



Response to Ministry of Justice Consultation – Legal Aid financial eligibility and Universal Credit

May 2017

Introduction

The Council is concerned that the proposals may impede access to justice for a few, but there is very little data on which to form a view on the extent to which this will affect numbers of those eligible for legal aid.

The impact assessment estimates that for civil and family legal aid around 400 users will be affected – an additional 150 would qualify for non-contributory funding, 250 would now have to make some form of contribution and 100 would lose non-contributory funding. So the net effect on these estimates would be 150 claimants worse off.

Given an overall number of civil legal aid users of 199,000 (July 2015-June 2016), the impact assessment suggests 0.25% of users would be affected. The Government should undertake monitoring and we would suggest a review after one year's operation to establish the actual numbers affected.

Answers to specific Questions

Question 1: Is limiting passporting through the legal aid means tests to Universal Credit recipients with zero income from employment (while continuing to passport recipients of legacy benefits) a reasonable measure to accommodate the expansion of Universal Credit?

The Government's impact assessment estimates that overall there will be approximately 150 people who will lose all or some eligibility to non-contributory civil legal aid. As such, the proposal appears reasonable, although it will require careful monitoring in terms of the numbers actually affected.

One concern is the impact on the administrative costs of the Legal aid Agency – the advantage of 'passporting' is the time saved in assessing eligibility, and on legal aid providers – regarding the latter, the impact assessment (paragraph 38) states that the impact on them cannot be quantified but is expected to be minimal.

Question 2: *Should the total amount for housing in the Universal Credit award be disregarded when assessing a claim for legal aid?*

Disregarding the housing benefit element of Universal Credit is the logical consequence of the core policy proposal. Our concerns with the approach would be the squeeze on the eligibility of people on already low incomes, especially as housing benefit tends to be paid directly to landlords. Care is very important in policy making in this area given the links between housing costs, poverty and material deprivation (see for example the research of the Joseph Rowntree Foundation - <https://www.jrf.org.uk/report/links-between-housing-and-poverty>).

Question 3: *Do you agree with the proposal that where there are contrary interests both parties should be assessed using the Universal Credit award amount for their household circumstances but any earnings would be taken account of separately?*

This would be consistent with existing practice and the logical consequence of the policy reform.

Questions 4-7: Equality Impact Assessment of the reforms

The Equality Statement published alongside the proposals sets out the context and issues. The context is that the characteristics of civil legal aid clients clearly show an over-representation of women (58% civil representation v 51% as proportion of general population), people with disabilities (30% receiving legal help v 18% of population), under 18s and black and ethnic minorities (26% of legal help cases v 13% of population).

Given that context, it seems likely that there will be a disproportionate effect of these proposals on protected characteristic groups as defined by the Equality Act 2010.

The reforms particularly hit the eligibility prospects for those working part-time, and the Statement highlights lone parents (90% of whom are women – ONS, 2015) as being particularly affected. It is difficult to see how these outcomes can be tackled without changing the overall policy rubric and allowing a more flexible and discretionary role to be played by Legal aid Agency officials.