



## Price competition and other proposals in the latest Ministry of Justice consultation on legal aid

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Many changes have been made to the way in which the legal aid scheme is organised and managed since its inception in 1949, but it remains a system in which the Government funds private practitioners to provide the service. The previous Government conducted numerous reviews and introduced various reforms and, more recently, the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) has (among other things) reduced the scope of civil legal aid.

The Ministry of Justice's most recent consultation paper [Transforming Legal Aid: Delivering a More Credible and Efficient System](#), published on 9 April 2013, makes a number of proposals for reforms to criminal and civil legal aid with the aim of saving around £220 million of legal aid spending per year by 2018/19.

Proposals relating to criminal legal aid include reducing the scope of legal aid for prison law cases, introducing a financial eligibility threshold for legal aid in the Crown Court and changing the rates of pay for Crown Court advocacy and Very High Cost Cases (VHCCs).

The proposal which the Ministry of Justice estimates will make the single largest saving is the introduction of competitive tendering in the criminal legal aid market. The Ministry of Justice estimate that this would save £122 million per year. This proposal is attracting controversy, as the Law Society and others voice concerns about the potential impact on the legal profession and on the service offered to those needing help.

Proposals relating to civil legal aid include the introduction of a residency test for applicants, changing payments in judicial review cases, requiring cases to have at least a 50% chance of success, and changes to the rates of pay for advocates and solicitors.

This note provides a brief summary of the consultation paper's proposals and the reaction to them.

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## 1 Introduction

The Ministry of Justice's current consultation on legal aid is the latest of a number of reviews, consultations and reforms over recent years. The Library note [SN/HA/5840](#) on the controversy surrounding the Government's plans for reform of legal aid, published in January 2011, provides a summary of the many reviews of legal aid under the previous Government.<sup>1</sup>

Most recently, changes were made by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, which, among other things, changed the scope of civil legal aid, and replaced the Legal Services Commission with the [Legal Aid Agency](#).<sup>2</sup>

The Legal Aid, Sentencing and Punishment of Offenders Bill had its first reading in the House of Commons on 21 June 2011, as Bill 205 of 2010-12, and had its second reading on 29 June 2011. The Government also published [Explanatory Notes](#). The Library has published various briefings on the Bill and the [consultation \(green\) paper](#)<sup>3</sup> that preceded it:

- [Library standard note SN/HA/5840](#) (26 January 2011) offers a broad overview of the Government's plans for legal aid reform as they were published in the consultation (green) paper and the controversy they provoked.
- [Library standard note SN/HA/6273](#) (26 March 2012) examines some of the debate about the Bill's likely effects (as they were seen at the time) on providers of legal aid and especially on the not-for-profit sector.
- [Library Research Paper 11/53](#), prepared for the second reading of the Bill, discusses the background to the Bill and some of the controversy it provoked.
- [Library Research Paper 11/70](#) (the Committee Stage Report) complements that paper.
- [House of Lords Library Note LLN 2011/035](#), prepared for the Bill's second reading in the Lords on 21 November 2011, summarises the report stage and third reading debate in the House of Commons and
- [Library standard note SN/HA/6293](#) (11 April 2012) discusses the Lords amendments.

On 9 April 2013 the Ministry of Justice published the consultation paper *Transforming Legal Aid: Delivering a More Credible and Efficient System*. The document sets out the Ministry of Justice's proposals for saving an estimated further £220 million from legal aid spending per year by 2018/19, with particular focus on legal aid in criminal law, although some of the proposals touch on aspects of civil legal aid.

The consultation paper outlines a number of proposed reforms to make savings in both criminal and civil legal aid, including reducing the scope and availability of legal aid in prison law, making further reductions to fees paid to legal aid service providers and, representing the single largest estimated saving (£122 million), the introduction of competitive tendering in nearly all areas of criminal legal aid (with the stated aim of introducing competition in civil and family cases in the future).

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<sup>1</sup> Library Standard Note, SN/HA/5840, *Legal Aid: controversy surrounding the government's plans for reform*, 26 January 2011

<sup>2</sup> See also Library Research Paper, RP 11/53, *Legal aid, Sentencing and Punishment of Offenders Bill Bill No 205 of 2010-12*, 4 July 2011

<sup>3</sup> Ministry of Justice, *Proposals for the reform of legal aid in England and Wales*, November 2010, Cm 7967.

On the 15 April 2013, in a [written ministerial statement](#), the Lord Chancellor and Secretary of State for Justice, Chris Grayling, argued the need for further savings and reforms in legal aid to restore public confidence in the system:

(...) against a backdrop of continuing pressure on public finances, we need to continue to bear down on the cost of legal aid to ensure we are getting the best deal for the taxpayer and that the system commands the confidence of the public. These new proposals aim to do so in ways that ensure limited public resources are targeted at those cases which justify it and those people who need it, drive greater efficiency in the provider market and for the Legal Aid Agency, and support our wider efforts to transform the justice system.<sup>4</sup>

According to the Ministry of Justice’s impact assessment, total legal aid spending in England and Wales was just over £2 billion in 2011/12, around 25% of the Ministry of Justice resource budget. Around £1.1 billion was spending on criminal legal aid, while the remaining £0.9 billion was spent on civil legal aid.<sup>5</sup>

The savings outlined in the consultation paper are in addition to the £320 million estimated savings expected from the changes to civil legal aid in the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* and previous reductions in fees paid to legal aid service providers.

The consultation relates to legal aid in England and Wales only. It ends on 4 June 2013. The consultation paper states that most of the proposals in the consultation would be enacted through secondary legislation and, where necessary, contract changes.

**2 Overview of consultation proposals and estimated savings**

The consultation’s proposals are set out from chapter three to chapter seven. Impact assessments have also been published for each proposal, outlining estimated savings, uncertainties and risks. The table below provides an overview of the proposals in each chapter and the estimated saving of each.

<b>Chapter 3 Eligibility, Scope and Merits</b>	<b><u>Estimated Saving</u></b>
1. <i>Restructuring the scope of legal aid for prison law</i>	£4m
2. <i>Imposing a financial eligibility threshold in the Crown Court</i>	£3m
3. <i>Introducing a residence test</i>	Not quantified
4. <i>Paying for permission work in judicial review cases</i>	£1m
5. <i>Civil merits test – removing legal aid for borderline cases</i>	£1m
<b>Chapter 4 Introducing Competition in the Criminal Legal Aid Market</b>	<b>£122m</b>
<b>Chapter 5 Reforming Fees in Criminal Legal Aid</b>	
1. <i>Restructuring the Advocates’ Graduated Fee Scheme</i>	£15m
2. <i>Reducing litigator and advocate fees in Very High Cost Cases</i>	£20m
3. <i>Reducing the use of multiple advocates</i>	£9m

<sup>4</sup> [HC Deb 15 April 2013 c19WS](#)

<sup>5</sup> [Civil credibility impact assessment](#), IA No: MoJ194, p6

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## Chapter 6 Reforming Fees in Civil Legal Aid

1. Reducing the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme	£20m
2. Harmonising fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings	£3m
3. Removing the uplift in the rate paid for immigration and asylum Upper Tribunal cases	£1m

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## Chapter 7 Expert Fees in Civil, Family and Criminal Proceedings

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Source: [Transforming Legal Aid: Delivering a more credible and efficient system](#), analysis of consultation impact assessments:

- [Civil credibility impact assessment](#), IA No: MoJ194, 9 April 2013
- [Crime credibility impact assessment](#), IA No: MoJ195, 9 April 2013
- [Criminal litigation price competition impact assessment](#), IA No: MoJ196, 9 April 2013
- [Criminal fees impact assessment](#), IA No: MoJ197, 9 April 2013
- [Civil fees impact assessment](#), IA No: MoJ198, 9 April 2013

### 3 Consultation proposals in more depth

#### 3.1 Eligibility, Scope and Merits

Chapter three of the consultation paper includes proposals to make savings in criminal and civil legal aid. It proposes restricting the availability of criminal legal aid in prison law to cases that cannot be dealt with through non-legal means and the introduction of a disposable household income threshold for legal aid in the Crown Court. It also suggests restricting the availability of civil legal aid to those with a strong connection to the UK, reducing payments in judicial review cases and no longer funding civil cases with less than a 50% chance of success.<sup>6</sup>

#### ***Restricting the scope of legal aid for prison law***

- Estimated saving: £4 million

Legal aid is currently available (subject to merits and means tests) to prisoners for matters relating to their treatment, sentencing, disciplinary matters and Parole Board reviews. A table in the consultation paper shows spending on legal aid for prison law since 2001/02.<sup>7</sup> This shows that spending on prison law increased from £1m in 2001/02 to £23 million in 2011/12.

The Ministry of Justice argues that only cases of sufficient priority should be publicly funded and is proposing to restrict the scope of legal aid for prison law to cases which:

- involve the determination of a criminal charge for the purposes of Article 6 European Convention on Human Rights (ECHR - right to a fair trial);
- engage Article 5.4 ECHR (right to have ongoing detention reviewed); and

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<sup>6</sup> [Transforming Legal Aid: Delivering a more credible and efficient system](#) (CP14/2013) 9 April 2013, Chapter 3 pp17-36

<sup>7</sup> *Ibid*, pp19-20

- require legal representation under the criteria established in *R. V Home Secretary ex parte Tarrant* [1985] QB 251.<sup>8</sup>

According to the consultation, this would mean legal aid would no longer available for treatment cases or many sentencing issues. Funding would remain for disciplinary matters where extra days may be imposed and for Parole Board hearings. The Ministry of Justice estimate that this could lead to legal aid funding for 11,000 fewer prison law cases a year (from around 44,000 in 2011/12).<sup>9</sup>

Cases no longer within the scope of legal aid would be dealt with by prison and probation complaint systems.

### ***Imposing financial eligibility threshold in the Crown Court***

- Estimated saving: £3 million

The Ministry of Justice argues that those who can afford to pay for legal services privately should not receive legal aid in Crown Court cases. It is proposing the introduction of a financial eligibility threshold whereby defendants with a disposable household income of over £37,500 would no longer be eligible (subject to an exception on hardship grounds). The threshold in the magistrates' court is £3,398.<sup>10</sup>

The stated threshold is (according to the Ministry of Justice figures) around twice the national average disposable household income. The threshold would not apply to appeals from the magistrates' court or onwards to the Court of Appeal or Supreme Court. The average defence cost of a legally aided case in the Crown Court was £5,000 in 2011/12.<sup>11</sup>

### ***Introducing a residence test for civil legal aid***

- Estimated saving: Not quantified

The Ministry of Justice expresses concern that those with little or no connection to the UK are able to claim civil legal aid. It is proposing to introduce a two-step residency test to ensure that only those with a strong connection to the UK receive legal aid.

The first step of the test would require the individual to be lawfully resident in the UK when they apply for legal aid, and the second step would require that they have lawfully resided in the UK for a continuous period of 12 months. The 12 month period could be at any point in the past. The consultation paper states that the test would comply with obligations under EU law. There would be exceptions for those in the armed forces and asylum seekers.<sup>12</sup>

A low risk of an increase in asylum applications as a result of these restrictions was identified in the impact assessment.<sup>13</sup>

### ***Paying for permission work in judicial review cases***

- Estimated saving: £1 million

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<sup>8</sup> [Transforming Legal Aid: Delivering a more credible and efficient system](#), 9 April 2013, p20

<sup>9</sup> [Crime credibility impact assessment](#), IA No: MoJ195, 9 April 2013, p2-4

<sup>10</sup> [Transforming Legal Aid: Delivering a more credible and efficient system](#), 9 April 2013, pp22-24

<sup>11</sup> *Ibid*, pp22-24

<sup>12</sup> *Ibid*, pp27-29

<sup>13</sup> *Ibid*, pp27-29

The Ministry of Justice argues that civil legal aid is being used to fund weak judicial review cases. It intends to transfer the financial risk of applying for permission for judicial review to the legal service provider by paying providers for work carried out during the application for permission only if the Court then grants permission.<sup>14</sup>

Legal aid would remain available for pre-proceedings work and reasonable disbursements such as expert and court fees.

A risk that providers may refuse to take on weak cases or judicial review case more generally was identified in the impact assessment.<sup>15</sup>

### **Civil merits test – removing legal aid for borderline cases**

- Estimated saving: £1 million

The Ministry of Justice is proposing that cases funded by civil legal aid should have at least a 50% chance of success. Currently, some cases with “borderline” prospects of success (cases where it is not possible to decide that the chances of success are 50% or more) are eligible for funding. The Ministry of Justice intends to abolish the “borderline” category so that only cases with 50% or greater chance of success would be funded.<sup>16</sup>

### **3.2 Introducing Competition in the Criminal Legal Aid Market**

- Estimated saving: £122 million

Chapter four of the consultation paper sets out the Ministry of Justice’s plans for competition in detail.<sup>17</sup> This aspect of the consultation is proving to be particularly controversial. The Law Society and others have expressed concern about the potential impact on the legal profession and the service offered to those needing help. In the impact assessment of the proposal, the Ministry of Justice identified, among other things, a possible risk to service quality.<sup>18</sup>

The Ministry of Justice argues that moving away from administratively-set fees and towards competition is the best way to ensure long-term sustainability and value for money initially in the criminal legal aid market and, in the future, in civil legal aid. The paper states that previous experience with competitive tendering in legal aid services, such as the Defence Solicitor Call Centre (DSCC), has improved value for money.

The Ministry of Justice is proposing to introduce competitive tendering for contracts for work in all areas of criminal legal aid except Crown Court advocacy and Very High Cost Cases (VHCCs) (both are which are dealt with separately in chapter five of the paper).<sup>19</sup>

In short, contracts to provide a share of legal aid work in a particular geographical area would be awarded to successful bidders. Only successful bidders would be allowed to work in a specified area and they would be required to provide a full range of services (although providers would be able to use agents to deliver services). Clients would be allocated a provider and would only be allowed to change provider in exceptional circumstances.

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<sup>14</sup> *Ibid*, p31

<sup>15</sup> *Civil credibility impact assessment*, IA No: MoJ194, p10

<sup>16</sup> *Transforming Legal Aid: Delivering a more credible and efficient system*, 9 April 2013, pp33-35

<sup>17</sup> *Ibid*, pp37-71

<sup>18</sup> *Criminal litigation price competition impact assessment*, IA No: MoJ196, p6

<sup>19</sup> *Transforming Legal Aid: Delivering a more credible and efficient system*, 9 April 2013, p38

Plans for competitive tendering in legal aid are not new; they were recommended in 2006 by [Lord Carter's Review of Legal Aid Procurement](#). Lord Carter's review argued that the selection of legal aid providers should be based on their ability to deliver work of sufficient quality and quantity at the best price. In the current consultation paper, the Ministry of Justice state that they still support the conclusions of Lord Carter's review.<sup>20</sup>

Details of the main elements of the proposed model are set out from page 41 of the consultation paper. A summary of some of the main features is provided below.

### ***Scope and length of contract***

Most criminal legal aid work, from pre-charge investigation to criminal proceedings and subsequent appeals, would be included in the tendering process, but only police station work, magistrates' court work and Crown Court litigation would be subject to price competition. Rates of pay for other work would continue to be set administratively and all work would be subject to a price cap of 17.5% below prices paid in 2012/13. Contracts would be awarded for three years.<sup>21</sup>

### ***Procurement areas***

England and Wales would be divided into 42 procurement areas. (For the most part these would be very similar to the current Criminal Justice System (CJS) areas, although some areas would be joined and London would be split into three areas). Each would offer a varying number of contracts representing an equal share of criminal legal aid work in that area. There would be a minimum of four contracts per area – although there would be many more in larger, busier areas. There would be a reduction in the total number of contracts with providers, from around 1,600 at present, to 400 across all procurement areas. Providers would only be allowed to bid for one contract (share of work) per procurement area but would be able to bid for contracts in more than one procurement area.<sup>22</sup>

The paper states that the reduction in the number of contracts would mean that successful bidders would have exclusive access to greater volumes of work, which would provide greater certainty of returns and more opportunities to realise economies of scale and provide services at reduced cost to the taxpayer.<sup>23</sup>

### ***Exclusivity and removal of client choice***

Only providers awarded contracts would be allowed to offer services in a procurement area. Providers would be required to offer the full range of services from police station to case completion. This would be coupled with the removal of client choice. Clients would be allocated a provider in their area and would be required to stay with that provider for the duration of the case (except in exceptional circumstances, such as a conflict of interest).<sup>24</sup>

A risk that the removal of client choice may lead to a reduction in quality of service was identified in the impact assessment.<sup>25</sup>

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<sup>20</sup> *Ibid*, p38

<sup>21</sup> *Ibid*, pp42-46

<sup>22</sup> *Ibid*, pp49-54

<sup>23</sup> *Ibid*, p39

<sup>24</sup> *Ibid*, pp56-57

<sup>25</sup> [Criminal litigation price competition impact assessment](#), IA No: MoJ196, p6



### ***Types of provider***

The consultation paper states that the Ministry of Justice does not intend to limit the types of organisation that may bid for contracts. Individual organisations (such as law firms), joint ventures and “Alternative Business Structures” would all be allowed to bid for contracts provided they formed a legal entity by the contract start date.<sup>26</sup> Stobart Barristers, part of the Stobart Group, are one group that have said they would be likely to bid for contracts.<sup>27</sup>

Providers would be allowed to sub-contract work through agents. However, they would need to state this during the tender process and would remain responsible for work done by any agents.<sup>28</sup>

### ***Remuneration***

Currently, legal aid providers are paid in a number of ways, from fixed fees and graduated fees to hourly rates. The proposals would see these replaced by unique fixed fees (based on bid prices) at each stage, regardless of how long or short the case.

Providers would receive a block payment for all police station work and fixed fees for magistrates’ court work and Crown Court litigation. All fee prices bid would be required to be at least 17.5% below current rates of pay for that type of work.

The only exception would be for Crown Court litigation of more than 500 pages of prosecution evidence (around 5% of cases), where the current graduated fee scheme would remain. However, providers would still be required to submit a new price at least 17.5% lower than current rates.

The Ministry of Justice would provide applicants with information on current average claims in each area to enable them to make appropriate bids.<sup>29</sup>

### ***Implementation***

The tendering process would start in autumn 2013, with contracts awarded in the summer of 2014 and service commencing in the autumn of 2014.<sup>30</sup>

## **3.3 Reforming Fees in Criminal Legal Aid**

Chapter five of the consultation paper makes proposals for savings from the parts of criminal legal aid excluded from competitive tendering: Crown Court advocacy and Very High Cost Cases (VHCCs). It also addresses the use of multiple advocates in Crown Court cases.<sup>31</sup>

### ***Restructuring the Advocates’ Graduated Fee Scheme***

- Estimated saving: £15 million

Crown Court advocacy costs around £215 million a year (22% of criminal legal aid spend).<sup>32</sup>

Currently, rates of pay for Crown Court advocacy work are set administratively under the Advocates’ Graduated Fee Scheme (AGFS). Fees under the AGFS depend on a number of

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<sup>26</sup> Alternative Business Structures are defined by the [Law Society](#) as firms where the manager of the firm, or someone with an ownership interest in the firm, is a non-lawyer.

<sup>27</sup> [Stobart to bid for new legal aid contracts](#), *Law Society Gazette*, 1 May 2013

<sup>28</sup> [Transforming Legal Aid: Delivering a more credible and efficient system](#), 9 April 2013, pp54-55

<sup>29</sup> *Ibid*, pp61-65

<sup>30</sup> *Ibid*, p71

<sup>31</sup> *Ibid*, pp72-84

<sup>32</sup> *Ibid*, p72

variables, including the level of the advocate and the complexity of the case. There are also different fees for cases where an early guilty plea is entered, where a late guilty is entered (cracked trial) and where the case goes to trial. Fees are lowest for early guilty pleas and highest for cases that go to trial.

The Ministry of Justice is proposing to replace the different fees payable for early guilty pleas, cracked trials and trials with a single fee set at the current cracked trial rate.<sup>33</sup>

Coupled with this, the Ministry of Justice is proposing to reduce fees paid for daily attendance by around 35%, by reducing payments for the first three days of a trial and reducing the taper payments from day four.<sup>34</sup> The stated aim is to encourage the early resolution of cases.

### ***Reducing litigator and advocate fees in Very High Cost Cases (VHCCs)***

- Estimated saving: £20 million

VHCCs are a small number of long running high value cases. In 2011/12 £92 million was spent on VHCCs (around 8% of criminal legal aid spending).<sup>35</sup>

The Ministry of Justice argues that the high level of spending on these cases is damaging public confidence in legal aid. It proposes to make a 30% reduction in fees paid for all work relating to VHCCs, for both litigators and advocates.<sup>36</sup>

The changes would not only apply to cases started after implementation date but also to subsequent work on existing cases.

The Ministry of Justice says the combined effect of the proposals related to Crown Court advocacy and VHCCs fees would result in a redistribution of fees. The highest paid advocates would see the greatest impact with reductions of up to 26% of income for those earning over £200,000 a year, while the lowest paid, those earning under £50,000, may see a small increase (1%). Overall, 53% of advocates would, according to Ministry of Justice figures, be better off or unchanged.<sup>37</sup>

### ***Reducing the use of multiple advocates***

- Estimated saving: £9 million

A defendant in the Crown Court is usually represented by one advocate, although the Court can appoint multiple advocates if certain criteria are met. The Ministry of Justice argues that permission to appoint more than one advocate is being granted in cases where it is not absolutely necessary and is proposing to “tighten up” the rules to reduce this. The Ministry of Justice is also proposing to encourage greater support for advocates from litigation teams, to help reduce the need for multiple advocates.<sup>38</sup>

## **3.4 Reforming Fees in Civil Legal Aid**

Chapter six of the consultation paper sets out proposals for further savings from civil legal aid spending in addition to those achieved through the [Legal Aid, Sentencing and Punishment of](#)

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<sup>33</sup> *Ibid*, p74-75

<sup>34</sup> From day four of a trial, daily attendance fees gradually reduce. These are known as taper payments.

<sup>35</sup> [Transforming Legal Aid: Delivering a more credible and efficient system](#), 9 April 2013, p72

<sup>36</sup> *Ibid*, p76-78

<sup>37</sup> *Ibid*, p79

<sup>38</sup> *Ibid*, pp80-84

*Offenders Act 2012*. This is in advance of the possible future introduction of competition in the civil legal aid market.<sup>39</sup>

***Reducing the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme***

- Estimated saving: £20 million

Representation fees paid to solicitors in public family law cases are currently fixed, based on a codification of what was previously being paid under hourly rates. Fixed fees are paid regardless of the amount of work. The Ministry of Justice argues that with recent reductions in the average duration of cases (and other changes) fees should also be reduced to reflect more accurately the amount of work involved.

The Ministry of Justice is therefore proposing to reduce the representation fee paid in public family law cases by 10%.<sup>40</sup>

***Harmonising fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings***

- Estimated saving: £3 million

In some civil (non family) cases, barristers can be paid more than other advocates for the same type of work. The Ministry of Justice argues that barristers in civil (non family) proceedings in the County Court, Upper Tribunal and High Court should be paid the same as other advocates and proposes to pay barristers the same standard rate that advocates are paid (although enhancements will still be available for more complex cases, which barristers are more likely to be involved in).<sup>41</sup>

Proceedings in the Court of Appeal or the Supreme Court would be exempt, as would Queen's Counsel (QCs).

***Removing the uplift in the rate paid for immigration and asylum Upper Tribunal cases***

- Estimated saving: £1 million

Providers currently receive a higher rate of pay, including a 35% uplift payment, for immigration and asylum Upper Tribunal cases. This was originally put in place to compensate providers for the risk of non-payment for work on a whole case. However, under current arrangements, providers only risk not being paid for work on the permission stage. The Ministry of Justice is therefore proposing to abolish the 35% uplift to reflect the reduced risk to providers. The Ministry of Justice argues that providers should take on the risk at the permission stage.<sup>42</sup>

### **3.5 Expert Fees in Civil, Family and Criminal Proceedings**

Estimated saving: £20 million

In chapter seven of the consultation paper, the Ministry of Justice is proposing to reduce fees paid for experts in legal aid cases by 20%. The Ministry of Justice wants to align expert rates

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<sup>39</sup> *Ibid*, pp85-96

<sup>40</sup> *Ibid*, p87

<sup>41</sup> *Ibid*, pp89-91

<sup>42</sup> *Ibid*, pp94-95

in legal aid with rates for comparable work elsewhere, which the Ministry says are “substantially less”.<sup>43</sup>

## 4 Reaction to the Ministry of Justice’s proposals

### 4.1 Law Society

In anticipation of the Ministry of Justice’s consultation and the possible introduction of price competition, on the day before it was published (8 April 2013) the Law Society published its own consultation, asking for views on alternatives to price competition. In the accompanying press release, the Law Society president, Lucy Scott-Moncrieff, outlined her concerns about competition in criminal legal services:

We have repeatedly voiced our opposition to tendering for criminal legal services on price. The level of uncertainty over work volumes (of lower crime cases), possible systemic changes and required investment to meet government IT requirements are critical issues for firms. The shortened timetable for consultation and implementation may require substantial restructuring of the market before the autumn, which is not plausible.<sup>44</sup>

In its consultation document, the Law Society said that its research indicated “almost unanimous opposition among the profession to competitive tendering based on price” and argued that this type of competition would have a damaging effect on the legal aid supplier base and the criminal justice system. It suggested that “firms that do not win bids and have no option to close down will leave a reduced number of suppliers, thereby removing any competition for future bid rounds”.<sup>45</sup>

On 15 April, after the Ministry of Justice’s consultation had been published, the Law Society responded again, pointing out some of their key concerns about competition for criminal legal aid. It said that the planned reforms would be damaging to both small and large firms and difficult to achieve in the timeline:

**For smaller firms:** the requirement to cover a whole criminal justice area means an increase in infrastructure and management costs. On top of a 17.5 per cent cut this would almost guarantee bankruptcy.

**For larger firms:** the artificial cap on the share of the market that they can be awarded means there is unlikely to be sufficient volume to enable them to absorb the cuts.

**Timeframe:** Firms would only be given three months from notification that they have a contract to undertake the restructuring and expansion required. Given that the successful firms will have to implement significant IT and infrastructure changes and, very likely, seek regulatory approval for changes to their structure, this is clearly not remotely achievable. Firms will be unlikely to be willing to make significant investment before the contract has been awarded.

**Client choice:** The scheme proposes abolition of a client's freedom choice of solicitor, which we understood to be guaranteed by LASPO. Client choice does not just benefit the client, it provides competition and an incentive to keep standards high.<sup>46</sup>

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<sup>43</sup> *Ibid*, pp97-99

<sup>44</sup> Law Society press release, [Solicitors invited to shape alternatives to price competition for legal aid](#), 8 April 2013

<sup>45</sup> Law Society consultation paper, [Procuring criminal defence services: is there a better way?](#), 8 April 2013, p13

<sup>46</sup> Law Society statement, [Tendering plans for criminal legal aid](#), 15 April 2013

## 4.2 Howard League for Penal Reform

The Howard League for Penal Reform released a statement on 9 April 2013 criticising, among other things, the proposed restrictions on legal aid for prison cases and warning of the potential effects on young people who leave secure estates:

The withdrawal of funding for resettlement cases will consign children to the streets or hostels on their release from custody, exposing them to untold dangers. This is because we will no longer be able to challenge the unjust decisions of local authorities who inappropriately treat boys and girls as homeless when they leave the secure estate.

These changes may also lead to a collapse in justice in the very place where it should be paramount – within prison walls. This will impact on children as well as adults. These cuts build on proposed reforms which seek to deny people the opportunity to pursue judicial reviews. These are crucial in highlighting and preventing violence in jails and making sure that young people can rebuild their lives, which helps keep the public safe.

The misuse of solitary confinement can exacerbate mental health problems and lead to lost lives. Access to behavioural programmes or help with resettlement can mean the difference between a prisoner going on to change their life for the better or to reoffend.<sup>47</sup>

## 4.3 Criminal Law Solicitors' Association (CLSA)

On 10 April 2013, the Criminal Law Solicitors' Association (CLSA) responded to the Ministry of Justice's consultation stating their opposition to the introduction of competition in the legal aid market. It said that the proposals do not "set out a rational economic case", "firms will find themselves bidding at an auction for a reduced share of work for a reduced fee per case" and that, "no actual promised increase in volume will be sufficient to compensate for the dramatic cut in fees."<sup>48</sup>

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<sup>47</sup> Howard League for Penal Reform, [Legal aid proposals will consign children to the streets](#), 9 April 2013

<sup>48</sup> Criminal Law Solicitors' Association, [Response to PCT Consultation](#), 10 April 2013