

MAGISTRATES' ASSOCIATION

FAMILY COURTS COMMITTEE

Response to the Legal Services Commission on Family Legal Aid Funding: Representation, Advocacy and Experts' Fees

The Magistrates' Association welcomes the opportunity to respond to the consultation by the Legal Services Commission on Legal Aid Funding. We appreciate the need for cost control but are concerned that the proposals will have the effect of experienced lawyers giving up family work if the funding is an issue.

We deal with the questions of impact in our response and answer those questions below. However, we would wish to register our concern at the proposal to remove from scope the funding of solicitors acting as independent guardians and all independent social work where Cafcass / Cafcass Cymru do not provide for a Guardian under rule 9.5. We urge the full consideration of the response to this consultation made by the National Youth Advocacy Service (NYAS) which report clearly states why this particular proposal should be reconsidered.

Impact Assessment

Q.70 Do you consider that the impacts on solicitor providers and self-employed advocates are justifiable in ensuring sustainable access to legal services for clients?

- Yes
 No
 Don't Know

The current situation is that there is now a short fall of experienced lawyers prepared to work within the family court service. This is leading to a lack of representation at a crucial time for families in both private and public law cases. The increase in the use of Mackenzie Friends is indicative of the situation; they cannot provide the service required in the FPCs to the detriment of the process. If this occurs it will inevitably lead to delays and increase in costs

Q.71 Do you consider that the impacts on NfPs are justifiable in ensuring sustainable access to legal services for clients?

- Yes
 No
 Don't Know

There is clear evidence as to the level of service provided by the NfPs. The service they provide impacts upon ethnic minorities and those on benefit. The use of fixed fees in the provision of legal services to these groups could lead to them being disadvantaged and not being properly represented.

See: Price Waterhouse Coopers 2002
Consultation Paper Advice Services Alliance 2007

Q.72 What will be the impacts on your organisation if the proposed areas are removed from the scope of legal aid funding?

It will raise the question as to how these areas are to be funded. Their impact on the FPC is essential however the use of standard fees may ensure that the work undertaken is more focussed. Problems will arise where a CAFCASS report indicates the need for further investigation and there are instances of domestic violence or other issue to be considered. The effect on a fixed rate for these court officers could lead to the work not being properly completed.

Q.73 What will be the impacts on your organisation if the proposed capped rates are implemented?

The introduction of capped fees on the public sector appears to be leading to solicitors no longer able or willing to work in the FPCs. If they are introduced in private law cases then there is likely to be a similar impact. FPCs rely upon the lawyers providing a high level and quality of service; this is relevant for both private and public law cases.

Q.74 Do you consider that the impacts on experts are justifiable in ensuring sustainable access to legal services for clients?

- Yes
 No
 Don't Know

The use of experts can be justified from time to time within the scope of private and public law applications to the FPC. Experience shows that often the evidence presented replicates that of other witnesses and adds little to the overall proceedings. There is a tendency to ignore the expert opinion available through other witnesses such as social workers and assume that the outside expert has greater knowledge. By capping the rates and reducing the amount of time dedicated to the expert there may be more resources available for other forms of representation.

Q.75 What will be the impacts on your organisation if these proposals are implemented?

In the FPCs the impact is likely to be in the availability and quantity of work. The impact of fixed fees may lead to fewer longer hearings (five days or more). This should ensure that the work of the FPCs stays in the magistrates' courts and does not get transferred due to length of hearing. The impact on the use of fewer experts may also enable cases to stay in the FPC as one reason for moving a case to the County Court is the introduction of experts.

Q.76 Do you think there will be any negative equalities impact on clients and providers as a result of the proposals to remove certain disbursements from scope?

- Yes
- No
- Don't Know

As with any changes, there may be an initial impact and clients may be denied access to services deemed essential at present. This may change as the efforts to streamline and improve the service come into force leading to a more effective use of resources.

Q.77 Do you think there will be an impact on clients and providers on the basis of sexual orientation or religion or belief?

	Sexual orientation	Religion	Belief
Large positive impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Small positive impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Don't Know	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Small negative impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Large negative impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The relevant sections, 3.16.- 3.18, make is clear that there should be no impact on clients due to their sexual orientation, religion or belief. The speedy resolution of cases should have the opposite effect. The criteria to be applied is that of Justice for All

Section 3.18 is very clear as to how the changes will support families and ensure that they are not disadvantaged.

Q.78 Do you have any comments on prospective impacts on clients, providers and self-employed advocates on the basis of ethnicity, gender, age or disability?

Again this is made clear in the relevant section. There is no specific mention of the role of the interpreter which is crucial in many cases. If they are to be provided, the introduction of capped fees may negatively impact on their clients if the fee level precludes interpreters working within the service.

Q.79 Do you have any comments on any prospective impacts on small firms and self-employed advocates?

It is possible that the introduction of fixed fees and capping may lead to firms refusing to undertake this work. There is evidence to show that this is happening as reported in several journals.

Q.80 Do you consider there to be any direct or indirect discrimination against people in rural communities in the proposals outlined in the consultation paper?

- Yes – direct discrimination
 Yes – indirect discrimination
 Don't Know
 No discrimination

Q80a Is there anything more that you suggest the LSC does to take account of this group?

The position of rural families is mentioned in the document. Taking into account the position of these families in relation to the offices of the legal representatives there may need to be consideration as to the level of remuneration. The introduction of differing fees in London etc may also lead to fewer lawyers willing to work in rural areas.

Draft Family Specification

Q81 Do you have any comments on the draft specification?

There is a need to evaluate and consider the funding of the courts in relation to private law applications. The document is a sensible and careful consideration however there remain concerns relating to the questions in the final section. There will inevitably be an impact on the provision of services to the courts both in terms of representation by experienced and well qualified lawyers and the willingness of experts and others to participate. There is evidence to show that in specific areas the use of a fixed fee has led to a reduction in service CAFCASS being one. If this is used as a monitor then care will be needed to ensure that the rates are proportional and commensurate with the complexity of private law cases.

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