



The Bar Council

Bar Council response to the Legal Aid Agency's operational consultation on the Amendments to the Cost Assessment Guidance.

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Aid Agency's operational consultation entitled "Amendments to the Cost Assessment Guidance."¹

2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Response

Misleading Communications

4. On 1 June 2020 the Gov.uk website² stated:

"We have opened an operational consultation being made to the Cost Assessment Guidance (CAG) to move civil court assessed claims to be handled by the LAA's civil finance team instead of the courts."

The statement provided a link³ to the "consultation" which was a news item of the same date stating,

¹ <https://www.gov.uk/government/news/civil-news-speedier-payments-on-way-for-court-assessed-bills>

² <https://www.gov.uk/guidance/transfer-of-claims-assessed-at-court-to-the-legal-aid-agency>

"We will be consulting on amendments being made to the Cost Assessment Guidance (CAG) to reflect this change in process."

No actual consultation document appears to have been published.

5. The Bar Council have consequently received representations from barristers, chambers and a Specialist Bar Association, concerned about the Legal Aid Agency (LAA) taking the processing of these bills in-house, out of the hands of the Courts, and have wanted the Bar Council to raise these legitimate concerns in response to the consultation that had been announced.

6. However, what was actually received by the Bar Council by way of consultation was an email from the Legal Assistant of the Central Legal Team of the LAA of 2 June, inviting Bar Council comments on minor amendments to the Costs Assessment Guidance to reflect the change that had already taken place.

Absence of Consultation

7. The LAA have told the Bar Council in a meeting that they have no intention on consulting on the principle itself. That the LAA have taken the decision in principle without consultation, implemented that decision and there are apparently no plans to seek views on that decision or review it.

8. The Bar Council welcome the prospect of these fees being paid more quickly, given that the Court staff have inevitably been taken up with the urgent response to Covid-19. However, the Bar Council are concerned that no opportunity was given to explore, and potentially reassure the legitimate concerns that have been raised on the change in principle.

9. In particular, the Bar Council are concerned with the potential reduction in independence as the LAA are the agency that stands to pay the bill that stems from their own assessment. The LAA staff are also more remote from the hearings themselves and are less able to make a judgment about the features in the case and whether particular enhancements are due. The financial viability of those who practice in civil legal aid has been brought to the edge of collapse by years of under-funding of civil legal aid. The potential that this operational change might have to reduce the amount legitimately earned could be disastrous for the practitioners and consequently for access to justice. The LAA have indicated that actual fee payments will not be affected, but there has been no promise given as to what process will be undertaken to ensure that this is the case, or whether any review will take place.

³ <https://www.gov.uk/government/news/civil-news-speedier-payments-on-way-for-court-assessed-bills>

10. The Bar Council have also received representations that the LAA:

- Adopt the same practice as District Judges, which is that they undertake a preliminary assessment on the papers and that the receiving party can request a more detailed assessment if they disagree with the amounts assessed; and
- The system of appeals by an Independent Adjudicator currently in operation would also apply to all these bills assessed, so that there can be an independent appeal system.

Response to this limited consultation

11. Beyond the observations made above, the Bar Council has no comments on the consequential changes to the amendments to the Cost Assessment Guidance.

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