



**Ministry of Justice Consultation  
'Housing Possession Court Duty Scheme: Towards a More Sustainable Service':**

**Response from Legal Aid Practitioners Group**

**About us**

LAPG is a membership body representing legal aid practitioners in England and Wales and the clients they serve. Our Members are private practice and not-for-profit (NfP) organisations, Law Centres, barristers and costs lawyers. We believe that access to justice is a fundamental right and as such we campaign for a fair, comprehensive and accessible legal aid scheme.

This response has been drafted based on our own knowledge of the delivery of HPCDS, and the combined views of our members who deliver these services.

**Q1. Do you agree with our proposed approach to tender for individual courts? If you do not agree, please give reasons for your view and set out any alternative options.**

Yes.

**Q2. Do you agree that we should continue to allow the use of agents to deliver the Scheme in the same way we do now?**

Yes.

**Q3. Do you agree with our proposal to introduce an attendance fee in place of the existing nil session fee?**

Yes.

This proposal is a welcome step towards providing a more sustainable service for court users. It goes some way to addressing the fluctuating workloads on HPCDS and the low fees paid per act of assistance. However, we would urge the MoJ to additionally consider increasing the rate per act of assistance in line with inflation (since the last time the rate was uprated). The rate has not increased for many years and does not reflect the current cost to providers of delivering the service. It should also be understood by the MoJ that, unless there is a wider assessment of civil legal aid remuneration, providers will continue to decide not to tender or give up their housing contracts as it is not sustainable on current rates. There is a problem with recruitment of housing supervisors throughout the sector due, in part, to the low rates of pay, and that will impact on an organisations' ability to bid for HPCDS work and to maintain these services.

It is also noted that there is no proposal to consider fees paid per act of assistance going into the future, which will mean that these services become ever less sustainable as time



passes. We would suggest an annual uprating of fees in line with inflation, such as that generally applied by other government departments such as the DWP.

**Q4. Do you agree that this attendance fee should be equivalent to if the provider had seen two clients during the session? If no, please suggest an alternative and provide supporting evidence.**

Yes.

But please see response to Q3 above.

**Q5. Do you agree with the proposal to allow providers to claim the Scheme fee in addition to the fee for any follow up Legal Help matter?**

Yes.

However, follow up work will become more difficult in the event that the provider is not located close to the relevant court and particularly in the event of further court closures.

**Q6. Do you agree with the proposal to introduce reasonable costs for travel as part of the competition bid?**

Yes, but not as part of the competition bid.

Whilst we welcome the proposal that travel costs be paid to providers, and consider that this would make the scheme more sustainable, we disagree with the proposal to introduce a price-competitive element to the tender. Please see further submissions below on Q7.

Additionally, we disagree with the notion that only 'reasonable' travel costs should be paid. Providers already run HPCDS services at a loss and they should be paid for the actual costs involved in travel time and the cost of travel (in terms of travel time this would have to be on an hourly rate basis). There should not be a subjective element introduced to the assessment of travel claims. It is unclear from the proposals what reasonable costs will mean and how that element will be adjudicated.

**Q7. Do you agree with the proposal to tender for contracts on a quality competitive basis, with travel costs factored in on a price competitive basis?**

No.

We take the view that the price competitive element is entirely unnecessary and that these services should be tendered only on the basis of quality. If these services are tendered on a similar basis to previous HPCDS tenders, proximity to the court will be assessed by reference to procurement area, with higher points awarded to those based within close proximity to



the court. It is entirely unnecessary, therefore, to introduce a further, competitive factor into the assessment process based on proximity.

A price competitive element suggests a large and healthy provider base that would benefit from competition between bidders. However, this is no longer the reality of the legal aid housing provider market. There are currently around 450 housing legal aid contracts, operated by some 270 providers, who among them would bid for around 100 HPCDS schemes. The LAA is already struggling to find providers for some of the regional HPCDS schemes and this element of competition is likely to act as a disincentive for providers to bid for this type of work. Our assessment is that it would particularly effect smaller, local providers who cannot afford to 'take a hit' on travel costs.

It is also necessary to take into account the complexity of assessing travel costs for schemes that operate using agents. Agents may travel from multiple locations, making the administration and assessment of travel costs unnecessarily complex for the purposes of submitting a tender.

The continuation of court closures should be taken into account in the consideration of the implementation of price competition for travel costs and for the wider operation of these schemes. Fewer County Courts mean fewer HPCD schemes, fewer sessions and wider geographical coverage per court. A price competitive element to travel costs will further and potentially greatly reduce the already low value to providers of running these schemes and has the potential to negatively impact on the number of bids. The proposals do not address the potential complexities of travel for providers when their local court is closed and cases listed in courts in other areas.

There are other consequences of court closures effecting local providers and clients which the MoJ must take into consideration when considering the delivery of HPCDS. Providers and their clients benefit from being able to access the same provider for the follow up conduct of the case and other associated work. This benefit ceases when their local court is closed. Travel costs not only increase for the providers, but they also increase for the court user who may not be able to afford to travel to a far away court. It is therefore likely that, in the event of a court closure, the clients seen on the HPCDS will only be local to that court, and potentially nowhere near the provider's office. It is accepted that the type of clients affected by possession proceedings (generally in rent arrears) cannot afford the costs of travelling long distances to court or to see providers subsequently. The LAA is already experiencing "advice deserts" in multiple areas of law.

**Q8. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.**

Yes.

However, this is subject to the price competitive aspect being dropped for all the reasons already outlined.



**Q9. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views.**

Our members report that, if the proposals in the consultation paper have the desired effect, then they could lead to better outcomes for individuals in England and Wales who face possession proceedings. This could have a beneficial effect on outcomes for groups with protected characteristics who are over-represented among HPCDS users: women (62%), particularly single women with dependent children; people with disabilities (31%); people with mental health difficulties; and BAME people (figures: LAA). However, this assessment would only apply if the proposal of a price competition on travel costs is dropped, as it would needlessly restrict the provider base and may lead to further provider flight from the scheme.

**Q10. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please give data and reasons.**

For the time being we consider that the overall impact of the first three proposals on people with protected characteristics would be neutral or beneficial. However, this effect would be largely cancelled out if travel allowances form part of price-competitive tendering, which would run counter to the more flexible approach of the proposals.

Moreover, the proposals must also take account of the likely effects of court closures and court reform. The main reason possession proceedings are brought are rent or mortgage arrears as a result of clients debt/benefit or cash flow issues. To expect them to travel unaided to a court further away because their local one has shut, and then possibly again to access follow-up assistance, is unrealistic without some financial recompense, such as travel vouchers that would enable them to attend.

**Q11. What do you consider to be the impacts on families of these proposals? Are there any mitigations the government should consider? Please give data and reasons.**

As noted above, our members see many low-income households accessing HPCDS services including single-parent families struggling on benefits (specifically Universal Credit) that have been wrongly calculated, when the average waiting duration for a benefits appeal is 36 weeks. They also include families on zero-hours contracts that make them reliant on benefits and in turn have to constantly be re-assessed. These families are less likely to be able to access courts or providers far from where they live and therefore a provider in close proximity to their local court would assist them. In the event that this is not possible due to a court closure, there ought to be provision for families to claim travel costs to enable these journeys, in advance of travel.



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**Submitted on 2.1.20.**

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