

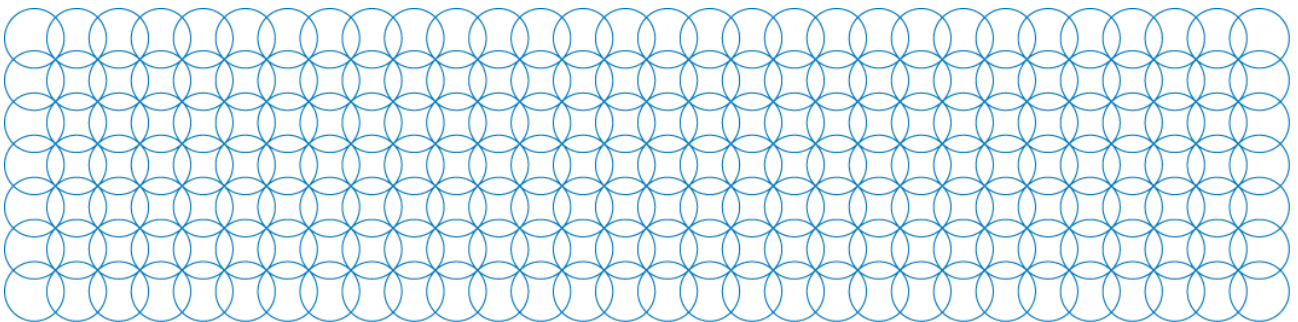


Ministry  
of Justice

# Supporting the introduction of the single Family Court – Proposed changes to Family legal aid remuneration schemes

This consultation begins on 28 October 2013

This consultation ends on 25 November 2013







Ministry  
of Justice

# **Supporting the introduction of the single Family Court – Proposed changes to Family legal aid remuneration schemes**

A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at [www.justice.gov.uk](http://www.justice.gov.uk)

## **About this consultation**

- To:** This consultation is specifically aimed at providers of family legal aid services. The changes being proposed relate to changes to the current remuneration framework which are a consequence of the new single Family Court coming into effect in April 2014
- Duration:** From 28 October 2013 to 25 November 2013
- Enquiries to:** Christine Okiya,  
4<sup>th</sup> Floor, point 4.41,  
Ministry of Justice,  
102 Petty France, London, SW1H 9AJ.
- Tel: 020 3334 5625  
Email: [Christine.okiya@justice.gsi.gov.uk](mailto:Christine.okiya@justice.gsi.gov.uk)
- How to respond:** Please complete the online survey which can be found at <https://consult.justice.gov.uk/>
- Response paper:** A response to this consultation exercise is due to be published in early 2014 at: <http://www.justice.gov.uk>

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## Chapter 1: Executive summary

- 1.1 This document sets out the Government's proposals for amendments to the current family legal aid remuneration schemes in England and Wales, which are required as a result of the planned introduction of the new single Family Court (FC).
- 1.2 We anticipate that the proposals set out in this consultation would, if implemented as proposed, have no impact on legal aid recipients and no or minimal impact on provider income or the legal aid fund.
- 1.3 Views are invited on the questions set out below.

### Proposals for reform

- 1.4 Chapter 3 sets out proposed amendments to the three main family remuneration schemes (**Family Legal Aid Scheme Framework (FLASF)**). Payment levels in each of the schemes are currently based on the existing tiers of court which will not be applicable in the new FC. This proposal therefore sets out an alternative basis for payments under the new court structure.
- 1.5 Chapter 4 seeks initial views (**Court Bundle Payments issue**) on potential changes to the current bolt-on fees payable under the Family Advocacy Scheme (FAS) that may be necessary should the anticipated change to the Practice Direction (PD) on court bundle payments be introduced.

### Impact Assessment

- 1.6 It will only be possible to fully assess the impact of these proposals once the allocation mechanism for the FC and the anticipated PD change have been officially confirmed. A full Impact Assessment has therefore not been carried out at this stage. The intention however, is that the level of legal aid fees should remain unchanged. The FLASF proposal is therefore expected to have no or minimal impact on providers, no impact on clients and should not result in less favourable treatment of persons with protected characteristics. On court bundle payments, the Government is seeking initial views on how legal aid remuneration for bundle payments should operate should there be any reduction in bundle sizes, to inform the development of options and the assessment of impacts.

## Consultation

- 1.7 The Government would specifically welcome responses to the questions set out in this consultation paper from persons directly affected by the proposed reforms. Please respond via the online template. Those who have queries with either the consultation process, or content of the paper during the consultation, may submit them directly to Christine Okiya, (Christine.okiya@justice.gsi.gov.uk) or 4<sup>th</sup> Floor, point 4.41, Ministry of Justice, 102 Petty France, London, SW1H 9AJ.
- 1.8 The **deadline for responses** is midnight on **Monday 25 November 2013**. The Government will respond to the consultation in early 2014.

## Schedule of Consultation Questions

### Chapter 3: Family Legal Aid Scheme Framework

- Q1.** Do you agree with the proposal to tie the level of payment in the affected schemes to the level of judiciary instead of the 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 in this paper? Please provide details.

### Chapter 4: Court bundle payments

- Q3.** Do you agree that the current system of bolt-on fees for court bundles payable under 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 Family Advocacy Scheme (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.

### Chapter 5: Equalities

- Q6.** What do you consider to be the equalities impacts on individuals with protected characteristics of the proposal to restructure the FLASF and the changes explored in relation to court bundles?



**Q7.** Are you able to provide any relevant evidence or sources of information that will help us to understand and assess those impacts?

## Chapter 2: Introduction

- 2.1 Currently, family proceedings can be heard in the Family Proceeding Court (FPC), County Courts (CCs) and the High Court (HC). One of the principal recommendations of the Family Justice Review (FJR) 2011 was the introduction of a single Family Court (FC) in England and Wales and the introduction of a 26 week time limit for care and supervision proceedings. The FC should be more accessible and less confusing for those who need to use the court. It will create a simpler, more efficient and more flexible court system. There will be greater flexibility in allocating business throughout the court, which will allow a quicker response to fluctuations in demand and ensure the most efficient use of judicial and court resources. Implementation of the FC is currently being planned for April 2014. Once implemented, most family proceedings will be dealt with by the FC, with some reserved, as now, for the HC. The single CC is also planned to be implemented on the same date.
- 2.2 The changes required to the FLASF as a result of the introduction of the FC are separate to the reductions in solicitors' representation fees in family public law proceedings set out in the *Transforming Legal Aid: Next Steps* response paper published on 5 September 2013. However, as set out in that document, those reductions will be implemented at the same time as the revision of the FLASF required by the new FC.
- 2.3 Once the FC is implemented, the FPC will no longer exist and the new single CC will no longer have jurisdiction to hear family proceedings. While the HC will still hear certain family proceedings that are reserved for the HC, or invoke its' inherent jurisdiction, HC judges will also sit in the FC.
- 2.4 In the FC, cases will be allocated to the most appropriate level of judge (including a bench of lay magistrates), with the aim of reducing delay and re-allocations between judges; and where possible maintaining continuity of judge. The allocation criteria and process for allocation within the FC are still being developed.
- 2.5 The change in the court structure has implications for three current legal aid payment schemes:
- the Family Advocacy Scheme (FAS);
  - the Care Proceedings Graduated Fee Scheme; and
  - the Private Family Law Representation Scheme (the "Family Representation Schemes").

Each of these currently use tier of court as a proxy for complexity, making payment according to the tier of court in which cases are heard, with higher rates being paid in some cases in the CC, than the FPC. The fees under these schemes are all higher in the HC than in either the CC or FPC.

- 2.6 The Government therefore needs to make changes to these schemes to reflect the implementation of the FC. These changes are consequential, but necessary to ensure payment for family legal aid work accurately reflects the structure of the new FC.
- 2.7 In order to revise the family fee schemes in time for the introduction of the FC in April 2014, it is essential that work begins now to put the revisions to the scheme in place. However, given that the final shape of the allocation process and criteria are still under development, the Government recognises that further changes may be necessary as it becomes clear how the new FC will operate and the impacts that this may have can be effectively modelled. The change to the FLASF proposed in Chapter 3 is therefore the minimum considered necessary at this stage to ensure it operates effectively following implementation of the new FC.
- 2.8 The intention is to introduce the minimum change necessary to harmonise the current family legal aid schemes with the structure of the new FC. Our proposal is therefore intended, as far as possible, to:
- be cost neutral;
  - reflect current payment levels and structure; and,
  - avoid introducing any unmanageable risks to the stewardship of the legal aid fund.
- 2.9 Government officials have been working with Representative bodies<sup>1</sup> of the legal profession (the “Working Group”) since July, in order to develop workable proposals for consultation that meet these requirements. While the main focus of discussions with the Working Group was on the necessary changes to ensure the proper functioning of the family legal aid schemes, some limited consideration was also given to the potential implementation of changes to Practice Direction 27A – Family Proceedings (the “PD”) as suggested by the President of the Family Division, to reduce court bundle sizes. Although no decisions have been made about the changes to the PD at this stage, views are sought in this paper on whether and how to make any changes to FAS to reflect the proposed change to the PD, should it be introduced. Once the detail of any changes to the PD on Court Bundles have been announced and it is clear how this would impact on current practice we will determine what changes might be appropriate to current FAS bolt-on fees and, in light of responses to this exercise, whether we need to consult further.

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<sup>1</sup> The Law Society, the Bar Council, the Family Law Bar Association, the Association of Lawyers for Children, Resolution.

## Chapter 3: Family Legal Aid Scheme Framework

### The case for reform

- 3.1 The current specified rates paid for public and private law family legal aid cases are set out in the Civil Legal Aid (Remuneration) Regulations 2013. The family legal aid payment schemes affected by the introduction of the FC are:
- the Care Proceedings Graduated Fee Scheme and the Private Family Law Representation Scheme (the “Family Representation Schemes); and
  - the Family Advocacy Scheme (FAS).
- 3.2 Under the Family Representation Schemes, solicitors are paid a fixed fee for representation (excluding preparation for advocacy). There are different fees payable depending on the number of clients involved in a case, the type of party represented, the court and geographical location of the provider. Where the case is complex and the time and cost involved exceeds two times the fixed fee, providers are able to escape the fixed fee regime and claim the Licensed work hourly rates instead.
- 3.3 The FAS scheme is a graduated fee scheme that provides remuneration for advocacy (for all advocates, regardless of the branch of the profession to which they belong) during the life of family proceedings. It operates alongside the arrangements for payment of non-advocacy work in these proceedings, including the two schemes mentioned above.
- 3.4 Payments under the FAS scheme are essentially fixed or standard fee payments payable for a specific activity (e.g. hearings, conference, opinion or meeting). There is a range of fees dependent upon the nature and venue of the proceedings and the type of activity undertaken. Certain fees are only payable to Counsel. In some types of proceedings there are limited additional payments (called bolt-on fees) that may be made to reflect additional complexity or preparation required of the advocate. Table 1 sets out the current fee schemes and proceedings that will be affected by the introduction of the new FC.

Table 1: Current fee schemes as set out in the Civil Legal Aid (Remuneration Regulations) 2013.

Remuneration scheme	Advice Type	Current court delineation as defined in remuneration scheme
Care Proceedings Graduated Fee Scheme <sup>2</sup>	Legal representation S.31 Children Act 1989 (Public)	<ul style="list-style-type: none"> <li>• Other</li> <li>• High Court</li> </ul>
	Proceedings Part IV and V Children Act (Care proceedings) (Public)	<ul style="list-style-type: none"> <li>• County Court and Family Proceedings Court</li> <li>• Higher Courts</li> </ul>
	Other family proceedings (Public)	
Private Family Law Representation Scheme <sup>3</sup>	Family help higher children, finance and domestic abuse cases (Private)	<ul style="list-style-type: none"> <li>• Court other than the High Court or Court of Protection</li> <li>• High Court or Court of Protection</li> </ul>
	Other family proceedings (Private)	
FAS <sup>4</sup>	Section 31 Children Act 1989 and Other Public Law (Public Law)	<ul style="list-style-type: none"> <li>• Family Proceedings Court</li> <li>• County Court</li> <li>• High Court</li> </ul>
	Private Law children, finance and domestic abuse (Private Law)	

3.5 Under the current legislation, most public law cases start in a FPC, where the case may be heard by either a lay bench or District Judge (Magistrates' Court) (DJ (MC)) and, if deemed appropriate, they may be transferred to a CC, where the case may be heard by either a District Judge (DJ) or Circuit Judge (CJ). In contrast, private law applicants can generally choose whether to apply to a FPC or to a CC (although there are some proceedings which must be started in a CC). Different fee levels apply depending on the tier of court.

<sup>2</sup> Tables 2(c) and 9(a)-(b) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013, [www.legislation.gov.uk/ukxi/2013/422/contents/made](http://www.legislation.gov.uk/ukxi/2013/422/contents/made)

<sup>3</sup> Tables 3(f)-(h) and 9(b) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013 [www.legislation.gov.uk/ukxi/2013/422/contents/made](http://www.legislation.gov.uk/ukxi/2013/422/contents/made)

<sup>4</sup> Schedule 3 of the Civil Legal Aid (Remuneration) Regulations 2013. [www.legislation.gov.uk/ukxi/2013/422/contents/made](http://www.legislation.gov.uk/ukxi/2013/422/contents/made)

3.6 In the FC, cases will be allocated to the most appropriate level of judge (including a bench of lay magistrates), with the aim of reducing delay and re-allocations between judges. Some cases may therefore be heard by a different level of the judiciary than is currently the case. Moreover, it is likely that DJs and DJ (MCs) will be regarded as being the same level of judge and be allocated the same level of work. Over time therefore, the mix of work that DJ(MC)s will deal with is likely to change, as they are likely to be allocated work previously heard by DJs in the CC. Consequently, some work currently undertaken in the FPC may be remunerated at higher rates in future (i.e. those currently applicable in the CC) resulting in an increase in remuneration for that work.

## Proposal

3.7 Following discussions with the Working Group, and having regard to the principles set out at paragraph 2.8, we propose that, in the light of the proposed structure of the single FC, the fee levels within the affected family legal aid schemes should be linked to the level of judge allocated to the case (rather than the tier of court) as in future there will only be two levels of court dealing with family proceedings in the first instance: the FC or the HC, but broadly four levels of judge (i.e. Lay bench, DJ, CJ and HC judge). Details of the proposed payment tiers for the family legal aid schemes, is set out in Table 2 below.

*Table 2 - Proposed revised framework*

	<b>Current payment tier</b>		<b>Proposed FC payment tier</b>
<b>FAS</b>	Family Proceedings Court	=	Bench of lay Magistrates
	County Court	=	District or Circuit Judge
	High Court	=	High Court Judge
<b>Care Proceedings Graduated Fee Scheme and Private Family Law Representation Scheme</b>	Other Court	=	Lay bench, District Judge or Circuit Judge
	High Court	=	High Court Judge

- 3.8 Currently under FAS, different fees are payable for hearings and advocates meetings in Public Law cases depending on the tier of court in which the hearing takes place. The same applies for hearings in Private Law Children cases and for hearings and early resolution fees in Private Law Finance cases. Under this proposal, that principle will remain, but the different fees will be payable according to the level of Judge allocated to the case instead. For the affected Family Representation Schemes, as now, the relevant fee would be determined according to the fee for the level of judge before whom the case concludes.
- 3.9 The proposed change would also apply to any proceedings under the Inheritance (Provision for Family and Dependants) Act 1975(1) and the Trusts of Land and Appointment of Trustees Act 1996 that might be heard in the FC. These are remunerated as civil not family proceedings.
- 3.10 Full details of the rates payable under the relevant schemes for work before each level of judge are set out in Annex A.
- 3.11 Having considered a number of alternative framework proposals with the Working Group over the summer, we believe that this proposal best meets the design principle aims set out in paragraph 2.8. Other options considered but rejected for consultation included maintaining existing fee differentials but using different criteria than the level of judge to determine the applicable fee, such as a defined system of payment based on case complexity, or simply leaving the appropriate level of payment to judicial discretion. These were both discounted as they had been considered during the development of earlier fee schemes and rejected in favour of the current proxies because of the difficulty in adequately defining complexity and the lack of adequate control over spend. We also considered a further option which proposed that a new single fee should be introduced for the majority of cases in the FC on a cost neutral basis, using a weighted average of the current relevant FPC and CC rates. Under this option, current HC rates would have been retained for appropriate cases heard in the HC and where HC judges are allocated cases in the FC. This option was also rejected as, although it would retain much of the structure and operation of the current schemes and while a minority of providers would experience an increase in income, the majority would have experienced a loss of income due to the current heavy weighting of cases carried out in the CC.

## Implementation

- 3.12 Subject to the outcome of this consultation, it is anticipated that this proposal would be implemented through secondary legislation to take effect when the FC is implemented, currently planned for April 2014, alongside all the other accompanying legislation that will implement the FC.

## Consultation Questions

**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 in this paper? Please provide details.



## Chapter 4: Court bundle payments

### Potential Issue for consideration

- 4.1 The current Practice Direction on Family Proceedings (PD 27A<sup>5</sup>) prescribes the format and content of a court bundle. This PD already requires some amendment so that it reflects the fact that the CC will no longer have jurisdiction to deal with family proceedings once the FC is implemented. In addition, although no firm proposals have been brought forward at this stage, the President of the Family Division has given a strong indication that he is also considering amending that PD to ensure that in future there will be smaller bundles overall with the majority of bundles being no more than a maximum of 350 pages<sup>6</sup>.
- 4.2 While it is not currently clear exactly what amendments will be made to the PD, given that some bolt-on fees payable under FAS are directly linked to bundle size, any required reduction in the size of court bundles would have a direct financial impact on advocates. While this might be justified if the amount of work required was also reduced, bolt-on fees are intended to be one way of remunerating providers for handling complex cases as reducing the size of court bundles themselves does not lessen the complexity of a case. We therefore need to explore how best to ensure appropriate remuneration for complexity should there be any changes to bundle size.

### Current practice

- 4.3 Currently, there is no particular limit on the size of a court bundle. Under FAS<sup>7</sup> different payments are made according to whether the hearing is interim or final and the number of pages in the bundle, with more complex cases typically requiring bigger bundles and therefore attracting a higher payment. Any bolt-on claimed is currently verified by the judge, magistrate or legal adviser at the hearing on the appropriate form (the Advocates Attendance Form) to provide some control over spend in this area. There are limits to the number of court bundle payments that can be claimed per case.
- 4.4 Preliminary discussions with the Working Group identified two potential approaches which we have considered further. The first would involve a simple pro rata reduction in the current thresholds at which bundle bolt-on fees could be claimed. However, while this would represent a minimal change to current practice, not every FAS case currently receives a bundle payment, as these are only payable where a bundle consists of more than 350 pages. Given that more cases are likely to be

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<sup>5</sup> Practice Direction (PD) 27A – Family Proceedings: Court Bundles, [www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_27a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_27a)

<sup>6</sup> View from the President's Chambers Number 6

<sup>7</sup> Schedule 3 of the Civil Legal Aid (Remuneration) Regulations 2013. [www.legislation.gov.uk/ukxi/2013/422/contents/made](http://www.legislation.gov.uk/ukxi/2013/422/contents/made)

eligible for bundle payments if the thresholds are lowered, the Government considers that there would be a high risk that such a change might result in a higher number of cases receiving a bundle bolt-on than currently happens, increasing costs to the legal aid fund unless, for example, the payment levels were reduced as well.

- 4.5 An alternative approach also considered, would be to replace the current bundle bolt-on fee with a preparation fee payable in respect of the total amount of material that the advocate had to examine to prepare the case, including material not submitted in the court bundle, which could then be claimed at the relevant hearing. Such a change would retain the current thresholds in order to determine when the bolt-on could be claimed and would involve either the judge being required to examine and certify at the hearing all the material that the advocate had considered in preparing the case, or have the advocate self-certifying the amount of material that they had considered. However, without an independent verification mechanism, there is a potential risk that providers would routinely claim higher bolt-on fees than would currently be the case. In addition, given the focus on streamlining procedures in the new FC, the Government does not wish to increase the amount of work that judges need to undertake if not directly related to the disposal of the case.
- 4.6 We do not consider that either of these options meet the overarching principles (at para 2.8) and are therefore seeking further views.
- 4.7 Under FAS, the number of pages in a court bundle was intended to be one measure of the complexity of the case. Given that the President has indicated that in future court bundles may be limited in size as he wishes to ensure that judges are not undertaking unnecessary work in the disposal of cases, then there is a risk that a form of payment that is based on the volume of material considered in a case, may not be an appropriate measure of complexity in the future. Therefore, an alternative approach might be to consider restructuring payment for court bundles in the new FC – perhaps by aligning court bundle payments with other current bolt-on payments for complexity in FAS, i.e. higher fees may be claimed where there is cross examination of an expert; where a client is facing allegations that they have caused significant harm to a child; and in public law proceedings where representing a client who has difficulty in giving instructions. This approach would retain an effective independent verification process while still ensuring that advocates received appropriate remuneration for complex cases. We would, however, welcome views on how we might ensure that advocates remain appropriately remunerated under such an approach.
- 4.9 We recognise that there may be other approaches that might satisfy the overarching principles (at paragraph 2.8). We would be interested in any other suggestions that would do so.

## Next Steps

- 4.10 Once the detail of any changes to the PD on Court Bundles have been announced and it is clear how this would impact on current practice we will determine what changes might be appropriate to current FAS bolt-on fees and, in light of responses to this exercise, whether we need to consult further.

## Consultation Questions

**Q3.** Do you agree that the current system of bolt-on fees for court bundles payable under 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 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.

## Chapter 5: Equality Statement

- 5.1. The Government is mindful of the importance of considering the impact of the legal aid proposals on different groups, with particular reference to the providers of legally aided services.
- 5.2. In accordance with our duties under the Equality Act 2010, we have considered the impact of the proposals on individuals sharing protected characteristics in order to give due regard to the need to eliminate unlawful conduct, advance equality of opportunity and foster good relations.
- 5.3. We do not consider that the proposed change to the Family Legal Aid Scheme Framework (FLASF) is likely to have any equality impacts on clients or providers since it relates solely to a cost neutral change to the structure of the current fee scheme. We would, however, welcome any views on equality impacts relating to either FLASF or the options being considered in relation to court bundle payments, as well as other suggestions you may propose and related data sources as per the equalities questions below.
- 5.4. Our assessment of the potential impact of these proposals on providers can be found in Annex B, which should be read in conjunction with these proposals.

### Consultation Questions

**Q6.** What do you consider to be the equalities impacts on individuals with protected characteristics of the proposal to restructure the FLASF and the changes explored in relation to court bundles?

**Q7.** Are you able to provide any relevant evidence or sources of information that will help us to understand and assess those impacts?

## About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
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.

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## Contact details/How to respond

To make responding to this consultation easier and to assist Government in analysing the responses it receives, we would encourage respondents to use the online consultation tool at <https://consult.justice.gov.uk>.

Alternatively, please send your response electronically, by email, to Christine Okiya at [Christine.Okiya@justice.gsi.gov.uk](mailto:Christine.Okiya@justice.gsi.gov.uk).

### Publication of response

A paper summarising the responses to this consultation will be published early 2014. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

### 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 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.

## Consultation principles

Responses to the consultation should be made using the on-line survey. However, if you have any complaints or comments about the consultation process you should contact Sheila Morson on 0203 334 4498, or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Ministry of Justice  
Consultation Coordinator  
Better Regulation Unit  
Analytical Services  
7<sup>th</sup> Floor, 7.02  
102 Petty France  
London SW1H 9AJ**





## Annex A: 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<sup>8</sup>

Current payment tier							Proposed Family Court payment tier (subject to Parliamentary approval)						
Party	Court	No of Clients	Midlands	North	London and South	Wales	Party	Level of Judge	No of Clients	Midlands	North	London and South	Wales
Child	Other	1	£1949	£1598	£2237	£2183	Child	Lay bench, District Judge or Circuit Judge	1	£1754	£1438	£2013	£1965
Child	Other	2+	£2922	£2396	£3355	£3275	Child	Lay bench, District Judge or Circuit Judge	2+	£2630	£2156	£3019	£2947
Child	High Court	1	£2591	£2125	£2975	£2903	Child	High Court	1	£2332	£1913	£2677	£2613
Child	High Court	2+	£3887	£3188	£4461	£4354	Child	High Court	2+	£3498	£2869	£4015	£3919
Joined Party	Other		£1033	£798	£1201	£1301	Joined Party	Lay bench, District Judge or Circuit Judge		£930	£718	£1081	£1171
Joined Party	High Court		£1374	£1602	£1597	£1730	Joined Party	High Court		£1237	£1442	£1437	£1557
Parent	Other	1	£2556	£2123	£2907	£2633	Parent	Lay bench, District Judge or Circuit Judge	1	£2300	£1911	£2616	£2370
Parent	Other	2	£3196	£2653	£3633	£3291	Parent	Lay bench, District Judge or Circuit Judge	2	£2876	£2388	£3270	£2962
Parent	High Court	1	£3399	£2823	£3866	£3502	Parent	High Court	1	£3059	£2541	£3479	£3152
Parent	High Court	2	£4249	£3530	£4832	£4378	Parent	High Court	2	£3824	£3177	£4349	£3940

<sup>8</sup> [www.legislation.gov.uk/uksi/2013/422/contents/made](http://www.legislation.gov.uk/uksi/2013/422/contents/made) (includes 10% reduction from change occurring from Transforming Legal Aid, subject to Parliamentary approval)

Table 9(a) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013<sup>9</sup>

Current payment tier			Proposed Family Court payment tier (subject to Parliamentary approval)		
Activity	Higher Courts	County Court & Family Proceedings Court	Activity	High Court Judge	Lay bench, District Judge and Circuit Judge
Routine letters out	£4.23 per item	£3.69 per item	Writing routine letters	£4.23 per item	£3.69 per item
Receiving routine letters	£2.12 per item	£1.85 per item	Receiving routine letters	£2.12 per item	£1.85 per item
Routine telephone calls	£4.23 per item	£3.69 per item	Routine telephone calls	£4.23 per item	£3.69 per item
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

Current payment tier			Proposed Family Court payment tier		
Activity	Higher Courts	County Court & Family Proceedings Court	Activity	High Court Judge	Lay bench, District Judge and Circuit Judge
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

<sup>9</sup> (includes 10% reduction from change occurring from Transforming Legal Aid, subject to Parliamentary approval)

## Private Family Law Representation Scheme

Table 3(f) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013

Current payment tier				Proposed Family Court payment tier			
Region	Court	Family help (higher) Standard Fee	Legal Representation Standard Fee	Region	Level of Judge	Family help (higher) Standard Fee	Legal Representation Standard Fee
London	Court other than the High Court or Court of Protection	£424	£302	London	Lay bench, District Judge or Circuit Judge	£424	£302
London	High Court or Court of Protection	£509	£362	London	High Court Judge	£509	£362
Non-London	Court other than the High Court or Court of Protection	£353	£251	Non-London	Lay bench, District Judge or Circuit Judge	£353	£251
Non-London	High Court or Court of Protection	£424	£302	Non-London	High Court Judge	£424	£302

Table 3(g) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013

Current payment tier					Proposed Family Court payment tier				
Region	Court	Family help (higher) Standard Fee	Family help (higher) Settlement Fee	Legal Representation Standard Fee	Region	Level of Judge	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	Lay bench, District Judge or Circuit Judge	£471	£95	£374
London	High Court or Court of Protection	£565	£113	£449	London	High Court Judge	£565	£113	£449
Non-London	Court other than the High Court or Court of Protection	£392	£78	£311	Non-London	Lay bench, District Judge or Circuit Judge	£392	£78	£311
Non-London	High Court or Court of Protection	£471	£95	£374	Non-London	High Court Judge	£471	£95	£374

Table 3(h) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013

Current payment Tier			Proposed Family Court payment tier		
Region	Court	Legal Representation Standard Fee	Region	Level of Judge	Legal Representation Standard Fee
London	Court other than the High Court or Court of Protection	£608	London	Lay bench, District Judge or Circuit Judge	£608
London	High Court or Court of Protection	£729	London	High Court Judge	£729
Non-London	Court other than the High Court or Court of Protection	£507	Non-London	Lay bench, District Judge or Circuit Judge	£507
Non-London	High Court or Court of Protection	£608	Non-London	High Court Judge	£608

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

Current payment tier			Proposed Family Court payment tier		
Activity	Higher Courts	County Court & Family Proceedings Court	Activity	High Court Judge	Lay bench, District Judge and Circuit Judge
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

Table 1(a) of Schedule 3 to the Civil Legal Aid (Remuneration) Regulations 2013

Current payment tier							Proposed Family Court payment tier						
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)	Level of Judge	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 Bench	£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

Current payment tier							Proposed Family Court payment tier						
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)	Level of Judge	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 Bench	£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

Current payment tier						Proposed Family Court payment tier					
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)	Level of Judge	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 Bench	£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

Current payment tier				Proposed Family Court payment tier			
<i>Court</i>	<i>Hearing Unit 1 (up to 1 hour)</i>	<i>Hearing Unit 2 (up to 2.5 hours)</i>	<i>Final Hearing Fee (per day)</i>	<i>Level of Judge</i>	<i>Hearing Unit 1 (up to 1 hour)</i>	<i>Hearing Unit 2 (up to 2.5 hours)</i>	<i>Final Hearing Fee (per day)</i>
Family Proceedings Court	£81.50	£203.76	£361.17	Lay Bench	£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

Current payment tier									Proposed Family Court payment tier								
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)	Level of Judge	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 Bench	£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



## Civil cases heard in the Family Courts

Table 10(a) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013

Current payment tier			Proposed Family Court payment tier		
Activity	Higher Courts	County Court & Family Proceedings Court	Activity	High Court Judge	Lay bench, District Judge and Circuit Judge
Routine letters out	£6.75 per item	£5.94 per item	Routine letters out	£6.75 per item	£5.94 per item
Routine telephone calls	£3.74 per item	£3.29 per item	Routine telephone calls	£3.74 per item	£3.29 per item
Preparation and attendance (London rate)	£71.55 per hour	£63.00 per hour	Preparation and attendance (London rate)	£71.55 per hour	£63.00 per hour
Preparation and attendance (non-London rate)	£67.50 per hour	£59.40 per hour	Preparation and attendance (non-London rate)	£67.50 per hour	£59.40 per hour
Attendance at court or conference with counsel	£33.30	£29.25	Attendance at court or conference with counsel	£33.30	£29.25
Advocacy	£67.50 per hour	£59.40 per hour	Advocacy (London rate)	£67.50 per hour	£59.40 per hour
Travelling and waiting time	£29.93 per hour	£26.28 per hour	Travelling and waiting time	£29.93 per hour	£26.28 per hour



## Annex B – Equality Impacts

1. As the proposed change to the FLASF is intended to be cost neutral, we do not anticipate a change in the behaviour of providers or advocates and therefore do not anticipate any indirect impacts on clients. We do not consider that the proposed change to the FLASF will have an adverse impact on providers or advocates. Moreover, because any effect on providers or advocates will depend on the level of judge to which a case is allocated, which depends on the criteria determining complexity of a case which is not yet known, all providers are equally likely to be affected to the same extent. To identify the characteristics of those affected, (were the proposal to result in particular disadvantage) we matched LSRC survey data to 1,403 of the 2,103 solicitor firms (a match rate of 67%) that provided representation in public family law cases in 2011/12. These firms would potentially be impacted by the proposal. Based on the data available, the managerial make-up of these firms was as follows:
  - 90% White-British, 7% BAME and 3% split-majority owned/controlled;
  - 65% male, 17% female and 18% split-majority owned/controlled;
  - 5% of firms employed an ill or disabled manager.
2. This analysis does not include data on providers who undertook private family law only before April 2013. Given the significant reductions in the volume of private family law cases now funded under legal aid, we expect the current providers undertaking private family law only to be the minority and therefore consider it reasonable to assume that these figures are likely to be fairly representative of all family legal aid providers at this time.
3. In common with all civil & family legal aid providers for whom data is available, those managing firms engaged in public family law work (where equalities data is held) were more likely to be male, and non-disabled than in the general population. We concluded that these providers will not be disproportionately impacted.
4. In respect of the Bar, an analysis of the profile of the self employed Bar profession<sup>10</sup> indicates that the majority of barristers tend to be located in the South East of England, with a gender profile predominantly male (approximately 68% of all self-employed barristers) in comparison to women (which equates to around 32%). In terms of ethnicity, the profession tends to be predominately white (80%) compared to 10% categorised as BAME and 10% where no data has been recorded. It is estimated that the proportion of barristers undertaking publicly funded work in the civil area is approximately 19% and in the family area 54%.<sup>11</sup> We concluded that these providers will also not be disproportionately impacted.

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<sup>10</sup> Information extracted from the Bar Barometer Trends in the profile of the Bar (November 2012) and Barrister's working lives – A biennial survey of the Bar 2011.

<sup>11</sup> [www.barstandardsboard.org.uk/media/1385164/barristers\\_working\\_lives\\_30.0.12\\_web.pdf](http://www.barstandardsboard.org.uk/media/1385164/barristers_working_lives_30.0.12_web.pdf)

## Conclusion

5. We consider that there will be no adverse impact or particular disadvantage as a result of the proposed FLASF change. All providers and advocates are equally likely to be affected to the same extent. Were there any particular disadvantage to result, we believe the proposal to be a proportionate means of achieving the legitimate aim of ensuring the family legal aid fee schemes operate effectively under the structure of the new FC.

## Annex C – Glossary

Acroynm	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.
FLASF	Family Legal Aid Scheme Framework	Referred to in the consultation paper and concerns the framework under which remuneration is made to the legal profession for the provision of family legal aid services.
FPC	Family Proceedings Court	The Family Proceedings Court (FPC) is the name given to the Magistrates' Court where 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

		<p>Division if a King is assuming the throne) - civil disputes for recovery of money, including breach of contract, personal injuries, libel/slander;</p> <p>ii) Family - concerned with matrimonial matters and proceedings relating to children, e.g. wardship;</p> <p>iii) Chancery - property matters including fraud and bankruptcy</p>
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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