



The Law Society

MoJ Green Paper on legal aid

November 2010

SUPPORTING
solicitors

The MoJ has just published the legal aid Green Paper 'Proposals for the Reform of Legal Aid in England and Wales. The fundamental purpose behind the proposed 'reforms' is to cut the legal aid budget by £350m by 2014-15. A summary of the main proposals is given below:

Criminal legal aid

- No change to scope.
- A single fixed fee of £565 to be introduced for a guilty plea in an either way case tried in the Crown Court which the magistrates' court has determined is suitable for summary trial;
- Lower standard fee for cracks and guilty pleas in the magistrates' court to be enhanced by 25 per cent for either-way cases; funded by the removal of the committal fee under the LGFS.
- Adjustments to some graduated fee categories.
- Some changes to the VHCC scheme, including amending the definition of a VHCC for litigators as well as advocates to cases where the trial is expected to last more than 60 days.
- Advocates' bolt-ons to their graduated fee scheme will be reduced by 50 per cent.
- BVT: The Government proposes to consult on Best Value Tendering during 2011. They say the suggestion put forward earlier this year of 8-10 firms per area has "a number of attractions that merit further consideration". The proposed timetable would open a price tender in some areas in 2011 with contracts in those areas starting in 2012. A rolling timetable for the remaining areas would follow.

Civil and family:

- The following areas will be taken out of scope:
 - Private law family unless there is domestic violence or a forced marriage. Ancillary relief and contact etc will still be funded where there is violence.
 - Non-asylum immigration unless the individual is detained and, asylum support
 - Clinical negligence
 - All consumer, debt unless the home is directly at risk, employment and welfare benefits
 - All education cases with the exception of judicial reviews.
 - Some housing cases. Serious disrepair where health is at risk or the main claim is for an order for repairs and repair as a counterclaim to possession; and possession proceedings will all remain in scope.

- The significant wider public interest test will be removed - cases will not be brought back in on that basis except inquests.

- The following changes to the financial eligibility rules are proposed:
 - Those on means tested benefits will no longer be passported on capital.
 - Clients with capital between £1000 and £3000 will be required to pay a flat sum contribution of £100. It will be collectable by the solicitor and offset against the costs payable by the LSC.
 - The pensioner capital disregard of £100k is abolished.
 - Home equity will count in full, but the mortgage will also count in full, so it will be real equity not notional equity. There is a provision for legal aid to be provided as a loan and charged against the property where the property is worth less than £200k and the client cannot reasonably leverage the equity. This effectively ends civil legal aid for the majority of home owners.
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 - Income contributions will start at the same level, but will be increased from 25% to 35% in the first band, from 33% to 45% in the next band and from 50% to 70% in the top band.

- Civil and family fee changes:
 - Across the board cut of 10% to all hourly rates, fixed and graduated fees. This is claimed to be a simple alternative to more radical restructuring. The problem is that private law family fixed fees were devised with a basket of cases in mind but under the proposals, only the more complex cases will remain
 - Enhancements capped to be capped at 100% for High Court, Court of Appeal and Supreme Court and, at 50% for all other courts.
 - Codification of Counsel "benchmark" rates for non-family civil with 10% reduction.
 - Confirmation that all rates will be frozen in cash terms until 2015. Thus the net impact is very significantly worse than 10%.

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Other proposals

- Proposals to cap experts' fees.
- Alternative sources of funding: Views are invited on interest on client account and a supplemental legal aid fund in which an un-stated proportion of damages would be taken.
- Sir Ian Magee's recommendations for the LSC to become an executive agency of the MoJ are to be implemented, but little detail is given.
- New ideas for improving efficiency and reducing bureaucracy: The Green Paper asks for views but does not present any ideas.

What you should do

- Please read all the chapters of the consultation which apply to the areas of law in which you currently offer legal aid and consider the questions posed.
- Please recall and record sympathetic cases you have dealt with in the past in the areas of law which will not be funded in the future, such as education, private law children and ancillary relief etc.
- Consider the implications of the fee cuts on the viability of your firm.

Next steps

- The Law Society is considering strategies for defending access to justice against the proposed cuts and responding in detail the Green Paper.
- A further Defending Legal Aid e-alert will be issued at the end of next week with further information about how you can participate in opposing the cuts.