

Summary of Legal Aid Reforms 21 June 2011

Criminal Legal Aid

Remuneration

The Government proposes to:

- implement an overall fee of £565 for either way cases deemed suitable for summary trial, but with the fee split between litigation and advocacy; and to enhance the lower and higher standard fee in the magistrates' court, and to abolish the committal hearing fee;
- reduce Crown Court fees for cracked cases by 25%, leaving the fees for guilty pleas unaltered;
- align the fees paid in cases of murder and manslaughter with those paid in cases of rape and other serious sexual offences;
- remove the distinction between cases of dishonesty based on the value of the dishonest act(s) below £100,000;
- remove the premium paid for magistrates' courts cases in London;
- remove separate ancillary payments (or "bolt-on" fees) for sentencing hearings and to subsume sentencing hearings within the standard graduated basic fee as one of the five standard appearances included within the base fee; and
- pay litigators in all cases with an estimated trial length of between 41 and 60 days under individual contracts at rates specified under the Litigators' Graduated Fee scheme, rather than at Very High Cost (Criminal) Case rates.

Civil Legal Aid

Civil and family Remuneration

The Government proposes to:

- Reduce all fees and hourly rates in civil and family matters by 10%;
- cap, and set criteria for, enhancements to hourly rates paid to solicitors in civil cases generally but apply the 100% cap on enhancements to civil (non-family) cases in the Upper Tribunal;

- codify the rates paid to barristers in civil proceedings, and to reduce them by 10%;
- cap enhancements to the hourly rates paid to solicitors in family cases;
- restrict the use of Queen’s Counsel in family cases using criteria similar to those applied in criminal cases;
- pay cases funded, in future, through the new scheme for excluded cases, at the current fixed fee or hourly rate in the relevant Category, subject to the proposed reduction of 10%

Scope

The following cases and proceedings are proposed to be **removed** from scope

- **asylum support**
except where accommodation is claimed.
- **clinical negligence;**
- **consumer and general contract;**
- **Criminal Injuries Compensation Authority cases;**
- **debt,**
except in cases where there is an immediate risk to the home;
- **employment cases;**
- **education cases,** except for cases of Special Educational Needs;
- **housing matters**
except those where the home is at immediate risk (excluding those who are “squatting”), homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the county court
- **immigration cases (non-detention);**
- **miscellaneous (specified matters):**
appeals to the Upper Tribunal from the General Regulatory Chamber of the First- tier Tribunal, cash forfeiture actions under the Proceeds of Crime Act 2002, legal advice in relation to a change of name, actions relating to contentious probate or land law, court actions concerning personal data, action under section 14 of the Trusts of Land and Appointment of Trustees Act 1996, and legal advice on will-making for (i) those over 70 (ii) disabled people (ii) the parent of a disabled person and (iv) the parent of a minor who is living with the client, but not with the other parent, and the client wishes to appoint a guardian for the minor in a will;

- **private family law**
other than cases where domestic violence or child abuse is present
- **tort and other general claims**
- **Welfare benefits**

Subject to certain exceptions, Legal Aid will **continue** to be available for civil legal services provided in relation to the following areas:

- **Care, supervision and protection of children**
 - orders under section 25 of the Children Act 1989 (“the 1989 Act.”) (secure accommodation);
 - orders under Part 4 of the 1989 Act (care and supervision);
 - orders under Part 5 of the 1989 Act (protection of children);
 - approval by a court under paragraph 19 of Schedule 2 to the 1989 Act (arrangements to assist children to live abroad);
 - parenting orders under section 8 of the Crime and Disorder Act 1998 (“1998 Act”);
 - child safety orders under section 11 of the 1998 Act;
 - orders for contact under section 26 of the Adoption and Children Act 2002 (“the 2002 Act”);
 - applications for leave of the court to remove a child from a person’s custody under section 36 of the 2002 Act;
 - placement orders, recovery orders or adoption orders under Chapter 3 of Part 1 of the 2002 Act (see sections 21, 41 and 46 of that Act);
 - orders under section 84 of the 2002 Act (parental responsibility prior to adoption abroad);
 - any other orders or procedures under an enactment for the care, supervision or protection of children that are prescribed for
- **Special educational needs**
 - Part 4 of the Education Act 1996

- **Abuse of child or vulnerable adult**
 - Abuse of an individual that took place at a time when the individual was a child or vulnerable adult, but only where the services are provided:
 - (a) to the individual, or
 - (b) for the purposes of a claim under the Fatal Accidents Act 1976 for the benefit of the individual's dependants.
- **Mental health & mental capacity**
 - Matters arising under:
 - (a) the Mental Health Act 1983;
 - (b) paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984;
 - (c) the Mental Capacity Act 2005.
- **Community Care**
- **Inherent jurisdiction of High Court in relation to children and vulnerable adults**
- **Unlawful removal of children from UK**
 - The following orders and requirements where the individual is seeking to prevent the unlawful removal of a related child from the United Kingdom:
 - (a) a prohibited steps order or specific issue order (as defined in section 8(1) of the Children Act 1989);
 - (b) an order under section 33 of the Family Law Act 1986 for disclosure of the child's whereabouts;
 - (c) a requirement under section 37 of that Act to surrender a passport issued to, or containing particulars of, the child.
- **Family homes and domestic violence**
 - Home rights, occupation orders and non-molestation orders under Part 4 of the Family Law Act 1996.
 - The following in circumstances arising out of a family relationship:

(a) an injunction following assault, battery or false imprisonment;

(b) the inherent jurisdiction of the High Court to protect an adult.

- **Victims of domestic violence and family matters**

- Civil legal services provided to an adult (“A”) in relation to a matter arising out of a family relationship between A and another individual (“B”) where A has been abused by B or is at risk of being abused by B.

- **Protection of children**

- Civil legal services provided to an adult (“A”) in relation to the following orders and procedures where the child who is or would be the subject of the order is at risk of abuse from an individual other than A:

(a) orders under section 4(2A) of the Children Act 1989 (“the 1989 Act”) (removal of father’s parental responsibility);

(b) orders under section 6(7) of the 1989 Act (termination of appointment of guardian);

(c) orders mentioned in section 8(1) of the 1989 Act (residence, contact and other orders);

(d) special guardianship orders under Part 2 of the 1989 Act;

(e) orders under section 33(1) of the Family Law Act 1986 (“the 1986 Act”) (disclosure of child’s whereabouts);

(f) orders under section 34(1) of the 1986 Act (recovery of child);

(g) any other orders or procedures under an enactment relating to children that are prescribed for

- **Mediation in family disputes**

- **Children who are parties to family proceedings**

- Services provided to a child in relation to family proceedings:

(a) where the child is, or proposes to be, the applicant or respondent;

(b) where the child is made a party to the proceedings by a court under rule 16.2 of the Family Procedure Rules;

(c) where the child is a party to the proceedings and is conducting, or proposes to conduct, the proceedings without a children's guardian or litigation friend in accordance with rule 16.6 of the Family Procedure Rules.

- **Forced marriage**
 - Forced marriage protection orders under Part 4A of the Family Law Act 1996.
- **EU and International agreements concerning children and maintenance**
- **Judicial Review of an enactment, decision, act or omission.**
- **Habeas Corpus**
- **Abuse of position or power by public authority and breach of Convention rights by public authority**
- **Proceedings before the Special Immigration Appeals Commission**
- **Immigration**
 - Detention
Civil legal services provided in relation to:
 - (a) detention under the authority of an immigration officer;
 - (b) detention under Schedule 3 to the Immigration Act 1971;
 - (c) detention under section 62 of the Nationality, Immigration and Asylum Act 2002;
 - (d) detention under section 36 of the UK Borders Act 2007
 - temporary admission
Civil legal services provided in relation to temporary admission to the United Kingdom under:
 - (a) paragraph 21 of Schedule 2 to the Immigration Act 1971;
 - (b) section 62 of the Nationality, Immigration and Asylum Act 2002.
 - residence and restrictions
Restrictions imposed under:

(a) paragraph 2(5) or 4 of Schedule 3 to the Immigration Act 1971 (residence etc restrictions pending deportation);

(b) section 71 of the Nationality, Immigration and Asylum Act 2002 (residence etc restrictions on asylum-seekers).

- right to enter and remain

Rights to enter, and to remain in, the United Kingdom arising from:

(a) the Refugee Convention;

(b) Article 3 of the Human Rights Convention;

(c) the Temporary Protection Directive.

- accommodation for asylum seekers

Services provided in relation to the Secretary of State's powers to provide, or arrange for the provision of, accommodation under:

(a) section 4 or 95 of the Immigration and Asylum Act 1999 (accommodation for persons temporarily admitted and asylum seekers);

(b) section 17 of the Nationality, Immigration and Asylum Act 2002 (support for destitute asylum-seekers).

- **Housing**

- loss of home

Civil legal services provided to an individual in relation to:

(a) court orders for sale or possession of the individual's home, or

(b) the eviction from the individual's home of the individual or others.

Civil legal services provided to an individual in relation to a bankruptcy order against the individual under Part 9 of the Insolvency Act 1986 where:

(a) the individual's estate includes the individual's home, and

(b) the petition for the bankruptcy order is or was presented by a person other than the individual, including services provided in relation to a statutory demand under that Part of that Act.

- Homelessness

Civil legal services provided to an individual who is homeless, or threatened with homelessness, in relation to the provision of accommodation and assistance for the individual under:

(a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);

(b) Part 7 of that Act (homelessness).

- risk to health or safety in rented home

Civil legal services provided to an individual in relation to the removal or reduction of a serious risk of harm to the health or safety of the individual or a relevant member of the individual's family where:

(a) the risk arises from a deficiency in the individual's home,

(b) the individual's home is rented or leased from another person, and

(c) the services are provided with a view to securing that the other person makes arrangements to remove or reduce the risk.

- **Anti-social behaviour**

- Civil legal services provided to an individual in relation to:

(a) an order made in respect of the individual under section 1B of the Crime and Disorder Act 1998 ("the 1998 Act.");

(b) an interim order made in respect of the individual under section 1D of the 1998 Act following an application under section 1B of that Act;

(c) an intervention order made in respect of the individual under section 1G of the 1998 Act in connection with an order under section 1B of that Act;

(d) an anti-social behaviour injunction against the individual under section 153A of the Housing Act 1996.

- **Protection from harassment**

- Civil legal services provided in relation to:

(a) an injunction under section 3 or 3A of the Protection from Harassment Act 1997;

(b) the variation or discharge of a restraining order under section 5 or 5A of that Act.

- **Gang-related violence**
 - Injunctions to prevent gang-related violence under Part 4 of the Policing and Crime Act 2009
- **Victims of sex offences**
- **Proceeds of crime**
 - restraint orders under section 41 of the Proceeds of Crime Act 2002 (“the 2002 Act.”) including orders under section 41(7) of that Act (orders for ensuring that restraint order is effective);
 - orders under section 47M of the 2002 Act (detention of property);
 - directions under section 54(3) of the 2002 Act (distribution of funds in the hands of a receiver);
 - directions under section 62 of the 2002 Act (action to be taken by receiver);
 - orders under section 67A of the 2002 Act (realising property), including directions under section 67D of that Act (distribution of proceeds of realisation);
 - orders under section 72 or 73 of the 2002 Act (compensation);
 - applications under section 351 of the 2002 Act (discharge or variation of a production order or order to grant entry);
 - applications under section 362 of the 2002 Act (discharge or variation of disclosure order);
 - applications under section 369 of the 2002 Act (discharge or variation of customer information order);
 - applications under section 375 of the 2002 Act (discharge or variation of account monitoring orders).
- **Inquests**
 - Inquests under the Coroners Act 1988 into the death of a member of the individual’s family.
- **Environmental pollution**
 - Injunctions in respect of nuisance arising from prescribed types of pollution of the environment.

- **Cross-border disputes**
- **Equality**
 - Contravention of the Equality Act 2010.

Exceptions

The existing exceptional funding scheme will be replaced with a more narrowly drawn scheme which will provide funding for excluded cases where, in the particular circumstances of a case, the failure to do so would be likely to result in a breach of the individual's rights to legal aid under the Human Rights Act 1998 or European Union law.

The Government will also retain the existing significant wider public interest criterion for advocacy in inquest cases.

Qualifying for legal aid

The merits criteria for civil legal aid will be amended so that civil legal aid may be refused in any individual case suitable for alternative funding, such as a Conditional Fee Agreement.

Reforms to financial eligibility in civil and family proceedings

- the same capital eligibility rules to applicants in receipt of "passporting" benefits as other applicants for legal aid, as set out in the consultation;
- retain the 'subject matter of the dispute disregard' and to cap it at £100,000 for all levels of service, as set out in the consultation;
- increase the levels of income based contributions to a maximum of approximately 30% of monthly disposable income, as set out under option 1 of the consultation;

The Community Legal Advice Telephone Helpline

There are plans to implement a mandatory single telephone gateway limited to the following areas of law:

- debt (insofar as it remains in scope);
 - community care;
 - discrimination (claims brought under the Equality Act 2010);
 - and Special Educational Needs
- subject to exceptions

The Government will also introduce a phased expansion of the provision of specialist telephone advice into the areas of law remaining in scope and run a pilot scheme which will further examine the feasibility of offering the option to clients to pay for advice over the telephone.

Expert Fees

The Government proposes to codify the Legal Services Commission's benchmark hourly rates (reduced by 10%) and will continue to develop its longer term plans to reform expert fees.

Alternative Sources of Funding

The Government proposes to introduce a Supplementary Legal Aid Scheme, under which a fixed percentage of 25% the client's damages (but excluding damages for future care and loss) awarded in the legally aided proceedings (including proceedings funded under the exceptional funding mechanism) is repaid to the legal aid fund.

Code of Conduct

The Lord Chancellor must publish a code of conduct to be observed by civil servants, and employees of a body established and maintained by the Lord Chancellor.

The code must include:

- (a) duties to avoid discrimination,
- (b) duties to protect the interests of the individuals for whom services are provided,
- (c) duties to courts and tribunals,
- (d) duties to avoid conflicts of interest,
- (e) duties of confidentiality, and
- (f) duties on persons who are members of a professional body to comply with the rules of the body.