

Title: Transforming Legal Aid: Scope, Eligibility, Merits (Criminal Legal Aid) IA No: MoJ195 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 05/09/2013			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
Contact for enquiries: Simon.Denison Simon.Denison@justice.gsi.gov.uk				
Summary: Intervention and Options				RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	No	NA

What is the problem under consideration? Why is government intervention necessary?

We are concerned that limited public resources should be targeted at the people and cases where funding is most needed to ensure the legal aid scheme commands the confidence of the public and is credible. The changes to the scope of criminal legal aid for prison law are intended to focus public resources on cases that are of sufficient priority to justify the use of public money. The proposals to introduce a financial eligibility threshold is intended to ensure that the wealthiest Crown Court defendants, who are able to pay privately, are not automatically provided with legal aid at the taxpayer's expense. The Government is responsible for the terms and conditions of access to legal services funded by the legal aid budget; hence government intervention is necessary in order to make any changes.

What are the policy objectives and the intended effects?

The intention is to ensure public confidence in the legal aid scheme by targeting limited public resources at those cases which justify it and those people who need it.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options have been assessed against the base case of 'no change' to legal aid scope:

Option 0: Do nothing.

Option 1: Remove from the scope of prison law any case which did not involve the determination of a criminal charge for the purposes of Article 6 ECHR (right to a fair trial); are proceedings before the Parole Board where the Parole Board has the power to direct release; are sentence calculations matters where the date of release is disputed; or require representation as a matter of natural justice (by engaging the 'Tarrant' criteria set out in case law – see footnote 2).

Option 2: Introduce a financial eligibility threshold of £37,500 or more annual disposable household income for access to legal aid in the Crown Court.

Will the policy be reviewed? We will monitor the impacts of the policy. If applicable, set review date:

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 05/09/2013

Summary: Analysis & Evidence

Policy Option 1

Description: To amend the scope of criminal legal aid for prison law. This will restrict prison law funding to those cases which involve the determination of a criminal charge for the purposes of Article 6 ECHR, are proceedings before the Parole Board where the Parole Board has the power to direct release; are sentence calculation cases where the date of release is disputed; or are Tarrant cases (see footnote 2). This will focus legal aid spending on prison law cases that justify the use of public funds.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Optional
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	Negligible		£4m		Optional
Description and scale of key monetised costs by 'main affected groups'					
<p>Legal Aid Clients: Prisoners are estimated to receive approximately £4m per annum less in legal aid funding for approximately 11,000 fewer prison law cases a year. Please note caveats on expected savings at paragraph 30.</p> <p>Legal Aid Providers: Legal aid providers are expected to experience a decrease in their income.</p>					
Other key non-monetised costs by 'main affected groups'					
<p>National Offender Management Service: More prisoners might use the prisoner complaints, discipline procedures and probation complaints system routes to address their grievances.</p> <p>Prison & Probations Ombudsman: more prisoners might have their case investigated by the Prison and Probations Ombudsman.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	Negligible		£4m		Optional
Description and scale of key monetised benefits by 'main affected groups'					
<p>Legal Aid Fund: The proposal is estimated to reduce legal aid expenditure by approximately £4m per annum in steady state with around 11,000 fewer cases a year being funded.</p>					
Other key non-monetised benefits by 'main affected groups'					
<p>Wider benefits: It is expected that this proposal will have the wider benefit of helping to command public confidence in the legal aid system resulting from the narrowing of the scope of criminal legal aid for Prison Law.</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
<p>- The applicants no longer eligible for criminal legal aid for prison law are assumed not to receive criminal legal aid funding through other routes. Some prison law cases removed from the scope of criminal legal aid might be funded via the civil legal aid scheme through, for example, the Judicial Review (JR) route if they meet the civil legal aid merits and means criteria. However, funding for JR would be at a different stage of the process, i.e. for a retrospective review of a decision rather than prior to or at the time of the decision.</p> <p>- There is uncertainty in estimating the impact of the prison law policy on the volumes of cases. The Legal Aid Agency (LAA) data does not allow a definitive estimate of the number of cases impacted by this policy.</p>					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Crown Court Eligibility Threshold: To introduce a financial eligibility threshold of £37,500 or more annual disposable household income for applicants for legal aid in the Crown Court. We will include a hardship provision to ensure access to legal aid and compliance with Article 6 ECHR for those who exceed the threshold but demonstrate that they cannot in fact afford to pay for their defence. We will reimburse acquitted Crown Court defendants from Central Funds at legal aid rates in line with the position in the magistrates' courts.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Optional
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low		Optional	Optional		Optional
High		Optional	Optional		Optional
Best Estimate		Negligible	£3m		Optional
Description and scale of key monetised costs by 'main affected groups'					
Legal Aid Fund: Crown Court means testing (CCMT) income will be lost. This is estimated to cost approximately less than £1m per annum.					
Central Funds: Defendants excluded from receiving legal aid under this option who are subsequently acquitted will be eligible to claim back their defence costs from Central Funds at legal aid rates. This is estimated to cost approximately £1m per annum.					
Legal Aid Clients: Defendants are estimated to receive approximately £2m per annum less once reimbursements to acquitted defendants and CCMT income contributions are taken into account.					
Other key non-monetised costs by 'main affected groups'					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low		Optional	Optional		Optional
High		Optional	Optional		Optional
Best Estimate		Negligible	£3m		Optional
Description and scale of key monetised benefits by 'main affected groups'					
Legal Aid Fund: savings are estimated to be approximately £3m per annum.					
Other key non-monetised benefits by 'main affected groups'					
Wider benefits: It is expected that this proposal will have the wider benefit of helping to command public confidence in the legal aid system resulting from the wealthiest Crown Court defendants not being able to automatically receive legal aid.					
Key assumptions/sensitivities/risks					Discount rate (%)
<ul style="list-style-type: none"> - The cases no longer within the scope of legal aid are assumed not to receive legal aid funding through other routes. - The data does not allow an estimation of the volume of cases which might be successful in obtaining hardship funding. This might decrease estimated savings. - There is a risk that defendants who currently do not apply for legal aid in the Crown Court and are acquitted make a claim to Central Funds which would increase the costs to Central Funds. 					

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Evidence Base (for summary sheets)

Introduction

Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's (MoJ's) consultation on "*Transforming Legal Aid: next steps*". The associated consultation document was published on 5 September 2013 and can be found at: www.justice.gov.uk
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services. Expenditure accrued to the legal aid fund was just over £1.9bn in 2012/13. Approximately £975m was spent on criminal legal aid, with the remaining £940m spent on civil legal aid¹. The Legal Aid Agency (LAA) is responsible for administering the legal aid scheme in England and Wales.
3. The criminal legal aid scheme makes provision for individuals to access advice and assistance (including advocacy assistance) when detained in custody or the subject of criminal proceedings. This includes legal aid both for individuals before the courts and for serving prisoners in prison law matters (on remand or sentenced). The current scope of criminal legal aid is set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the circumstances in which criminal legal aid advice and assistance is available are set out in the Criminal Legal Aid (General) Regulations 2013. The Crown Court means-testing regime is set out in the Criminal Legal Aid (Contribution Orders) Regulations 2013, and financial eligibility rules are set out in the Criminal Legal Aid (Financial Resources) Regulations 2013.
4. Individuals subject to proceedings in the Crown Court are currently deemed to be eligible for legal aid on the grounds that the interests of justice test is always passed, in particular due to the potential seriousness of the penalty they face although other factors are considered. Applicants are subject to a means test and may have to make a contribution of up to 100% of the cost of their case depending on their income and capital as assessed by the LAA.
5. There have been significant reforms to civil legal aid following the Government's 2010 *Proposals for the Reform of Legal Aid in England and Wales*. However, the scope of and eligibility for the criminal legal aid scheme were not considered in that consultation.

Policy Objectives

6. We are concerned that limited public resources should be targeted at those criminal cases which justify it ensuring that the public can have confidence in the legal aid scheme. The legal aid scheme should be as fair on taxpayers as on legal aid applicants. We do not believe it is right for the taxpayer to pick up the bill for those who can afford to pay for their own defence, and, in relation to prison law, matters that are not of sufficient priority to justify public money (alternative means of redress such as the prisoner complaints system should be the first port of call for issues removed from the scope of criminal legal aid).

Policy

7. The policy proposals considered in this Impact Assessment are as follows:
 - (i) To amend the scope of criminal legal aid advice and assistance for prison law.
 - This will restrict prison law funding to those cases which involve the determination of a criminal charge for the purposes of Article 6 ECHR, are proceedings before the Parole Board where the Parole Board has the power to direct the release; are sentence calculation cases;

¹ Rounded to the nearest £5m. Source: <http://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf>

or are Tarrant cases². This will focus criminal legal aid spending on prison law cases that are of sufficient priority to justify the use of public funds.

- We will oblige applicants for criminal legal aid advice and assistance in sentence calculation matters to have made use of the internal prisoner complaints system and sentence calculation helpline before making an application. This will ensure that legal aid would only be available once alternative means of redress (such as the prisoner complaints system and sentence calculation helpline) have been exhausted. Providers would need to give reasons as to why the matter was not suitable to be dealt with via the complaints system or helpline.
- (ii) To introduce a financial eligibility threshold of £37,500 annual disposable household income for applicants for legal aid in the Crown Court. We will include a hardship provision to ensure access to legal aid and compliance with Article 6 ECHR for those who exceed the threshold but demonstrate that they cannot in fact afford to pay for their defence. We will reimburse acquitted Crown Court defendants from Central Funds at legal aid rates in line with the position in the Magistrates' courts

Main affected groups

8. The proposals will affect the following groups:

- Legal aid service providers
- Legal aid clients
- The Legal Aid Agency (LAA) – formerly the Legal Services Commission (LSC)
- National Offender Management Service (NOMS)
- The Ministry of Justice
- The Prison & Probation Ombudsman

Costs & Benefits

9. This Impact Assessment identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society might be from implementing the options considered. The costs and benefits of each option are compared to the 'do nothing' option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised which might include how the proposals impact differently on particular groups of society or changes in equity and fairness.

² When a prisoner attends a disciplinary hearing before a governor the prisoner is asked whether he wants to obtain legal advice or representation. If the prisoner does not want any legal assistance the hearing proceeds. However, if the prisoner requests legal advice the governor adjourns the hearing for a reasonable time to allow the prisoner to telephone or write to a solicitor. If the prison requests legal representation the governor considers the Tarrant principles. These result from the case of *R v Home Secretary ex parte Tarrant* and require representation should be provided due to:

- the seriousness of the charge/potential penalty;
- a substantive point of law being in question;
- the prisoner being unable to present their own case;
- potential procedural difficulties;
- urgency being required; or
- reasons of fairness to prisoners and staff.

10. All savings figures have been rounded to the nearest £1m. All volume changes have been rounded to the nearest 100 cases below 10,000 volumes and to the nearest 1,000 above 10,000.

Option 0: Do Nothing

11. Prisoners currently receive criminal legal aid for sentencing, treatment, parole and disciplinary matters. If the 'do nothing' option were pursued, then all Prison Law cases currently funded through criminal legal aid would continue to be funded by the scheme.
12. Currently all defendants in the Crown Court are automatically granted legal aid at the outset, and are subsequently subject to a means test and may have to make a contribution of up to 100% of the cost of their case depending on their income and capital as assessed by the LAA. If the 'do nothing' option were pursued then all applicants for legal aid in the Crown Court would continue to be eligible for legal aid upfront, subject to subsequent means-tested contributions.
13. As this option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1 – Scope Change for prison law matters

Description

14. This option entails amending the scope of criminal legal aid for prison law matters to exclude all prison law cases that do not involve the determination of a criminal charge for the purposes of Article 6 ECHR (right to a fair trial), are not proceedings before the Parole Board where the Parole Board has the power to direct release, are sentence calculation cases where the date of release is disputed, or which do not fulfil the criteria as set out in the *R v Home Sec ex parte Tarrant* case.
15. We will also oblige applicants for criminal legal aid in prison law sentence calculation matters to have made use of the internal prisoner complaints system and sentence calculation helpline before making an application. This will ensure that legal aid would only be available once alternative means of redress (such as the prisoner complaints system and sentence calculation helpline) have been exhausted. Providers will need to give reasons as to why the matter was not suitable to be dealt with via the complaints system or helpline.

Assumptions

16. The following assumptions have been made in the estimation of the costs and benefits:
- (i) We assume individuals who no longer receive criminal legal aid will now adopt a range of approaches to resolve issues. They may choose to represent themselves or pay for private representation.
 - (ii) We have assumed that there are no other behavioural changes (e.g. in provider behaviour).
 - (iii) The resource used in non-legally aided dispute resolution is assumed to remain the same as the resource currently used.
 - (iv) Prisoners are assumed to continue to achieve the same case outcomes from non-legally aided means of resolution.
 - (v) The cases no longer within the scope of criminal legal aid and applicants no longer eligible are assumed not to receive legal aid funding through other routes.

Costs

Legal Aid Client Costs

17. Prisoners are estimated to receive approximately £4m per annum less in legal aid funding for approximately 11,000 fewer prison law cases a year. This is based on 2011/12 LAA administrative data.

Legal Aid Providers

18. Legal aid providers are expected to face a fall in demand for their services. However, the precise impact on the provider is dependent upon the behavioural response of the client. This is discussed further in the 'risks and uncertainties' section.

19. There may also be small familiarisation costs associated with the revised scope of criminal legal aid for Prison Law as providers may face increased costs in assessing whether or a not a case is within scope and qualifies for legal aid.

LAA Administration Costs

20. Restricting the scope of criminal legal aid for prison law as proposed might result in a small increase in LAA administration costs due to contract consultation and changes to provider contracts.

National Offender Management Services (NOMS)

21. Cases removed from the scope of legal aid will continue to be eligible to use the prisoner complaints system to resolve issues. NOMS estimate that this costs them approximately £35 per case. There may also be an increase in the use of the prisoner discipline procedure system and the probation complaints system. However, the total cost is unquantifiable as the volumes of cases that will choose to pursue their case through these routes are uncertain.

22. There are also potential resource implications to NOMS that include an increase in self-representation which might take up more of prison officers' time.

23. NOMS will be undertaking work to reinforce compliance with the complaints system to ensure it is adhered to in all establishments.

Prisons and Probation Ombudsman

24. We expect that the majority of prison law cases being removed from the scope of criminal legal aid will be able to be resolved via the prisoner complaints system, prisoner discipline procedures or the probation complaints system. We consider the actions to be taken by NOMS in reinforcing compliance with relevant PSIs, including in relation to the complaints process and those regarding prisoners with protected characteristics (see paragraph 34 of the response), will reduce the likelihood of complaints not being satisfactorily resolved within establishments and so necessitate referral to the PPO. NOMS have also committed to approaching HMIP in relation to a 'complaints' thematic inspection that would highlight any unforeseen impacts.

25. Prisoners may also refer their case to the Independent Monitoring Board or the Parliamentary Commissioner for Administration. The total cost is unquantifiable as the volume of cases that will pursue their case through these routes is uncertain. NOMS will be undertaking work to reinforce compliance with the complaints system which we consider will mitigate the risk of more cases being referred to the PPO.

Benefits

Legal Aid Fund

26. LAA 2011/12 Prison Law spend and volume data has been used to estimate the benefit of this policy. In 2011/12 approximately £23m was spent on almost 44,000 prison law cases. The proposal is estimated to reduce legal aid expenditure by approximately £4m per annum in steady-state with almost 11,000 fewer cases a year being funded

27. It should be noted that we have assumed no savings from the following cost categories:

- Other sentence issues. Please note that it is highly likely additional savings will be delivered through cases in this billing category not being funded. Due to lack of detailed information we are unable to make a definitive assessment. This category accounts for £1m of Legal Aid spend per annum.
- Sentence planning and/or calculations. Please note that sentence planning matters will not be funded and additional savings are expected as a result. However, we are unable to disaggregate spending on sentence planning and sentence calculation matters using the data available. This category accounts for £2m of Legal Aid spend per annum.

28. These categories account for around £3m of Legal Aid spend per annum, and under the proposals outlined above a proportion of this spend will cease to be funded, however as there is no further disaggregation of the data it is not possible to estimate the additional savings that this will deliver.

National Offender Management Service (NOMS)

29. Any decrease in the number of prison treatment and certain sentencing cases prisons are required to defend will lead to administrative savings for NOMS. The volumes impacted will be equal to the volume of cases the proposal removes from the scope of Prison Law. However, this might be offset by an increase in the use of the prisoner complaints system or probation complaints systems. The overall impact is uncertain.

Wider benefits

30. It is expected that this will have the wider benefit of helping to command public confidence in the legal aid system resulting from the narrowing of the scope of criminal legal aid for Prison Law.

Risks and uncertainties

31. The precise behavioural response of the prisoner is uncertain. Prisoners who no longer receive criminal legal aid may choose to address their disputes in different ways. They may represent themselves, seek to resolve issues by themselves, pay for private legal representation, or decide not to tackle the issue at all.
32. The resource used in alternative dispute resolutions is uncertain. The resources used to resolve the dispute may change. However this will depend upon the behavioural responses of prisoner to the policy change which are not known.
33. We believe the work that NOMS are doing to reinforce compliance with the complaints system will be sufficient to mitigate the risk that removing complaints relating to categorisation from the scope of legal aid may lead to some prisoners may remain in higher than appropriate security categories if alternative dispute resolutions are not sufficient. If this were not the case then there would be an additional cost burden to NOMS as the average cost per prison place increases as the categorisation of prisoners increases. Any rise in costs would be likely to be partly offset by the over supply of higher security prison places and an under supply of lower security places in the prison estate at present. There may be some marginal additional costs relating to different transportation or behavioural programme requirements, but it is not possible to estimate the extent of these costs.
34. The outcomes from alternative dispute resolution are uncertain. Prisoner outcomes may change. However, this will depend upon the behavioural responses of prisoners to the policy change which are not known.
35. There is uncertainty in estimating the impact of the Prison Law policy on the volumes of cases. The LAA data does not allow the isolation of all Prison Law cases that are now out of scope. The change in volumes and associated savings might therefore differ from those estimated.
36. Some Prison Law matters removed from the scope of criminal legal aid might still continue to be funded via the civil legal aid scheme for example through the Judicial Review (JR) route if they meet the civil legal aid merits and means criteria. However, this would be for review of a decision already made rather than legal assistance prior to or at the time the decision is made. The cost to the legal aid fund and cost to HMCTS through an increase in cases going to court is dependent on the behavioural response of the legal aid client, which is uncertain. Changes to the merits criteria for civil legal aid are being taken forwards which will mean that the borderline cases will no longer be funded through civil legal aid which will decrease this risk.
37. Prisoners might not be able to obtain privately paid for advice and assistance for the same price as legal aid therefore the costs to prisoners might be higher than stated. However, as outlined in the costs and benefits section, other means of resolution will be available.

Enforcement and Implementation

38. It is intended that these changes will be introduced by way of amendments to secondary legislation and contract amendments in late 2013.
39. LAA staff will be responsible for reviewing prison law claims to ensure that providers are applying the amended scope of criminal legal aid for prison law correctly.

Option 2 – Introduction of a financial eligibility threshold in the Crown Court

Description

40. The proposal is to introduce a financial eligibility threshold for access to legal aid in the Crown Court of £37,500 or more annual disposable household income, to be assessed by the LAA. We will include a hardship provision to ensure access to legal aid to ensure compliance with Article 6 ECHR for those who exceed the threshold but demonstrate that they cannot in fact afford to pay for their defence. We will reimburse acquitted Crown Court defendants from Central Funds at legal aid rates in line with the position in the magistrates' courts.

Assumptions

41. The estimated saving to the Legal Aid Fund is calculated by combining 2011/12 data on the average Crown Court legal aid case cost³ for each offence type, with data on the disposable income of defendants for cases that started within Jan-June 2012⁴, scaled up to represent a full year's worth of cases. The savings to the fund are estimated by multiplying the annual number of cases with disposable income in excess of £37,500 by average case costs.
42. The potential lost income contributions to the LAA are estimated by calculating the monthly Income Contribution Order (ICO) amount due for each ineligible defendant, applying the average case length by offence type (capping at 6 months as this is the maximum number of monthly payments under CCMT) to scale up to the total amount due and adjusting this for the average proportion collected by offence type by the LAA since the inception of CCMT.
43. The number of defendants acquitted and therefore eligible to claim their costs back from Central Funds (at legal aid rates) was estimated by applying acquittal rates⁵ to cases in the data where the disposable income is judged to have exceeded £37,500, and applying the average Crown Court legal aid case cost for the relevant offence category. LAA data suggests around a third of defendants with disposable income of over £37,500 were acquitted⁶.
44. The following assumptions have been made in the estimation of the costs and benefits:
- (i) We assume individuals who no longer receive legal aid will now adopt a range of approaches to resolve issues.
 - (ii) We have assumed that there are no other behavioural changes (e.g. in provider behaviour).
 - (iii) All defendants currently applying for legal aid in the Crown Court are assumed to continue to do so following the proposed changes.

³ By combining the 2011/12 LGFS and AGFS data sets to generate whole case costs.

⁴ Data from this time period was chosen to ensure consistency with internal eligibility modelling which allows monthly income contributions to be calculated.

⁵ For defendants with disposable income of £37,500 or above whose case started within Jan-June 2012.

⁶ A small number of defendants with disposable income over £37,500 were neither convicted or acquitted and were classed in the data as 'awaiting outcome'. The probability of defendants with disposable income over £37,500 being acquitted where an outcome was available was applied to the volumes 'awaiting outcomes' to provide an estimate of the acquitted volumes.

Costs

Legal Aid Client Costs

45. Approximately 200 Crown Court defendants are estimated to receive £3m per annum less in legal aid funding. However, legal aid defendants above the threshold are estimated to no longer be required to pay less than £1m per annum in legal aid contributions. In addition, Crown Court defendants who are no longer eligible for legal aid and acquitted are estimated to claim back around £1m per annum from Central Funds. The net cost to the legal aid clients is therefore approximately £2m⁷ per annum.

Legal Aid Fund

46. There will be a loss of Crown Court means testing (CCMT) legal aid contributions from defendants who would currently be liable to pay these contributions. LAA administrative data for Jan-June 2012 has been used to estimate that this is likely to be less than £1m per annum in steady state.

Legal Aid Providers

47. Legal aid providers may face a fall in demand for their services. The precise impact on the provider is dependent upon the behavioural response of the client. However, we expect that there is likely to be a corresponding increase in the demand for privately funded work. This is discussed further in the 'risks and uncertainties' section.

LAA Administration Costs

48. The LAA will face an increase in ongoing costs from dealing with the hardship review for applicants with a disposable income of £37,500 or more.

HMCTS Costs

49. HMCTS might incur some small one-off administration costs associated with changing guidance and means testing forms.

Central Funds

50. There will be an increased cost to the Central Funds from acquitted defendants being eligible to claim back their private defence costs at legal aid rates. LAA administrative data suggests that approximately a third of all Crown Court defendants in 2011/12 with annual disposable income of £37,500 or greater were acquitted. It is estimated that Central Funds costs might increase by approximately £1m per annum in steady state based on the average cost of the offence type of the cases estimated to be no longer eligible for legal aid in the Crown Court. Please note caveats on the impact on Central Funds account paragraph 60.

Benefits

Legal Aid Fund

51. Jan-June 2012 LAA administrative data has been used to estimate the savings from implementing this policy proposal. In 2011/12 an estimated £3m was spent on almost 200 Crown Court cases where the defendant's disposable household income was greater than £37,500.

Wider benefits

52. It is expected that this proposals will have the wider benefit of helping to command public confidence resulting from the wealthiest defendants not being able to automatically receive legal aid.

⁷ Totals may not sum to their component parts due to rounding.

Risks and uncertainties

53. The precise behavioural response of the client is uncertain. Individuals who no longer receive criminal legal aid may choose to address their disputes in different ways. They may represent themselves in court or pay for private legal representation. However, we do not expect an increase in litigants in person due to affordability concerns as a result of the hardship review provision and expect that there is likely to be a corresponding increase in the demand for privately funded work.
54. The resource used in alternative dispute resolutions is uncertain. The resources used to resolve the dispute may change. For example, defendants may not be able to obtain advice and representation for the same price as legal aid, therefore the costs to them of the alternative dispute resolution may be higher than stated. However this will depend upon the behavioural responses of clients to the policy change which are not known.
55. The client outcomes from alternative dispute resolution are uncertain. Client outcomes may change. However, this will depend upon the behavioural responses of clients to the policy change which are not known.
56. There is a risk that some of the estimated savings might be offset by defendants who are eligible for hardship funding, but there is no available data to estimate the number of defendants who might be eligible for hardship funding.
57. Defendants who currently choose to pay privately may apply for legal aid where they would not do so at present or submit financial details which show them to be above the threshold in order to ensure reimbursement at legal aid rates if acquitted. If this were to occur there is a financial risk to central funds. However, the extent to which this risk will arise is highly dependent on defendant behaviour.

Enforcement and implementation

58. Subject to the outcome of the consultation, it is currently anticipated that this proposal will be implemented through secondary legislation to be laid in Autumn 2013.
59. The changes would be enforced by HMCTS staff processing CDS15 forms (financial statement for legal aid in criminal proceedings). Changes would be required to IT systems and guidance to ensure the changed process was efficient and effective. Hardship reviews would need to be undertaken by LAA staff.