://flba.co.uk/wp-content/uploads/2013/09/view6.pdf>

bolt-on fees than is currently the case. It has therefore decided that this will not be taken forward as an option.

30. However, the responses provided by respondents have been helpful in identifying the issues and the Government intends to bring forward alternative proposals for consultation on changes to the system of bolt on fees in respect of court bundles shortly.

Annex B: Revised Family Legal Aid Scheme Framework

Care Proceedings Graduated Fee Scheme

Table 2(c) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013:⁶ Legal representation – section 31 Children Act 1989 Care or Supervision proceedings only

Current payment tier							Family Court payment tier (subject to Parliamentary approval)						
Party	Court	Number of Clients	Midlands	North	London & South	Wales	Party	Persons before whom proceedings are heard	Number of Clients	Midlands	North	London & South	Wales
Child	Other	1	£1949	£1598	£2237	£2183	Child	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge)	1	£1754	£1438	£2013	£1965
Child	Other	2+	£2922	£2396	£3355	£3275	Child	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge)	2+	£2630	£2156	£3019	£2947
Child	High Court	1	£2591	£2125	£2975	£2903	Child	High Court Judge	1	£2332	£1913	£2677	£2613
Child	High Court	2+	£3887	£3188	£4461	£4354	Child	High Court Judge	2+	£3498	£2869	£4015	£3919
Joined Party	Other		£1033	£798	£1201	£1301	Joined Party	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge)		£930	£718	£1081	£1171
Joined Party	High Court		£1374	£1602	£1597	£1730	Joined Party	High Court Judge		£1237	£1442	£1437	£1557
Parent	Other	1	£2556	£2123	£2907	£2633	Parent	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge)	1	£2300	£1911	£2616	£2370
Parent	Other	2	£3196	£2653	£3633	£3291	Parent	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge)	2	£2876	£2388	£3270	£2962
Parent	High Court	1	£3399	£2823	£3866	£3502	Parent	High Court Judge	1	£3059	£2541	£3479	£3152
Parent	High Court	2	£4249	£3530	£4832	£4378	Parent	High Court Judge	2	£3824	£3177	£4349	£3940

⁶ Includes 10% reduction from change announced in Transforming Legal Aid – Next steps paper published in September 2013, subject to Parliamentary approval.

**New Table (Based on Table 9(a) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013):
Table 9aa⁷ – Legal representation – section 31 Children Act 1989 Care or Supervision Proceedings only**

Current payment tier			Family Court payment tier (subject to Parliamentary approval)		
Activity	Higher Courts	County Court & Family Proceedings Court	Activity	High Court Judge or Higher Courts	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Higher Courts)
Preparation and attendance (London rate)	£70.07 per hour	£61.38 per hour	Preparation and attendance (London rate)	£63.06 per hour	£55.24 per hour
Preparation and attendance (non-London rate)	£65.84 per hour	£58.41 per hour	Preparation and attendance (non-London rate)	£59.26 per hour	£52.57 per hour
Attendance at court or conference with counsel	£37.13 per hour	£32.67 per hour	Attendance at court or conference with counsel	£33.42 per hour	£29.40 per hour
Advocacy (London rate)	£70.07 per hour	£64.35 per hour	Advocacy (London rate)	£63.06 per hour	£57.91 per hour
Advocacy (non-London rate)	£65.84 per hour	£65.84 per hour	Advocacy (non-London rate)	£59.26 per hour	£57.91 per hour
Travelling and waiting time	£32.18 per hour	£29.21 per hour	Travelling and waiting time	£28.96 per hour	£26.29 per hour

Table 9(b) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013: Other Family Proceedings

Current payment tier			Family Court payment tier (subject to Parliamentary approval)		
Activity	Higher Courts	County Court & Family Proceedings Court	Activity	High Court Judge or Higher courts	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Higher Courts)
Routine letters out	£6.35 per item	£5.40 per item	Writing routine letters	£6.35 per item	£5.40 per item
Receiving routine letters	£3.15 per item	£2.70 per item	Receiving routine letters	£3.15 per item	£2.70 per item
Routine telephone calls	£6.35 per item	£5.40 per item	Routine telephone calls	£6.35 per item	£5.40 per item
Preparation and attendance (London rate)	£70.56 per hour	£59.40 per hour	Preparation and attendance (London rate)	£70.56 per hour	£59.40 per hour
Preparation and attendance (non-London rate)	£65.75 per hour	£54.90 per hour	Preparation and attendance (non-London rate)	£65.75 per hour	£54.90 per hour
Attendance at court or conference with counsel	£37.13 per hour	£32.40 per hour	Attendance at court or conference with counsel	£37.13 per hour	£32.40 per hour
Advocacy (London rate)	£70.56 per hour	£59.40 per hour	Advocacy (London rate)	£70.56 per hour	£59.40 per hour
Advocacy (non-London rate)	£65.75 per hour	£56.70 per hour	Advocacy (non-London rate)	£65.75 per hour	£56.70 per hour
Travelling and waiting time (London rate)	£32.18 per hour	£28.80 per hour	Travelling and waiting time (London rate)	£32.18 per hour	£28.80 per hour
Travelling and waiting time (non-London rate)	£32.18 per hour	£27.90 per hour	Travelling and waiting time (non-London rate)	£32.18 per hour	£27.90 per hour

⁷ The rates for preparation and attendance at court or conference with counsel, advocacy and travel and waiting time that apply when a case under section 31 of the Children's Act 1989 (only) reaches the escape threshold (and for the purposes of calculating the threshold) will include the 10% reduction to hourly rates announced in the *Transforming Legal Aid – Next Steps* paper published in September 2013, subject to Parliamentary approval).

Private Family Law Representation Scheme

Table 3(f) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013: Higher Standard Fee Scheme – Children

Current payment tier				Family Court payment tier (subject to Parliamentary approval)			
Region	Court	Family help (higher) Standard Fee	Legal Representation Standard Fee	Region	Persons before whom proceedings are heard	Family help (higher) Standard Fee	Legal Representation Standard Fee
London	Court other than the High Court or Court of Protection	£424	£302	London	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Court of Protection Judge)	£424	£302
London	High Court or Court of Protection	£509	£362	London	High Court Judge or Court of Protection Judge	£509	£362
Non-London	Court other than the High Court or Court of Protection	£353	£251	Non-London	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Court of Protection Judge)	£353	£251
Non-London	High Court or Court of Protection	£424	£302	Non-London	High Court Judge or Court of Protection Judge	£424	£302

Table 3(g) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013: Higher Standard Fee Scheme – Finance

Current payment tier					Family Court payment tier (subject to Parliamentary approval)				
Region	Court	Family help (higher) Standard Fee	Family help (higher) Settlement Fee	Legal Representation Standard Fee	Region	Persons before whom proceedings are heard	Family help (higher) Standard Fee	Family help (higher) Settlement fee	Legal Representation Standard Fee
London	Court other than the High Court or Court of Protection	£471	£95	£374	London	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Court of Protection Judge)	£471	£95	£374
London	High Court or Court of Protection	£565	£113	£449	London	High Court Judge or Court of Protection Judge	£565	£113	£449
Non-London	Court other than the High Court or Court of Protection	£392	£78	£311	Non-London	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Court of Protection Judge)	£392	£78	£311
Non-London	High Court or Court of Protection	£471	£95	£374	Non-London	High Court Judge or Court of Protection Judge	£471	£95	£374

Table 3(h) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013: Higher Standard Fee Scheme – Domestic Abuse Proceedings

Current payment tier			Family Court payment tier (subject to Parliamentary approval)		
Region	Court	Legal Representation Standard Fee	Region	Persons before whom proceedings are heard	Legal Representation Standard Fee
London	Court other than the High Court or Court of Protection	£608	London	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Court of Protection Judge)	£608
London	High Court or Court of Protection	£729	London	High Court Judge or Court of Protection Judge	£729
Non-London	Court other than the High Court or Court of Protection	£507	Non-London	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Court of Protection Judge)	£507
Non-London	High Court or Court of Protection	£608	Non-London	High Court Judge or Court of Protection Judge	£608

Table 9(b) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013: Other Family Proceedings

Current payment tier			Family Court payment tier (subject to Parliamentary approval)		
Activity	Higher Courts	County Court & Family Proceedings Court	Activity	High Court Judge or Higher courts	All persons before whom such proceedings can be heard in the Family Court (except High Court Judge or Higher courts)
Routine letters out	£6.35 per item	£5.40 per item	Writing routine letters	£6.35 per item	£5.40 per item
Receiving routine letters	£3.15 per item	£2.70 per item	Receiving routine letters	£3.15 per item	£2.70 per item
Routine telephone calls	£6.35 per item	£5.40 per item	Routine telephone calls	£6.35 per item	£5.40 per item
Preparation and attendance (London rate)	£70.56 per hour	£59.40 per hour	Preparation and attendance (London rate)	£70.56 per hour	£59.40 per hour
Preparation and attendance (non-London rate)	£65.75 per hour	£54.90 per hour	Preparation and attendance (non-London rate)	£65.75 per hour	£54.90 per hour
Attendance at court or conference with counsel	£37.13 per hour	£32.40 per hour	Attendance at court or conference with counsel	£37.13 per hour	£32.40 per hour
Advocacy (London rate)	£70.56 per hour	£59.40 per hour	Advocacy (London rate)	£70.56 per hour	£59.40 per hour
Advocacy (non-London rate)	£65.75 per hour	£56.70 per hour	Advocacy (non-London rate)	£65.75 per hour	£56.70 per hour
Travelling and waiting time (London rate)	£32.18 per hour	£28.80 per hour	Travelling and waiting time (London rate)	£32.18 per hour	£28.80 per hour
Travelling and waiting time (non-London rate)	£32.18 per hour	£27.90 per hour	Travelling and waiting time (non-London rate)	£32.18 per hour	£27.90 per hour

Family Advocacy Scheme (FAS)

Table 1(a) of Schedule 3 to the Civil Legal Aid (Remuneration) Regulations 2013: Care or supervision proceedings under section 31 of the Children Act 1989 – graduated fees

Current payment tier							Family Court payment tier (subject to Parliamentary approval)						
Court	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Conference Fee	Opinion Fee	Advocates Meeting Fee	Final Hearing Fee (per day)	Person(s) before proceedings are heard	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Conference Fee	Opinion Fee	Advocates Meeting Fee	Final Hearing Fee (per day)
Family Proceedings Court	£86.72	£216.81	£127.71	£105.66	£128.16	£506.25	Lay Justices, Justices' Clerk, Assistant Justices' Clerk	£86.72	£216.81	£127.71	£105.66	£128.16	£506.25
County Court	£95.40	£238.46	£127.71	£105.66	£140.99	£556.88	District or Circuit Judge	£95.40	£238.46	£127.71	£105.66	£140.99	£556.88
High Court	£114.48	£286.16	£127.71	£105.66	£169.20	£668.25	High Court Judge	£114.48	£286.16	£127.71	£105.66	£169.20	£668.25

Table 1(b) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013: Other Public Law Case – Graduated Fees

Current payment tier							Family Court payment tier (subject to Parliamentary approval)						
Court	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Conference Fee	Opinion Fee	Advocates Meeting Fee	Final Hearing Fee (per day)	Persons before whom proceedings are heard	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Conference Fee	Opinion Fee	Advocates Meeting Fee	Final Hearing Fee (per day)
Family Proceedings Court	£75.83	£189.59	£127.71	£105.66	£128.16	£464.31	Lay Justices, Justices' Clerk, Assistant Justices' Clerk	£75.83	£189.59	£127.71	£105.66	£128.16	£464.31
County Court	£83.39	£208.53	£127.71	£105.66	£140.99	£510.75	District or Circuit Judge	£83.39	£208.53	£127.71	£105.66	£140.99	£510.75
High Court	£100.08	£250.20	£127.71	£105.66	£169.20	£612.90	High Court Judge	£100.08	£250.20	£127.71	£105.66	£169.20	£612.90

Table 2(a) of Schedule 3 to the Civil Legal Aid (Remuneration) Regulations 2013: Private Law Children – Graduated Fees

Current payment tier						Family Court payment tier (subject to Parliamentary approval)					
Court	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Conference Fee	Opinion Fee	Final Hearing Fee (per day)	Persons before whom proceedings are heard	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Conference Fee	Opinion Fee	Final Hearing Fee (per day)
Family Proceedings Court	£62.69	£156.74	£125.37	£94.05	£397.04	Lay Justices, Justices' Clerk, Assistant Justices' Clerk	£62.69	£156.74	£125.37	£94.05	£397.04
County Court	£68.94	£172.40	£125.37	£94.05	£436.73	District or Circuit Judge	£68.94	£172.40	£125.37	£94.05	£436.73
High Court	£82.76	£206.87	£125.37	£94.05	£524.07	High Court Judge	£82.76	£206.87	£125.37	£94.05	£524.07

Table 2(b) of Schedule 3 to the Civil Legal Aid (Remuneration) Regulations 2013: Domestic Abuse – Graduated Fees

Current payment tier				Family Court payment tier (subject to Parliamentary approval)			
Court	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Final Hearing Fee (per day)	Persons before whom proceedings are heard	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Final Hearing Fee (per day)
Family Proceedings Court	£81.50	£203.76	£361.17	Lay Justices, Justices' Clerk, Assistant Justices' Clerk	£81.50	£203.76	£361.17
County Court	£81.50	£203.76	£361.17	District or Circuit Judge	£81.50	£203.76	£361.17
High Court	£81.50	£203.76	£361.17	High Court Judge	£81.50	£203.76	£361.17

Table 2(c) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013: Private Law Finance – Graduated Fees

Current payment tier									Family Court payment tier (subject to Parliamentary approval)								
Court	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Financial Dispute Resolution Hearing Unit 1	Financial Dispute Resolution Hearing Unit 2	Early Resolution Fee	Conference Fee	Opinion Fee	Final Hearing Fee (per day)	Person(s) before proceedings are heard	Hearing Unit 1 (up to 1 hour)	Hearing Unit 2 (up to 2.5 hours)	Financial Dispute Resolution Hearing Unit 1	Financial Dispute Resolution Hearing Unit 2	Early Resolution Fee	Conference Fee	Opinion Fee	Final Hearing Fee (per day)
Family Proceedings Court	£63.18	£157.95	£101.07	£252.72	£126.36	£126.36	£94.77	£443.70	Lay Justices, Justices' Clerk, Assistant Justices' Clerk	£63.18	£157.95	£101.07	£252.72	£126.36	£126.36	£94.77	£443.70
County Court	£63.18	£157.95	£101.07	£252.72	£126.36	£126.36	£94.77	£443.70	District or Circuit Judge	£63.18	£157.95	£101.07	£252.72	£126.36	£126.36	£94.77	£443.70
High Court	£75.83	£189.54	£121.32	£303.26	£151.65	£126.36	£94.77	£532.44	High Court Judge	£75.83	£189.54	£121.32	£303.26	£151.65	£126.36	£94.77	£532.44

Annex C: Other issues/suggestions made in response to the consultation

Key issues raised

1. Respondents raised a number of observations about features of the current family legal aid scheme that were not directly related to either the structure of the scheme or to the expected changes to PD 27A. This included the view of one respondent that the standard fee element for preparation in a publicly funded care case in the North was currently lower than any other region⁸ but there was little evidence to support this difference. In addition, the Law Society raised concerns about who would prepare the court bundle in cases where the other party was unrepresented. Litigants in person often wanted to include documents that would not normally be included in a court bundle and, as a result, this would impact on the workload and costs of the advocate.
2. The main concerns however centred on the impact of the revised PLO and the new approach being adopted by the courts in relation to experts. In this context respondents were generally concerned that advocates would be required to undertake substantial work outside of the three hearings specified under the revised PLO as a result of the need to resolve problems that arise. For example, after the Case Management Order has been made, variations may be necessary as a result of directions made at the Case Management Hearing (CMH). They made the point that resolving these difficulties can involve significant amounts of time and work, with counsel being instructed to manage the case in conjunction with a number of parties without a further hearing to reduce the pressure and strain on the court system. As a result, the Bar Council and FLBA argued that the current payment levels and/or structures should be adjusted to appropriately remunerate such work, possibly by extending the application of Advocates Meeting under FAS⁹ to cover communications between advocates by any medium which achieves the resolution of an issue and saves court time.
3. Respondents also argued that the revised PLO requires advocates to analyse documents at a much earlier stage in the process. They suggested that the volumes of work involved justified the removal of the current restrictions on when a bundle payment could be claimed and how much should be allowed at different times.
4. In relation to experts, respondents argued that the increasing reliance on written expert evidence required advocates to prepare written questions to expert witnesses outside court hearings and deal with their response. This involved the same amount of preparation as that undertaken for a hearing and it was therefore essential that this was appropriately remunerated. In this context, Resolution argued that given the direction issued by the President,¹⁰ advocates should be remunerated under the current bolt-on scheme under the FAS¹¹ for complexity in cases where preparation

⁸ Schedule 1, Part 1 (Table 2c), the Civil Legal Aid (Remuneration) Regulations 2013.

⁹ Schedule 3, Part 1, the Civil Legal Aid (Remuneration) Regulations 2013.

¹⁰ <http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/pfd-process-reform-revised-plo-may-2013.pdf>

¹¹ Schedule 3, Part 1, (Table 1(c)) and Schedule 3, Part 2 (Table 2(d)) of the Civil Legal Aid (Remuneration) Regulations 2013.

is necessary in cross examining social workers and guardians where they were acting as experts.

5. The FLBA raised concerns that counsel could be asked by solicitors to carry out reading and analysis of the documents for the CMH but that currently they were not being remunerated for such work. They argued that where such work was undertaken, counsel should receive appropriate remuneration.

Government response

6. There are currently four different regional fees for representation in care proceedings¹² which were introduced in 2007 to ensure the sustainability of market supply ahead of competitive tendering. The issue of regional variations was considered as part of the development of the proposals contained in the *Transforming Legal Aid: delivering a more credible and efficient system*¹³ consultation. As set out in that consultation paper, the Government continues to retain the view that their long term retention would only be justifiable in the context of market supply shortages and does intend to address these in due course. However, the current assessment is that such change would be premature before the impact of the scope changes introduced under LASPO have fully materialised. Instead we intend to review the existing regional price differentials in light of the impact of both the LASPO scope changes and the reforms that are implemented through the Transforming Legal Aid consultation.
7. As set out in the consultation document, the Government recognises that wider changes to the family legal aid payment schemes may be necessary as a result of the extensive programme of reform being undertaken within the family justice system and in particular, as a result of revisions to the PLO in public law proceedings. This may include, for example, the impact of applying the PD in cases involving Litigants in Person and out of court preparation time relating to expert witnesses, if any. Going forward, it intends to work with the representative bodies to ensure that the family legal aid schemes continue to provide appropriate remuneration for work necessarily done. Where wider change impacts on the family legal aid schemes, requiring any restructuring of the current remuneration framework or altering the level of remuneration, the Government would intend to consider what action is necessary once the detail on the impact of the changes becomes clear and can be effectively modelled.

Conclusion

8. The Government notes the points made on how cases should be allocated and in particular how complexity should be determined, as well as concerns surrounding remuneration to advocates as a result of the effects of the pilot PLO and other FJR reforms, such as the reduction in the use of experts. The impact of all of these elements is not yet known and in the case of the allocation process any impact on the legal aid scheme is unlikely to be known until the new FC comes into effect and the process is allowed to operate for a period of time. Where impacts do occur on the legal aid scheme, it is possible this may necessitate further reform to the family legal aid schemes.

¹² Schedule 1, Part 1 (Table 2(c)), the Civil Legal Aid (Remuneration) Regulations 2013.

¹³ <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>

Annex D: Glossary

Acronym		Meaning
CC	County Court	County courts deal with civil matters such as disputes over contracts, unpaid debts and negligence claims. County courts deal with all monetary claims up to £50,000. The county court is a court of the first instance – where civil cases start.
CJ	Circuit Judge	A judge between the level of a High Court Judge and a District Judge, who sits in the County Court and/or Crown Court.
DJ	District Judge	A judicial officer of the Court whose duties involve hearing applications made within proceedings and final hearings subject to any limit of jurisdiction. Previously known as Registrars.
DJ(MC)	District Judge (Magistrates' Court)	A judicial officer in the Magistrates' Court whose duties involve hearing applications made within proceedings and final hearings subject to any limit of jurisdiction.
FAS	Family Advocacy Scheme	The FAS is a Graduated Fee Scheme that provides a separate payment regime for advocacy for all advocates regardless of their professional status during the life of family proceedings.
FC	Family Court	The new Family Court, which is planned to come into effect in April 2014, was created to bring a single point of entry to the family court system, thereby replacing the current three tiers of court. All levels of the family judiciary (including magistrates) will sit in the family court and work will be allocated according to the complexity of the case.
FPC	Family Proceedings Court	The Family Proceedings Court (FPC) is the name given to the Magistrates' Court when members of the family panel sit to hear a family case. It is a court of first instance in England and Wales that deals with family matters. Cases are either heard in front of a bench of lay magistrates or a District Judge (Magistrates' Courts).
HC	High Court	A civil Court which consists of three divisions: i) Queen's Bench (can be known as King's Bench Division if a King is assuming the throne) – civil disputes for recovery of money, including breach of contract, personal injuries, libel/slander; ii) Family – concerned with matrimonial matters and proceedings relating to children, e.g. wardship; iii) Chancery – property matters including fraud and bankruptcy.
MC	Magistrates Court	A Court where criminal proceedings are commenced before justices of the peace who examine the evidence/statements and either deal with the case themselves or commit to the Crown Court for trial or sentence. Also has jurisdiction in a range of civil matters.
PD	Practice Direction	A practice direction is a supplemental protocol to rules of civil and criminal procedure in the courts – “a device to regulate minor procedural matters”.

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