

Submissions in respect of the Legal Aid Agency's decision on court assessed civil bills

This document is prepared on behalf of Irwin Mitchell LLP in response to the Legal Aid Agency ("LAA") decision on 1 June 2020 for court-assessed civil bills to now be assessed in-house by the LAA.

In brief, the firm opposes this change, and is concerned about the reasons for and the speed in which it has been brought about and lack of an acceptable consultation process.

The firm invites the relevant consultative bodies to take account of the following:

- 1 Although we accept the LAA has long had the power to assess civil bills in-house, it is unreasonable to decide to change the current arrangement with HMCTS with so little notice to providers. The court assessment process is a long-standing arrangement, which has been in successful operation for many years. There has been no advance warning of the change. It comes at a time when firms have already had to adapt their working practices to a previously unimaginable degree due to the Covid-19 crisis. There is only a short, putative consultation process (discussed below) ahead of this significant change.
- 2 The consultation process has been limited to the consultative bodies and is a little over two weeks in length. The profession has been presented with a *fait accompli* as we understand that the change will be implemented by the LAA in any event. There is in effect no meaningful consultation and therefore individual firms have not had the opportunity to provide their views directly to the LAA. In particular, there has not been any opportunity for firms to discuss the changes with the relevant LAA contract managers, and other senior officers at the LAA. This is disappointing when many providers, including this firm, have tried over many years to engender a spirit of co-operation with the LAA.
- 3 We are particularly concerned that the experience and expertise of cost judges will not be replicated by the LAA taking over the responsibility for assessing civil bills. There is no available information on precisely which team at the LAA will be undertaking the assessments, the training, experience and skills of the assessors and how the process will work in practice. We understand that the LAA's resources remain stretched, and we are therefore also concerned that they will be unable to cope with this substantial additional volume of work. If the problems that we foresee come to bear there will be even more work involved (including non-recoverable time for providers) because it is likely there will be a significant increase in the amount of costs appeals for the LAA.
- 4 In order for a smooth transition to the LAA assessing these bills, the consistency of approach which the courts have adopted in recent years would need to be followed by the LAA assessors. We would wish to see evidence that the LAA has discussed the costs assessment workload with HMCTS and has understood the court's consistent approach to assessing bills, in particular in relation to awarding enhancements and decisions on recoverable work.

- 5 The initial period, of we understand six weeks, in which providers can volunteer to send their claims to the LAA, is futile. It is intended to be used as an opportunity for providers to provide feedback on the LAA's assessments, and to iron out problems with the new system, then it is self-defeating. There will not be enough time for bills to be sent, assessed and feedback provided in six weeks. Further, it could in no way reflect the volume of bills which would need to be processed by the LAA in the event of the permanent change being made. As per our proposals below, we invite the LAA to extend this "voluntary period" to allow providers time to test the system and to give proper feedback before any permanent change is made.
- 6 Under the new system we understand that the LAA's independent costs assessors will have responsibility for dealing with appeals on disputed civil bills. It is unclear how this appeals process will work in practice and we question whether this will be a truly independent adjudication process. We are concerned there will be pressure on LAA assessors to limit cost claims for the purposes of key performance indicators, or general internal policy. If that happens then it is likely that the already stretched margins of legal aid providers will be hit heavily in the medium to long term.

Proposals and information sought

The firm seeks the following assurances and information from the Legal Aid Agency and invites the consultative bodies to include these proposals in their response to the LAA. We seek:

- (a) details of the numbers of additional staff being recruited to the LAA to deal with the assessing of the increased volume of bills, and details of the training being provided to the assessors, together with any written guidance provided to them to assist with the assessments;
- (b) an assurance that the LAA assessors working in house will adopt the same approach as costs judges to recoverable work and enhancements on civil bills, that there will be no change of policy in assessments as a result of this change and that providers will be entitled to rely on decisions previously made by costs judges and Special Cases Unit case workers as precedents;
- (c) further information as regards the appeals procedure for disputed civil bills, personnel dealing with appeals and the options for providers to challenge LAA assessment of bills;
- (d) an extension to the "voluntary period" of, say, six months to allow for a more substantial period of time in which bills can be assessed by the LAA on a voluntary basis, and for feedback to be given by providers, to enable the new system to be tested prior to any mandatory requirement for all bills to be assessed by the LAA.

IRWIN MITCHELL LLP

12 June 2020