

Transforming Legal Aid:
the next steps

Thompsons response to
Ministry of Justice Consultation
(October 2013)



STANDING UP FOR YOU

The Government has substantially modified its proposals for reform of legal aid after receiving representations from nearly 16,000 organisations and individuals earlier this year.

It is still intent on using procurement to deliver 'significant consolidation of the market' and annual cost savings of £220m. However, it is now proposing a 'modified model' in which prices will be administratively fixed and not used as a criterion for awarding competitively-tendered own client contracts. The new proposals also place no restrictions on the number of own client contracts, giving people the right to select any law firm as long as it meets Government-set standards.

While these changes are steps in the right direction, the proposals still contain major flaws with serious implications for access to justice, which we comment on here.

2) About Thompsons

Thompsons Solicitors has been standing up for the injured and mistreated since the firm was founded by Harry Thompson in 1921. We have fought for millions of people, won countless landmark cases and secured key legal reforms. We have a network of 28 offices across the UK, including the separate legal jurisdictions of Scotland and Northern Ireland.

Thompsons is committed to the trade union movement, working closely with them and with professional associations for the benefit of working people everywhere. On behalf of our trade union clients, we provide union members accused of work-related criminal acts with access to specialist criminal legal services.

We operate specialist criminal law units from a small number of regional centres with very high success rates. The overwhelming majority (95%) of our cases are dealt with as “no further action” or our clients are acquitted.

We specialise in acting for teachers and care workers in abuse and assault cases and emergency workers accused of causing death by dangerous driving. We also specialise in health and safety investigations, inquests and the employment law consequences of criminal investigations.

The latest government proposals accept that people should - as now - be able to choose a law firm that meets their specialist needs. With our success rate, that makes sense for the client and will ultimately save legal aid funds.

3) Access to justice

Thompsons remains very concerned, however, about impact on access to justice of the government's insistence on retaining in its modified proposals a financial eligibility threshold of a household disposable income of below £37,500.

We do not accept the government's argument that this will only hit 'wealthy' Crown Court defendants who are able to pay their legal costs. This threshold will undoubtedly exclude millions of hard working people on average incomes from legal aid, leaving many unable to fund their own defence to prove their innocence.

The calculation of household disposable income only takes account of deductions for tax, National Insurance, limited living costs (such as food and utility bills), housing and child care. Where a household has two incomes of not much more than current average earnings (£24,648), it is likely they will not meet the eligibility test.

Such people - a family with two nurse or teaching incomes or a fire-fighter living with a midwife, exactly the demographic for whom we act - are hardly 'the wealthiest' in society, as the government claims.

This means thousands of people facing false allegations, which often come suddenly and unexpectedly, will have to go into debt to pay for legal costs. Many middle income families will be forced to claim for hardship, which can be humiliating and time-consuming, in order to secure access to justice.

In addition, if they are acquitted, they will only be reimbursed at legal aid rates, which are significantly less than the private rates, leaving individuals who have successfully fought to prove their innocence significantly out of pocket.

We therefore urge the government to reconsider the threshold to avoid unfairness to hard working families.

4) Procurement of legal aid consultation questions

We have considered the limited number of questions in the government's second consultation and answered those that are relevant to us.

Question 1

Do you agree with the modified model described?

The consultation says that under the modified model 'applicants could be individual organisations (such as a partnership or a Legal Disciplinary Practice), a joint venture or an ABS but will need to form a single legal entity'. We understand the Law Society is seeking clarification of what this means. However, at this late stage, the ambiguity of such an important feature of the proposed modified model is unfortunate.

We would also question why, if a provider wishes only to tender for own client work, there is a requirement that there be at least one CLAS qualified member of staff. We believe this is contradictory as a CLAS qualified member would not necessarily be in a position to maintain such a qualification given the restriction to only undertake own client work. Having a Supervisor in place surely fulfils the need for appropriately qualified staff, particularly in view of the requirement to maintain a ratio of Supervisor to casework/advisor of 1:4 throughout the contract term.

Reduction in remuneration is a significant issue in the proposals but we will deal with this at question 4

Question 2

Do you agree with the proposed procurement areas under the modified model?

We have no comment to make.

Question 3

Do you agree with the proposed methodology (including the factors outlined) for determining the number of contracts for Duty Provider Work?

We have no comment to make.

Question 4

Do you agree with the proposed remuneration mechanisms under the modified model?

We continue to share concerns expressed by CLSA and others that a 17.5% reduction in rates is savage when rates have not increased for 16 years despite rising overheads over the same period.

The proposal is for a fixed fee of £258.71 (excluding VAT) for all Magistrates court cases irrespective of plea and including an allowance for travel and waiting. We note there is a threshold for non-standard fee. However, for a trial you would need to have undertaken £587 worth of work to reach the threshold whereas on a guilty plea the threshold is only £355 worth of work. This means work undertaken for a guilty plea is far better remunerated - on an hourly basis - than 'not guilty' work.

This has serious implications for justice. It cannot be right that the system is skewed so as to give a financial incentive to lawyers to encourage clients to plead guilty. This is putting cost cutting before justice.

The proposals for the Crown Court work (of under 500 pages of evidence PPE) will result in a considerable reduction in fees paid, well in excess of the 17.5 % headline figure and, in some cases, by as much as 43%. This threatens the sustainability of criminal law firms, and the proposals do not set out the basis for such a savage reduction in fees.

The 20% reduction in expert fees could deprive the criminal justice system of the most experienced experts whose expertise can make a significant difference to the outcome of a case, thus creating a risk of more miscarriages of justice.

Question 5

Do you agree with the proposed interim fee reduction for all classes of work in scope of the 2010 Standard Crime Contract (except Associated Civil Work)?

We do not agree or accept that it is appropriate to implement a cut in fees as set out above and therefore do not feel able to comment on how best the cuts should be implemented.

Question 6

Which approach do you favour in terms of reforming the Advocates' Graduated Fee Scheme?

We have no comment to make.

Question 7

Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation?

The modified proposals continue to be based on the premise that market consolidation is necessary and, somewhat surprisingly, should be driven by government. We believe that specialist providers - such as those focusing on issues affecting black and ethnic minority groups - will be commercially disadvantaged by consolidation and do not think this has been adequately taken into account.

Question 8

Do you agree that we have correctly identified the extent of impacts under these proposals?

We do not believe the government has demonstrated the extent of the impact of these proposals. The suggestion that the changes to financial eligibility will impact only on the wealthiest is - as we have illustrated above - a nonsense and there is over reliance on the argument that the cuts are 'proportionate and necessary' because of the need to save money. In fact legal aid costs have been coming down without these changes, and there are base costs associated with offering a fair and equal justice system that we believe society and government have to accept are unavoidable and right.

Question 9

Are there forms of mitigation in relation to impacts that we have not considered?

As above

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