



Managing Legal Aid Cases in Partnership - Delivery Transformation

A Response Paper

*Criminal
Defence Service*



*Community
Legal Service*



December 2008

**Managing legal aid cases in
partnership –
Delivery Transformation**

**A Response to Consultation
December 2008**

Contents

Foreword by Carolyn Regan, Chief Executive	3
1. Executive Summary	4
2. Introduction	6
3. Background	7
4. Summary of views expressed and the LSC's Response	9
4.1. Electronic Working	9
4.2. Client Database	15
4.3. Application Process	22
4.4. Certificate Discharge	32
4.5. Client Contributions	33
4.6. Electronic Billing	35
4.7. Risk	40
4.8. Supporting Providers Through the Transition	43
4.9. Impact Assessment	46
4.10. General	46
5. Next Steps	48

Annexes

Annex 1: Respondents to the Delivery Transformation Consultation

Foreword by Carolyn Regan, Chief Executive

I am grateful to all those, including the representative bodies, who gave their time both in drafting responses to the Delivery Transformation consultation and attending our events around the country.

The aim of our legal aid reform programme is to ensure that legal aid remains sustainable for the long term. Delivery Transformation is a key element of this programme and is crucial to making our internal and external processes efficient.

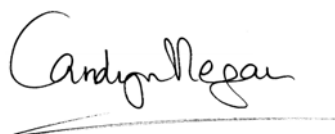
Working electronically is the foundation of our proposals and we recognise providers concerns caused by recent problems with Legal Services Commissions (LSC) computer systems. We can assure you that lessons learned are being applied to future system development, testing and implementation. We are also ensuring that contingency plans are in place and clearly communicated in the unlikely event of any future system failure.

Responses to the consultation were positive and providers had many useful comments and suggestions about our proposals. There were some areas of concern, which we have addressed in our response. We understand that, in some instances, it has been difficult for providers to comment without the final detailed solutions being present. We are committed to continue to work closely with providers and other stakeholders through the design and development process to ensure that the final systems are fit for purpose.

Some providers expressed concerns that workload on providers may be increased by the proposals. However, although an item taken in isolation could be seen as an increased burden, when the proposals are considered holistically this is not the case. With effective design of the final processes and systems and by working closely with providers we will ensure that the solutions implemented are efficient.

Through Delivery Transformation we intend to give legal aid providers simpler processes, increased automation and reduced paperwork. We aim to enable providers, (within an appropriate controlled framework), both to start and progress work for clients, in many cases with limited recourse to the LSC. To the client the experience will be a simpler, faster and more transparent process. To legal aid service providers and the LSC this will mean simpler processes and reduced transaction costs.

Finally, I want to stress that we are committed to improving value for money, so that clients have continuing access to the high-quality services that they need.



Carolyn Regan
Chief Executive, Legal Services Commission

December 2008

1. Executive Summary

This document is the summary of responses to the consultation '*Managing Legal Aid Cases in Partnership – Delivery Transformation*' and outlines our decisions based on the responses. We received a total of 61 formal responses, and over 400 individuals attended a series of consultation briefing events.

The consultation focused on increased electronic working, particularly for civil certificated work. This included the expansion of online billing, devolving the responsibility for conducting means assessment and considering case merit to providers, a move to electronic applications and other forms, the introduction of a client database and changes to the contributions system. There were also proposals on certificate discharge procedures and the claim process for self-employed advocates. The majority of proposals are applicable to civil work only, though the proposals around billing apply to both civil and criminal work.

Following the consultation, the LSC now proposes:

- to mandate electronic working, with minimum technical requirements, for providers starting at a point from April 2010 at the earliest.
- to require providers to use the LSC's systems to make applications for civil certificated work, including conducting the means assessment online
- to devolve the decision-making element of the merits test to providers where it is deemed that the case is low risk and provider performance sufficiently high
- to ensure that outreach situations are not impacted by requirements, and to further consider what options can be developed to account for these scenarios
- to introduce a client database internally, and a client registration process externally, taking into account security and confidentiality concerns
- to expand electronic billing to cover all civil cases, including certificated work
- to require self-employed advocates to bill us and be paid electronically
- to devolve decisions on certificate discharges in non-contentious cases

These decisions have been made based on our objectives to better the client's experience of the legal aid process, reduce our administrative spend and increase value for money for the tax-payer, decrease the administrative burden on providers, and modernise the delivery of legal aid services. Account has been taken of all views expressed, whether through formal consultation responses or other forums, such as briefing events. There was broad support from respondents, although several areas of concern were identified, which we have tried to address in the detail of this response. We believe that, as a package, these proposals will bring benefits to all parties.

However, we recognise that much will depend on the detail, and where we have not been able to provide it in this document, we will do so at appropriate points in time. We will continue to engage with stakeholders throughout the process. Recently, we visited several providers to better understand the current systems and discuss improvements they would like to see under the new system. The visits included both

small and large firms across the country as well as Barristers and Not for Profit organisations. We also ran workshops to go through the process we have designed and gathered feedback on this. We will also continue to engage the 80 providers who volunteered to help us on an ongoing basis following the regional consultation workshops we ran between May and June. Any providers who would like to get involved in the development of the future state processes should contact either their local Provider Reference Group or contact us directly through your Account Manager. Although we are not proposing to mandate the uploading of electronic documentation for the systems outlined in this consultation response, we (the LSC) are currently investigating the use of an online system for bidding for 2010 contracts. If the LSC decides to go ahead with this online system, this would require providers to be able to upload electronic documents in support of bids. For more information, see the consultation on the civil specification for 2010.

As part of the consultation exercise, we launched a draft Impact Assessment. Annexed to this document is the final Impact Assessment. A number of impacts and benefits were identified. It was generally found that there would be an ongoing benefit to providers, although there may be an initial investment cost associated with implementing procedures in the most efficient ways, particularly around means assessment. Although the anticipated costs to providers are currently higher than the identified benefits, as the technical detail is developed we expect to identify more benefits associated with process improvements. It was found that there would be no disparate impacts on ethnicity, gender or disability.

Following the consultation, we have identified a number of further steps we need to take.

- We will revisit our policy on contributions, and how they are allocated to cases
- We will evaluate different methods of client payments, including direct debit facilities
- We will work with providers and representative bodies to develop the 'provider risk criteria' that will determine whether providers are eligible to grant legal aid in low risk cases without prior referral to the LSC for a funding decision
- We will define in more detail our arrangements for support and education, working with representative bodies to address the best way forward
- We will work with representative bodies in developing our contingency arrangements, to ensure that there is minimal disruption to services in the event of system failure
- We will undertake a targeted approach to equality impacts, including undertaking a disability audit of our systems
- We will undertake and publish a more detailed analysis of impacts and benefits following a more detailed technical design
- We will work with providers of case management software, to aid integration with our systems and processes.

2. Introduction

- 2.1. This paper presents a summary of responses to the consultation '*Managing Legal Aid Cases in Partnership – Delivery Transformation*,' and outlines our revised proposals based on the responses. The consultation sought views from interested stakeholders on our proposals to increase electronic working, reduce bureaucracy and foster improved service to clients.
- 2.2. This response to consultation, and its annexes cover:
 - the background to the consultation
 - an analysis of the responses received and our decisions in light of these responses
 - a list of organisations and individuals who responded to the consultation
 - the final Impact Assessment
- 2.3. We received a total of 61 responses, 12 of which were from representative organisations and 2 from other government agencies. 25 of these responses were submitted using the LSC's online consultation tool, with the remainder being submitted by fax, email or letter. The majority of responses were received from solicitors responding on behalf of their firm. We also received responses from chambers, Not-for-Profit organisations, other organisations and individuals.
- 2.4. Along side the consultation, we ran an IT survey for contracted providers. We received over 1,300 responses to this, and have used this data in formulating our policy and assessing the impacts. We've referred to some of the results in this document, and will release more information shortly.
- 2.5. As part of the consultation, we ran a number of regional briefing events. In total, we held 25 events, with over 400 attendees. These provided an opportunity to discuss the proposals in more detail in small working sessions. We received very positive feedback on these sessions, with 83% of attendees saying they were useful or very useful. We stressed at these events that feedback would not be taken as formal responses. However, we have considered the feedback, have reflected it in our decisions, and are using it in development going forwards.
- 2.6. Generally, the responses were positive, although some concerns were expressed around some of the proposals. In particular, concerns were raised about the confidentiality issues of the proposed client database, potential for increases in administration for providers, and recent IT failures. We have tried to address these concerns.

3. Background

- 3.1. The consultation paper '*Managing Legal Aid Cases in Partnership – Delivery Transformation*' was launched on the 10th April 2008, and was open for responses for a period of 12 weeks, until 3rd July 2008.
- 3.2. The aims of the proposals put forward were to foster improved services to clients, reduce bureaucracy and improve the way the LSC works with providers of legal aid services. The four broad objectives were, and continue to be:
 - to enable faster case progression to the advantage of the client, provider and LSC
 - to provide better information to the client, particularly at the start of the case, and increase the understanding of how any contributions are balanced
 - to improve clients' experience of the legal aid process
 - to reduce the cost of administering legal aid for both providers, by enabling improved processes, and the LSC by 2010.
- 3.3. We proposed a number of changes to the administration of legal aid, including a reduction in the amount of paper-based transactions, by simplifying processes and introducing more electronic working, devolving some additional responsibilities to providers, and reducing the time taken for clients to receive a funding decision.
- 3.4. The proposals focused on a number of different processes, including:
 - means assessment for all levels of civil work
 - the application and amendment process for civil representation
 - the administration and calculation of contributions for civil legal aid
 - the submission of claims for both civil and criminal cases
- 3.5. We anticipated that the ongoing annual benefit of Delivery Transformation would be circa £7million in reduced LSC administration, including internal facing efficiencies. We also anticipated administrative savings for providers, in areas such as overheads and time.
- 3.6. This paper is the post-consultation response to these proposals, and sets out a summary of the findings and our responses and decisions.
- 3.7. A number of respondents made specific reference to the lack of detail, especially technical detail, in the proposals. We appreciate that it is hard to comment on impacts of proposals where the technical arrangements are not spelt out, but we were keen to engage at an early time so providers and other interested stakeholders had the opportunity to comment on the principles before we put more investment into technical development. The detail will be developed over time and we intend to continue to work closely with providers and other stakeholders through the design and development process to ensure that the final systems are fit for purpose. We will do this by continuing to run workshops where providers will have opportunities to review what is being planned and developed and provide suggestions for improvements.

- 3.8. We are in a similar position with this post-consultation response. We have tried to strike a balance between giving the information providers need in order to understand the implications of the proposals, whilst allowing a degree of flexibility as to how we approach the detail, in order to cope with any changes that we need to implement as a result of designing and testing systems. We appreciate that there are gaps, and have identified where we think these are. We will fill these at appropriate points within the project, and communicate them to providers, software vendors and other interested stakeholders.
- 3.9. We have taken a similar approach with our Final Impact Assessment; impacts of IT changes are going to be heavily influenced by the detailed process, technical specifications and the look and feel of the system. In developing our Impact Assessment we have considered all comments received, both directly and indirectly, and undertaken more work where possible to restate impacts. However, given the above, it is inevitable that there will be gaps, and we intend to update the Impact Assessment a number of times throughout the life of the project, so that we can give more accurate indications of impacts as and when we know more.
- 3.10. Ultimately, we have decided to proceed with most of the proposals put forward in the consultation paper. We do recognise the responses received and we have sought to address the concerns raised.
- 3.11. In the development of future IT solutions, we are aware of the crucial importance of working with software vendors, the developers of providers' electronic case management systems (ECMS). Not only should any interface between LSC and ECMS tie in seamlessly, avoiding input duplication, changes required of ECMS products must be reasonable and should not impose unreasonable cost to Vendors. The Provider Readiness Team are working through a number of initiatives with software vendors to address such issues. A software vendor group, made up of around 10 vendors representing all vendors, is being reconvened. This working group will agree a protocol to limit the number of changes per year, assess the potential impacts of future changes, and aid in the design process.
- 3.12. As highlighted in the 'Next Steps' section of this document, we will consult on any contractual and regulatory changes needed to implement these proposals in early 2009.

4. Summary of views expressed and the LSC's Response

4.1. Electronic Working

We proposed to increase electronic working with all legal services providers, including advocates and family mediators. This would require all legal services providers to use our electronic system to submit information that would otherwise be sent in on paper forms directly to us.

The proposals under electronic working would also require providers to use the Legal Services Commission's (LSC) online client management system, which would include means and merits functionality and a client database. The system would enable providers to conduct instant means and merits tests, whilst the client database would be used to review a client's legal aid history when dealing with new applications and enquiries.

We believe that the proposals around electronic working would reduce the time taken by the LSC to turn work around and improve the quality of data to the benefit of clients, providers and the LSC. Accuracy of information is also expected to improve as a result of a single point of entry for data.

From a technical perspective providers were required to meet a minimum set of IT requirements such as access to, a computer, a web browser, an email address and a printer. The additional requirement of a scanner was optional for providers who want to submit supplementary documentation to the LSC electronically.

Questions:

1. Which of the minimum requirements do you think you will be able to meet in time for the implementation of Delivery Transformation in April 2010? What obstacles do you envisage in meeting these requirements?

4.1.1. The majority of people who responded directly to this question indicated that they would have little problem in meeting the minimum requirements.

- 95% indicated that they would have a computer
- 88% indicated they would have a web browser
- 95% indicated they would have an email address
- 93% indicated they would have a printer

4.1.2. The results of the IT survey run along side this consultation found the majority of providers are already meeting the minimum requirements, with 90% having internet access and 98% having email and a printer. The majority of providers, 62%, also indicated that an increase in electronic working would bring efficiencies to their office.

4.1.3. Generally, responses from the representative bodies were supportive of the increase in electronic working. They indicated that the minimum requirements as specified in the consultation document should not provide any significant issues for providers as a whole.

- 4.1.4. We specified in our consultation that the technical requirements for the electronic working proposals are the same as those currently needed to use LSC Online. However, there were concerns raised about the amount of hardware available in an office. The Housing Law Practitioner's Association indicated that although this is technically correct, the reality is that not all solicitors and caseworkers currently need access to these facilities, whereas under the new proposals they will need access. The Association of Lawyers for Children also expressed concern about the impact on smaller organisations, in that they may find it harder to meet the minimum requirements and at a disproportionate cost.
- 4.1.5. We believe that all of our proposals can be implemented with the current technical requirements. The results of our Electronic Working survey on technical capabilities indicated that the vast majority of providers already meet these needs. Although it is possible, not all providers may choose to work with us electronically, and this is a choice individual organisations will need to take.
- 4.1.6. Significant concern was raised about services that are provided on an outreach basis, as these locations will not necessarily have the facilities to access our portal. A number of locations were mentioned explicitly, including hospitals and prisons.
- 4.1.7. Concern was raised about how effective the system would work where there is limited broadband availability. We understand this concern, as well as concerns on the quality of the broadband. As such, all of our systems will be designed to operate with dial-up internet access, although this will inevitably be slower and more time consuming for providers to use. We will strongly encourage providers to have broadband access to use our systems, but will ensure that access is not limited to this type of internet connection.
- 4.1.8. One of the key benefits anticipated with these proposals is the minimisation of instances where data has to be entered more than once. This was recognised by a number of organisations, but it was highlighted that it is essential that we work with suppliers of case management software to ensure this. In addition we will also work closely with them to ensure compatibility, and that there is minimal additional burden placed on providers.

Decisions

- 4.1.9. Based on the consultation responses, the IT survey and the current requirements to use LSC Online, we believe that the proposed minimum requirements are appropriate and achievable, and will therefore be requiring providers to have these and make use of our systems from April 2010 at the earliest.
- 4.1.10. From the results of the IT survey, we've found that small providers (those with one to five fee earners) are not disproportionately impacted by the proposals in terms of investment. There are some potential issues around IT literacy, but we are seeking to address this through our education and support strategy.
- 4.1.11. We will ensure that any form that will be part of the electronic submission system will be printable by the provider. We will also explore the possibility of

enabling our systems to be used 'off-line' and then completed later online when an internet connection is available.

- 4.1.12. We recognise that in outreach scenarios real-time access to our systems may be difficult, and that this cannot prejudice a client's application. We will ensure that there are appropriate alternatives available for these instances, so that providers are not negatively impacted by the requirements. Although the alternatives will be dependant on technical feasibility, we are considering the following:
- providing an option to access via mobile web
 - building an electronic off-line version of the form which can be submitted later online
 - retaining paper forms in exceptional circumstances for very specific usage
- 4.1.13. We will discuss the feasibility of these options with providers and representative bodies at an appropriate time.
- 4.1.14. We will endeavour to provide an Application Programming Interface (as used by other government systems) so that providers can enter relevant information into their own case management systems to pre-populate the relevant fields of the LSC's submission system. This is to avoid data being entered twice by providers.
- 4.1.15. Some respondents were concerned at the level of engagement that software vendors might have with us. As highlighted above, we will work closely with vendors of case management software in order to deliver the maximum possible integration, through the software vendors working group. We will also make technical details available for providers who use their own software.
- 4.1.16. We will continue to investigate the issues surrounding broadband availability, and what can be done to mitigate impacts on providers who are unable to get good service.
- 4.1.17. It is also our intention that any electronic submission system we implement enables users to track the progress of their submission, be it an application or claim.

[Questions:](#)

2. If the LSC has the ability to accept key-supporting documentation electronically, would you use this facility?

- 4.1.18. 70% of people who answered this question directly said they would sometimes or always use the facility. A further 14% said they were not sure or would need to try it first, and 2% said they would never use it. The remaining 14% of respondents provided other answers. The IT survey indicated that 62% of providers would be likely or very likely to use the facility.
- 4.1.19. A number of concerns were raised about making this method mandatory. Although some documents will originate electronically, others will be paper-

based, and will therefore require scanning in order to use this facility. Advice Services Alliance (ASA) stated that scanning documents in order to use this facility would be time consuming. Although 78% of respondents to the IT survey¹ stated that they would have the facilities to scan, we recognise the hardware and ability to do this efficiently will vary from provider to provider, and do not want to impose additional investment for this. It was also expressed that, in order to gain efficiencies from other forms of electronic working, such as applications, this method would need to be used.

4.1.20. In addition to the above, there was concern around the system's ability to cope with large amounts of data transfer. We accept that there is likely to be a lot of data if the take up of this facility is high and we will ensure that the system can cope with this. However, given that we will still be accepting paper documents, there will be appropriate contingency if any problems arise.

4.1.21. Concerns were also raised about the security of submitting such documentation electronically. We are very conscious of the need to ensure that all communication channels are secure, and will build the system to ensure this. As a minimum, the system will be compliant with the Data Protection Act and will conform to industry standard security protocols, such as the 'https' standards for transfer of information. We expect this will be via our portal, rather than secure email. Similar stringent standards for data storage will be implemented. The system will be rigorously security tested to ensure that the security methods offer sufficient protection. We will ensure that this level of security is maintained and audited annually to this effect.

Decisions

4.1.22. Whilst we will still allow supporting evidence to be submitted on paper, for example when a means assessment is referred to us, we will ensure that we allow providers the choice as to how to use this facility. We do feel that there is sufficient support for this facility to be developed, but we recognise this is a choice for individual providers, and will therefore not be making this mandatory. We will ensure that we have appropriate document management systems in place to match paper submissions with the electronic application quickly, so as not to disadvantage providers who cannot use the submission facility.

4.1.23. All systems will be built in line with information assurance standards, and we will work with industry experts to ensure that documentation can be submitted securely.

4.1.24. It is likely that the electronic document management system we will provide will allow documentation to be uploaded in multiple formats e.g. PDF, jpg, tiff. We will ensure we publish agreed formats well in advance, to ensure that this can be fully implemented, and providers and software vendors are clear on the requirements.

¹ We have used the IT survey as the sample size as it is more reflective of the provider base

Questions:

3. Are there any additional activities the LSC can consider to improve the electronic working proposals?

- 4.1.25. It was universally expressed that we will need to have appropriate contingency arrangements in place, in light of the recent experiences of LSC Online, and the time and effort needed from providers in working around these difficulties. It was expressed that such arrangements are extremely important, especially in light of the fact that any system failure could impact a client's application and their access to justice. It was also requested that the representative bodies be involved in formulating these contingencies. We agree that we need to have appropriate measures such as offline capabilities and paper back up solutions. However, we are not yet in a position to indicate what these may be, we will work closely with interested parties in formulating detailed plans.
- 4.1.26. Concern was expressed about the differences between some elements of the justice system, and that different organisations often require similar information in different formats.
- 4.1.27. There were a number of comments to the effect that our current forms are complicated and burdensome to complete. Whilst we agree that some do require a lot of information, we are conscious that there is a minimum standard of information that is needed, and it is difficult to tailor forms to individual circumstances in the current paper-based system. Under the new process we have made efforts to simplify our forms, and we hope that the introduction of electronic forms will allow us opportunities to tailor them to differing circumstances. In particular, we anticipate this to be the case with application forms.
- 4.1.28. The Welsh Language Board commented on the LSC's Welsh Language Scheme, and that we should have full regard of the users of the Welsh Language². It was expressed that, when developing systems, we need to ensure they cater for Welsh speakers. In particular, it was stated that the system would need to be able to produce information for clients in Welsh, and that it would need to be able to record language preference. We are conscious of our obligations with regards to this, and will fully consider the Welsh Language Boards Bilingual Software Guidance and Standards.
- 4.1.29. There have also been suggestions that the LSC supply legal aid providers with an electronic case management system. The Criminal Law Solicitors' Association, for example, stated that this would enable the LSC to design and build it with the specific experiences of the legal aid client in mind, and enable us to undertake remote monitoring. IPLA expressed a similar sentiment, stating that the LSC should take responsibility for procuring software, make available to suppliers at minimal cost and bear the costs of any subsequent changes.

2 LSC Welsh Language Scheme, section 4, available at www.legalservices.gov.uk

Decisions

- 4.1.30. We will develop full contingency and business continuity plans, in consultation with representative bodies, with the aim of minimising impact of IT failure. These will be published and widely available at an appropriate date.
- 4.1.31. Whilst we appreciate the advantages that may be achieved through the LSC supplying a case management system, we believe there are a number of factors that limit our ability to do this. These include:
- many providers will undertake a mix of legal aid and private client work, and we are not in a position to develop a system which will effectively account for all types of work
 - we believe the expertise for this already lies with the organisations that currently develop legal case management systems.
 - the risks and costs attached to doing this are prohibitive
 - we are reluctant to limit the market for electronic case management systems, and believe by us creating or procuring one specifically for legal aid will place undue restrictions upon provider choice.
 - some providers have already invested in this equipment and we are not able to offer a service that may put other firms at a competitive advantage.
- 4.1.32. Therefore, we do not currently intend to procure, specify or develop one electronic case management system for legal aid providers. However, we will work with software vendors to make sure their systems are compatible with ours.
- 4.1.33. We will fully consider our obligations under the Welsh Language Act, the LSC's Welsh Language Scheme and the guidance from the Welsh Language Board on bilingual software.
- 4.1.34. We will work with disability groups and experts to undertake a disability audit of our software. This will include assessing accessibility of the systems, how they work with accessibility solutions (e.g. screen readers) and whether alternatives should be made available.

4.2. Client Database

We consulted on the introduction of a client database to assist us when searching for clients and reviewing a client's legal aid history when dealing with new applications and enquiries. The system would generate a unique client reference, which would be retained by the client throughout their case and subsequent future applications.

We envisaged that information stored on this database would be similar to that which we currently store and process in our existing systems. For instance, where a provider has previously instructed a client, they will be able to review the details of the application i.e. means and merits assessment and the type of legal aid applied for. This is no different to a provider accessing their own paper records to review former client applications. However, one of the advantages to having this information on a database is that, information such as client name and address could be pre-populated on new applications. This would significantly reduce the time taken when making an application.

We envisaged that the database would also allow a provider access to the high-level legal aid history of new clients. This means the provider would be able to see whether a client had a live legal aid case, the matter type and whether contributions are being paid. This would allow the provider to handle a new client's case speedily and appropriately.

As part of the proposals we also asked whether limited access to a subset of this data, by providers, with appropriate controls would be desirable and benefit the application process. With regard to controls, we also stated that we would ensure that all access provisions and requirements identified to implement such a database would comply with the data protection legislation and with our confidentiality obligations under s20 Access to Justice Act 1999.

Questions:

4. Do you believe that a client database is appropriate and would provide value as described in the proposals? Do you envisage any additional issues that would impede its introduction?

- 4.2.1. 25% of direct responses to this question felt that it was appropriate to introduce a client database. A further 35% conditionally agreed, 21% replied that it was inappropriate, and 19% provided other responses.
- 4.2.2. There was significant concern around the introduction of a client database, and almost all respondents raised the issues around security and experiences of other government bodies over the last year. We are aware of this concern, and agree that information security should be of prime importance. We will continue to work with the data protection officials at the Ministry of Justice (MoJ) to ensure that our proposals for a client database will be fully compliant with the Data Protection Act (DPA) and other best practice.
- 4.2.3. ASA queried whether the database would be used solely for certificated cases, or would cover legal help clients as well. Currently, client details are only reported at the end of the case, and we have little information about progression from legal help to certificates.

- 4.2.4. Many respondents recognised the benefit the database could bring to the LSC. ASA recognised that it would provide useful management information, and the Law Society agree that it would be useful to collate class action information and identify litigious clients.
- 4.2.5. Concern was raised on the introduction of a Unique Reference Number. ASA questioned whether this would be the same as the one announced in April 2008, and stated that it should not become “another hurdle for the grant of legal representation certificates.” We have also received significant feedback from providers, notably at the consultation road shows, that clients would find it difficult to retain or remember this number, especially for future cases. In the consultation paper, we stated
- “[I]n the previous consultation that a client’s National Insurance number could be used as this identifier. We no longer anticipate that this will be the case, as concerns have been raised around the security of this...”³
- 4.2.6. We have received feedback that the use of NI numbers would, in fact, be an appropriate reference, as most clients will have one, and it avoids introducing another reference number for them to retain and remember. In addition, if a check is needed against the DWP database, this will need to be collected anyway.

Decisions

- 4.2.7. We are not proposing to increase the information that we retain on a client, but it is essential that we have a record of them in order to effectively manage their legal aid. We already have this and we will develop a new database to record this information. Information security will be taken very seriously. As an organisation, we are obliged to comply with information assurance standards, and will continue to do so with the new system. Detailed information on this will be released when available and we will hold discussions with appropriate organisations and experts on how we can ensure our data remains secure, including the Information Commissioner’s Office (ICO).
- 4.2.8. As an organisation, we are obliged to comply with the obligations under the DPA. There are a number of obligations that we highlighted in the consultation paper⁴, which the ICO agreed was a suitable summary of the key concerns. We will review how we are going to address these, and will publish more specific information and guidance when available
- 4.2.9. We believe that having one record per client will give significant advantages. It will allow us to better track progress of a client from Legal Help to representation, and enable us to improve the management information we use for formulating policy and managing contracts. As such we are exploring the possibilities of all clients who receive civil legal aid having a record, including Legal Help, and how to achieve this without adding any additional burden.
- 4.2.10. We will review how we utilise National Insurance numbers and consider any difficulties there may be with this, for example for clients who do not possess

3 Para 4.2

4 Para 4.3

one. We will look into how we can make a Unique Reference Number as memorable as possible. We will not allow failure to remember this a bar to receiving legal aid, although we will implement appropriate measure to avoid duplicate records.

Questions:

5. Is it appropriate to extend the use of the Client Database to providers and at what stages of the application process could a Client Database add value? What are the barriers that could hinder the use of the database?

- 4.2.11. From respondents who answered this question directly, 27% said that it was appropriate, 25% that it wasn't and 31% indicated that they didn't know. A further 16% gave an alternative response.
- 4.2.12. There was universal concern from respondents about this proposal, both in the online consultation and from the representative bodies. The biggest concern related to security and the potential for providers to inappropriately access client details. Some respondents felt that security measures could not address the risks of abuse due to the number of providers and their staff who would have access.
- 4.2.13. A theme that came out across responses was the impact this proposal could have on vulnerable clients, including those pursuing domestic violence cases, asylum cases, and those in which the applicant is a child. The Bar Council felt that mere knowledge of the fact that another provider has acted for a client might, in certain circumstances, breach client confidentiality. The Law Society stated that we should be aware of inferences that could be drawn from even the simplest of information. It was also stated that it is "vital that clients are not discouraged from seeking legal advice due to fears that their details including current address may be accessible." (Citizens Advice)
- 4.2.14. A number of respondents questioned the reference to 'high-level legal aid history' and what this would contain. The Institute of Legal Cashiers and Administrators (ILCA) suggested that that only very basic information should be available, such as name and address, date of birth and number of open cases, with referral back to the LSC for any further information.
- 4.2.15. There were a number of comments regarding consent issues. ASA believe that the client must be given a choice over what information is available, and only after they fully understand the potential consequences. The ICO point out that the client must understand the purpose of the database, both as a means of administering legal aid and to risk profile legal aid applicants to minimise error or fraud. HLPAs state that it is unclear what will happen where a client does not give informed consent, and the Law Society state that there must be alternative arrangements in place for these clients. HLPAs and ASA also question how a client's consent would be recorded, and concern has been raised on the possibility of this being forged. The ASA also suggest that time taken to advise the client on consent should be funded.
- 4.2.16. Concern was also raised about the administration that would be involved in providers using such a database. In particular, this focused on the time and effort involved in setting up clients on the database. For example, Shelter

state that we should only be asking for data already collected, and that there should be interfaces with a provider's own software. ALC are concerned that we have underestimated the administration involved in setting up clients, and they and ILPA requested remuneration for any additional work. HLPAs are concerned that we are suggesting something overly bureaucratic, but suggest ways in which systems could be set up to dramatically reduce the need for providers to correspond with the LSC to obtain basic information about the status of certificates.

- 4.2.17. Despite these concerns, a number of respondents saw the value in having some access to information. Some respondents believed it would be a good opportunity to find out what advice a client had already received, with one respondent suggesting some information would save time in the application process. The HLPAs stated that it would be sensible for providers to have some information, such as whether there is a pre-existing certificate and whether we have the correct details of the client. The Bar Council requested that, should the proposals go ahead, authorised chambers have access, reducing the number of invalid claims, thereby giving significant time savings.

Decisions

- 4.2.18. Having considered the risks and benefits of such a database, we are no longer proposing that providers have access to the database per se. Instead, we will introduce a client registration system. This will not give any details of past legal aid history, but simply indicate whether the client currently has a certificate, and whether they are paying contributions. It is essential that clients are appropriately identified so as to make sure they are not required to pay additional contributions where already being paid, that litigious clients can be identified, and that a provider has the opportunity to start a case without referral to the LSC.
- 4.2.19. We will ensure that the information given out by the registration system is limited to confirmations. However, we accept the points made regarding sensitive cases, and that simple acknowledgement will be too much in some circumstances. For these cases, there will be automatic invisibility outside the LSC. Specific cases that have been identified through the consultation, including domestic violence, cases in which the applicant is a child and sensitive asylum cases, will be deemed to be sensitive for the purpose of these proposals, and therefore have invisibility. We will work with representative bodies in creating a more extensive list of cases falling into this category.
- 4.2.20. We recognise that such a list cannot cover all instances, and believe that consent will be key in ensuring clients are protected. This will be informed consent, and, as a number of organisations have stated, the client will need to understand what this consent means. This will be when they are first registered on the system, and this consent will be able to be removed or given by the client at any time during the case. A client will also need to consent at the start of each subsequent case to a provider accessing these details. We will need to do some further analysis on how this consent will be obtained and recorded, but anticipate that this will be signature based. Also, where a client has not provided consent on first registration, they will be able to call the LSC, and with appropriate identity checks, be able to request

information be released to the subsequent provider. This may not apply to cases that we have deemed should be invisible.

- 4.2.21. As stated above, we will ensure all our systems comply with the appropriate data assurance and information security standards. Although we are not yet in a position to give details of how this will operate, we will ensure we use appropriate internet security and encryption. Further details will be released with the technical specifications. In some circumstances, we also think that it would be appropriate to release more information than on the initial registration system. Further consideration will be given on what information this should be, but expect it to be particularly relevant when a client consents to a transfer in solicitor (see paragraph 4.2.36 below)
- 4.2.22. Although the Bar Council requested access to client data (4.2.17), we do not believe this would be appropriate or necessary. The only processes that require access to client data are client registration and change of provider. In addition we are not in a contractual relationship and therefore contract sanctions would not be available, which is one of the key risk controls (further details below). We will, however, continue to hold discussions with the Bar on this matter.
- 4.2.23. In developing detailed designs and processes, we will have regard to the Data Protection principles. This will include, but is not limited to, defining roles and responsibilities, ensuring fair processing notice is given, having appropriate measures in place to manage disputed information, introducing sanctions for misuse and ensuring clients have access to the data held on them. We will also ensure we only hold data for as long as necessary. A number of respondents have questioned the details of this, and although we are not yet in a position to give any more details, we will do so in advance of implementing proposals.
- 4.2.24. We will expect providers to use the client registration system to enter details of clients that are not currently on the system. However, the information will be no more than is already required on the current means form and other forms making up the application. This will reduce the need to repeat information when making new applications for former clients. We believe that any additional burden will be offset against the benefits of not having to re-enter this information again on subsequent forms, such as amendments. We will endeavour to provide an application programming interface, so that a provider's own software can interface with this system, so to further reduce the impact. We are not in a position to remunerate for this activity, as we already require providers to collect most of the information.
- 4.2.25. We will implement measures to address issues relating to data integrity and duplicate records. We recognise the issues that this presents and will need to further consider what action we can take to minimise this. For example, we will use a postcode verification system.

Questions:

6. What controls do you consider would be the most appropriate for protecting against inappropriate access [of the client database]? Are there any other data issues that you feel would need to be considered?

- 4.2.26. A number of respondents expressed the importance of having password protection for individuals not just for an organisation. It will be necessary to have a full audit trail back to an individual, both as a deterrent to inappropriate use and to take action against an organisation and the employee. It is also stated that there should be clear roles defined within the system, and an individual's access should be restricted to only data that is needed to perform their job.
- 4.2.27. The Law Society stresses the importance of "heavy penalties and contract sanctions" as a deterrent from unauthorised use of the system. The ICO support this approach, and state that users need to understand their obligations under the Data Protection Act. Also, they suggest that any serious breaches should be referred to them.
- 4.2.28. However, a number of respondents, including the ALC and HLPAs, state that contract sanctions in themselves are insufficient. Both state that although solicitors are governed by strict codes of conduct, other people who may have access, such as paralegals and caseworkers, do not. The deterrent against misuse for such individuals is therefore less. One respondent raised concern about temporary members of staff, such as students or paralegals, having access with little deterrent.
- 4.2.29. With regards to monitoring and exception reporting, this is supported by the ICO. It is suggested that both the LSC and providers have measures in place to monitor the use of the database. They also suggest that checks could be undertaken by the LSC, and more routinely managed by lead contacts within a contracted organisation.

Decisions

- 4.2.30. We will ensure that there is appropriate role based access, and acknowledge a need for individual logins and passwords. All access will be monitored, and there will be a full audit trail back to the individual.
- 4.2.31. We expect Providers to be registered, as appropriate, with the Information Commissioner's Office (ICO) as data controllers in their own right but where they are processing data on our behalf they would be required to demonstrate that they have appropriate technical and organisational measures in place to keep personal data secure and that ensure access within their firm is controlled and that individuals are clear of their responsibilities under the Data Protection Act 1998.
- 4.2.32. When the client registration system is accessed, and no application made, we will have the ability to investigate why this happened on a case-by-case basis. We expect providers to ensure that individuals are clear of their responsibilities under the Act and do not act recklessly or negligently when processing personal data, so as to extend obligations to individuals as well as organisations⁵. Where we have evidence of organisations or individuals using personal data illegitimately we would work with the Information Commissioner with any prosecution of offenders.

⁵ s55 Data Protection Act

- 4.2.33. We will build obligations and sanctions into the contract around use of our systems and personal data processed on our behalf. We will be very clear on what these obligations and sanctions are, so to act as a deterrent against misuse as well as a punishment for any breach of the Act. We will consider termination for serious breaches, and will report such breaches to the Information Commissioner. This will be discussed more fully with the representative bodies when negotiating the terms of the 2010 Unified Contract.
- 4.2.34. We will work with representative bodies in designing a system whereby local management and monitoring can be implemented.
- 4.2.35. All data on the client registration system will be strictly limited to that necessary to start a case. We currently anticipate that this will include confirmation of name and address, whether a client has an existing certificate and whether they are paying contributions. As discussed above, this would not apply in cases where informed consent is not given or where the case is deemed too sensitive to be available on the system.
- 4.2.36. There are instances where means information will be useful for clients and providers, particularly when undertaking a reassessment. For example, when a client transfers to a new solicitor and consents for the transfer of the certificate, they will also be able to consent for the new solicitor to see the means information for the purposes of any reassessment.
- 4.2.37. Other controls discussed in the consultation, such as consent and restricting access to sensitive cases have been discussed above.
- 4.2.38. We appreciate that we need to develop more detail on how we manage the system. We will do this as an integral part of the detailed process and IT design. We will also discuss this with representative bodies. We expect to be able to publish this information at the same time as we publish information on the technical specifications.

4.3. Application Process

We consulted on the proposal to devolve, progressively, more responsibility for case decisions on merits, means and the progression of cases to providers. The current process for making applications is complex and involves significant paper and administrative burden. We proposed to reduce the complexities by introducing an online system with in-built controls. This would assist providers and clients in completing applications and would allow means decisions to be made automatically in many cases, which would otherwise have required referral to a Legal Services Commission (LSC) caseworker to manually make a decision.

We proposed that the merits test would also be part of the same system and will be engineered to enable a much reduced decision – making time from the LSC and where possible enable providers to make decisions without LSC intervention.

Though we maintained that there are certain means assessments that are deemed complex or high risk i.e. where there is evidence of suspected fraud/tampered documents and that these cases would require referral to an LSC caseworker, but overall there would be significantly less intervention.

Questions:

7. Do you think there are any additional categories of cases [for means assessments] that should be referred to the LSC? If so, please could you list what you think these are.

4.3.1. There was a mixed reaction to the list of categories that would require referral to the LSC. Some respondents expressed the opinion that the list was comprehensive and that there were no additional categories. However, some representative body responses felt that the list needed changing.

4.3.2. Shelter stated that they did not think self-employed means assessments were complex or high-risk, and that referrals to an LSC caseworker should not be the norm. They suggested this should not be included in the list of mandatory referrals.

4.3.3. Shelter also stated that clients with negative disposable income should not be on the list of referrals:

“This penalises those who are often in the greatest and most abject need, whose benefit claims have not yet been processed and who have high housing costs. This is rarely that complex and usually arises in cases where the client has low income but high housing costs and many children. It is fairly common.”

4.3.4. ILPA raised the point that there would be many cases like this in immigration and asylum, including cases where the client is based overseas. They expressed specific concern that many clients with negative disposable income in immigration and asylum cases are unlikely to have evidence of this.

4.3.5. The ALC state that there will be matrimonial cases where there are assets in dispute, which will need careful consideration, and some of these will need referral to us.

4.3.6. A number of organisations have requested a voluntary referral option. ILPA stress that there will be cases where discretion needs to be applied, and that these may need to be referred.

Decisions

4.3.7. We will undertake a review of the list of mandatory referrals, with a view to ensuring only those posing a genuine risk are mandatory. We will also undertake a volume-based analysis to anticipate numbers. It is important that clients are not negatively impacted by their case being referred, so we will ensure we have got adequate resource to cope with the numbers of referrals. The situations that we currently anticipate referral are:

- where the applicant is based overseas
- where the applicant is self-employed, a partner in a business, a company director or a shareholder in a private limited company
- where the applicant has negative disposable income
- where there is suspected fraud (e.g. suspected forged or tampered documents are provided)
- where the case involves personal insolvency or there are assets held under a freezing order
- where there is an interest under a will or trust fund
- where there is access to a third party's assets, assets have been sold or transferred, or assets are held overseas
- where there is an apparent aura of means i.e. the applicant has a lavish lifestyle or an unencumbered property with a value over £200,000
- where the client has previously provided false information
- where the client has had a previous certificate revoked or discharged due to non-co-operation with a means enquiry
- where the client's means are subject to an ongoing investigation.

4.3.8. The maximum turnaround time for any decisions will be five working days, dependant on us having all the necessary information.

4.3.9. Please note, there will be no mandatory referrals for cases where the provider currently undertakes means assessment, e.g. for Legal Help.

4.3.10. Where a solicitor feels unable to complete a means assessment a referral may be made to the LSC. In assisting the solicitor we will ensure that we transfer the required knowledge to ensure that they feel better equipped to perform the test in the future. This will not be seen as a failure and real time support will be provided for all areas of the process.

Questions:

8. Do you agree with the proposals on the handling of means testing? What changes to the proposals would you suggest?

4.3.11. 37% of respondents to this question agreed or strongly agreed. 25% were neutral, 8% disagreed, with 10% strongly disagreeing. The remainder gave different responses.

4.3.12. There was support for the belief that this proposal would speed up the process. There was particular support for the proposal for passported clients,

and the introduction of the DWP check, and there were requests for this to be extended to Legal Help. The ALC commented that it is essential this be in place for the system to be effective. The LAPG stated "if the DWP database is always up to date and never fails it could be of some benefit."

- 4.3.13. There were, however, a number of concerns regarding the interface with the DWP. A number of representative bodies asked whether it would be mandatory, even when the client has supporting evidence. ILPA stated that any efficiency savings would be dependant on the DWP database being up-to-date, something that will be out of the control of the Commission and providers. The ASA raised a number of questions, including whether the DWP will need copies of the client's (and partner's) authorisation and what will happen when the information returned is incorrect or misleading. A number of responses echoed this, including the Law Society, who also expressed concern about the security of having a link with the DWP. One respondent suggested that the process could be slower than the current process, if there were a backlog with the DWP.
- 4.3.14. There were requests that the system work with other government agencies. For example, Shelter suggested a similar arrangement with HMRC for tax credit confirmations. They felt this would be of significant benefit.
- 4.3.15. There was significant concern about the potential for this proposal to add additional administrative burden on providers. A number of respondents to the online consultation expressed the view that we are simply passing the administrative burden to providers without additional remuneration. The ALC requested that we acknowledge the additional expense to providers, and the HLPAs asked for confirmation that providers would be paid for this by allowing them to claim for the time under the terms of a certificate that is subsequently granted. This was also the view from IPLA and the Law Society. ASA stated that it is essential to check whether the online tool would take more time than the current system, and do not accept that electronic systems are necessarily more efficient.
- 4.3.16. Some respondents also expressed the view that the proposal may not speed up the process for non-passported clients, as the timescales are often dependant on the client producing the necessary documentation (ALC).
- 4.3.17. Concern was raised about corroborating evidence of means and retaining it on file, particularly in light of the administrative burden this may add. ILPA, for example, argue that this appears to be a significant additional requirement on providers beyond the verification of means they currently carry out.
- 4.3.18. A number of respondents expressed the view that it would be essential that clients are not prejudiced if the system fails. HLPAs state that this could be because of the LSC's IT failing or providers experiencing problems with their IT. It was stated that it would be essential for appropriate contingency arrangements to be in place.
- 4.3.19. Some respondents raised the concern that these proposals could impact the relationship between the provider and client, and that it could lead to a conflict of interest. Respondents to the online consultation felt there was a potential for a provider to say a client is not eligible to encourage them to pursue the case under private funding.

- 4.3.20. A number of respondents requested more clarity around the re-assessment process, specifically what is meant by criteria of “where a significant amount of time has elapsed.”⁶ In addition, Shelter queried whether a reassessment should be undertaken if notification is received from the DWP that the client has stopped receiving benefits, or if there has been a change in financial circumstances. They raise the specific concern that once a client is eligible, they should remain so, and question what would happen with funding in these instances.
- 4.3.21. We have also received comments around the need to ensure that providers can save an assessment part way through, to avoid the need to re-enter if it gets to a point where the client doesn't have the necessary information.

Decisions

- 4.3.22. We will implement the proposal to devolve the responsibility for completing non-complex means testing to providers, for both initial assessments and reassessments. This will be via an online tool, which will usually make an instantaneous decision (provided all necessary information is given).
- 4.3.23. While we appreciate the ALC's view that for non-passported clients the speed of the process is dependent on the client having the information, we believe additional delays are caused through the need to interact with the LSC. These proposals will remove these delays.
- 4.3.24. We have also received feedback that, in many cases, the provider can spend a disproportionate amount of time completing the means assessment. In these cases, we believe that removing our intervention will significantly speed up the process.
- 4.3.25. We accept the concerns around the DWP interfaces, as well as the view that, if it works properly, it will be of benefit. We support the view held by a number of respondents that we should also accept documentary evidence.
- 4.3.26. Subject to the appropriate rules and agreement with the DWP being in place, our position is that the first check should be done with the DWP, which will be performed through our systems. The system will be designed to ensure that minimal burden is added to do this process. The interface will be built into the application system, so as to ensure no additional information is needed. Where results are returned as a 'no' or 'undetermined,' we will continue to accept documentary evidence. With regards to reliability of the systems, we will use the lessons learnt from the introduction of a similar system for means testing in the magistrates' court. We will also ensure that the system is secure, and use similar measures to that of the client registration system. We expect that we will still need a client's (and partner's) consent to check with the DWP, and that this will be signature based and need to be kept on file.
- 4.3.27. Although we agree that similar interfaces with other agencies, such as HMRC, would be beneficial, there are discrete difficulties with this, and we will not be in a position to introduce this by 2010. We will continue to work with those departments with the intention of increasing efficiency in the future.
- 4.3.28. We accept that it is imperative that the client is not prejudiced by any failure of the system, whether it is because of our IT, or because a provider is having difficulty in using it. We will ensure that we have contingency arrangements in place for such eventualities, and also that there is appropriate support

6 Para 5.7.1

available to ensure a client's application is processed as fast as possible. We will publish our contingency arrangements with regards to means testing when we publish our overall contingency plans, and will work with the representative bodies in defining these.

- 4.3.29. We accept that there may be instances where the work needed from the provider is greater than currently needed. However, we believe that there will be numerous cases where the effort is less. We agree with the ASA that simply introducing an electronic system does not necessarily increase efficiency, and will therefore not simply be placing the current means form online, but will be designing the system to make it easier and faster to complete, and more tailored to individual circumstances.
- 4.3.30. Although taken in isolation, this proposal may add a burden to providers, we anticipate that Delivery Transformation as a package will produce savings. We are not in a position to be able to remunerate for this activity. Although the Law Society stated that most practitioners give clients the form to complete, and only check the entries, we have also received feedback that many organisations spend a significant amount of time with the client in filling or checking means forms, and in these circumstances there will be no additional burden. The benefit will be a much quicker turnaround time, by moving from the completion of a paper form to the completion of an electronic form, which can be processed instantaneously in most cases.
- 4.3.31. Benefits from these proposals are largely dependant on an organisation's working practices. For example, we anticipate that for providers who currently have a computer in an interview room and assist the client in completing the form or spend time checking it, the proposal will introduce savings. From the IT survey, 73% of respondents indicated that they would not need any additional investment to use this model. For those providers who do not have facilities where they interview clients, there will be a number of options as to how to process means. For example, a provider may find the best method to complete the means with the client on paper and enter the data at a later point. We believe that the choice on whether to invest and how to integrate the process into working practices is one best made by an individual provider. However, we will work with providers in defining the best ways to do this.
- 4.3.32. We are also considering possibilities for extending the tool to clients, so that they can make the first entries. This information could then be sent to the provider, so they are not require to enter it into the system again. We would not, however, allow clients to have direct access to the database.
- 4.3.33. We believe that the same principles apply to the corroboration and retention of evidence. This is an important measure in ensuring the legal aid fund is appropriately spent, and a measure that is necessary under the new system. We need to further define what this corroboration will involve, but don't believe this will add a burden to providers who currently check the information sent in to us by the client. This will be validated in updates to the Impact Assessment.
- 4.3.34. We will extend the use of the system, including the DWP interface to Legal Help, although it will not be mandatory in these cases. We believe this could offer significant benefit to providers and clients, particularly for those clients who attend at solicitor offices without an appointment.

- 4.3.35. Outreach scenarios have also been mentioned in relation to means applications. As stated in paragraph 4.1.12 above, we will ensure that appropriate arrangements are in place for outreach.
- 4.3.36. An important part of the process will be to ensure that clients declare the information they have given is correct. This declaration will need to be signature based. In the consultation, we suggested that this would need to be kept on the client's case file. Subject to appropriate rules and agreements being in place, we will allow the provider to choose whether this be electronic, for example by scanning the document or using a signature pad, or paper based.
- 4.3.37. With regards to the provider bearing the risk, we will only withhold payment where a client is subsequently found to be ineligible, and where it would be reasonable to expect that the solicitor knew this before granting the certificate. Where the provider has kept the necessary supporting evidence proving eligibility, payment will not be withheld. We aim to remove as much discretion from the means process as possible and to state very clearly the evidence required for each application. However, we accept that a level of discretion may remain, and will try to add a level of certainty over what is reasonable and publish this in due course. Contract sanctions will be only be used for persistent misapplication of the rules or fraud.
- 4.3.38. We will also review what evidence needs to be retained, balancing ease of supply with risk assurance. We will try to minimise the impact of our evidence requirements. We will define and publish the requirements in due course and the system will also state what evidence needs to be retained with every application
- 4.3.39. It is also our intention for the system to allow for part-completed applications to be saved.
- 4.3.40. With regards to reassessment, we currently undertake these in the circumstances discussed in the consultation, i.e. where there have been a changes in financial circumstances, where an error has occurred, where we receive notification from the DWP, and where we feel a reassessment is justified. We will not change these circumstances, as it is important that the client remains eligible throughout the life of the case. We will notify providers electronically that a reassessment needs to take place. In these circumstances, where the reassessment is with the provider who undertook the initial assessment, they will be able to call up the information from the system, and confirm that the information is still accurate, or make appropriate changes. As referred to above (paragraph 4.2.36), where this is with a new provider, the client will be able to consent to this information being released as part of their consent to transfer the certificate.

Questions:

9. Are there any additional activities that the LSC could consider doing to achieve a more efficient and timely process with regards to applications?

- 4.3.41. There were a number of responses to this question. Respondents suggested better staff training, improving our forms, and for providers to be able to see the progress of applications.

4.3.42. There were also specific comments around the difficulties experienced with the L17 form. The Law Society suggested that we should consider enabling the employer, on receipt of the form, to send it back to us electronically. Other feedback is that we should equally accept copies of wage slips. It has also been suggested that it is essential to improve the L17 process in order to facilitate any benefits from the proposals on means testing.

Decisions

4.3.43. We will ensure all appropriate staff are fully trained in means assessment, and are able to take complex queries and referrals.

4.3.44. It is our intention to build in the facility to view the progress of an application.

4.3.45. We will aim to simplify the forms, particularly their language, and adapt them for more efficient use on the online application system. As stated above, we will also provide a print-ready format of all forms.

4.3.46. In the future we intend to be able to accept either copies of wage slips or an L17, whichever the client can more easily provide, subject to the appropriate rules and agreements being in place. We will provide more guidance on this at a suitable time.

Questions:

10. Do you agree with the proposals on the merits element of the application process? What changes would you suggest?

4.3.47. 38% of respondents to this question indicated that they agreed or strongly agreed with the proposals. A further 38% were neutral, 11% disagreed or strongly disagreed, and 13% gave another response.

4.3.48. A number of respondents felt there was a lack of clarity about what was being proposed in the consultation, and were therefore unable to comment.

4.3.49. There was general support for what was being proposed. For example, the ALC commented that “providers are used to applying the legal merits test in accordance with the existing guidance.” The LAPG state that enabling providers to exercise devolved powers is welcome, although it is essential that lessons are learnt from the past, including ensuring procedures are clear and there is consultation on who will bear the risk. One respondent to the online consultation stated that it would be speedier and save time under a fixed fee arrangement.

4.3.50. There was, however, some concern about awarding powers only after some case information is given, on a case-by-case basis. The LAPG feared that this may add to the level of bureaucracy, and Shelter felt that it would make more sense to devolve the merits element in all cases where the provider assesses the merits as being above a given percentage.

4.3.51. A number of respondents felt that the current amendment process is overly bureaucratic, and needs revision. The ALC commented that we are failing to take account of the burden of amendment applications, particularly in non-means non-merits cases, and suggested we streamline the process.

- 4.3.52. Respondents felt that it would be essential that the provider be able to refer the case to the LSC to make a decision, especially where there is uncertainty.
- 4.3.53. HPLA state that it is important that the current ability to grant funding in emergency cases be retained, otherwise there could be severe prejudice to the client.
- 4.3.54. Respondents also felt that the current forms are complex, and often require more information than necessary.

Decisions

- 4.3.55. We will introduce an electronic application system for civil cases, which will also be used for amendments. This will be integrated with the means system to reduce the need to enter information more than once, particularly for client and provider details. We appreciate that the current forms are complex, and we will look to simplify the equivalents when moving them on to the online system, and tailor them to case type. The system will also be 'intelligent' in that it will only ask questions specific to the particular application.
- 4.3.56. We also want providers to progress legal decisions without referral to the LSC where risk can be managed for all parties, in order to reduce the time it takes to progress cases and reduce bureaucracy. However, we recognise that a successful transfer of responsibility from the LSC to providers is dependent upon a clear and shared understanding of the Funding Code and a clear framework with regards to liabilities. The risk is that, without this, too many decisions will become discretionary or subject to debate and the benefits will not be realised. Therefore, whilst it is impossible to reduce the entire Funding Code to a series of 'yes/no' answers, we will do everything possible to make sure that the decisions we allow providers to make are done so with clear and accessible guidance. We will endeavour to provide a system that enables providers to be confident they have reached the correct decision prior to granting legal aid.
- 4.3.57. Following the electronic submission of some case information, on the basis of the risk the case appears to pose combined with the provider's historical decision making and performance, the system will instantaneously do one of the following:
- Confirm that all Funding Code criterion have been met to enable legal aid to be granted without prior referral to the LSC, or the need to use of Devolved Powers (i.e. the LSC would be the assessing authority), on the condition that the provider declares they have seen and will retain supporting evidence, which will be defined by the system;
 - Where the system cannot make the decision it will check whether or not a provider is eligible to exercise Devolved Powers for that case, again on the condition that the provider declares they have seen and will retain supporting evidence, which will be defined by the system;
 - Where neither of these two options are possible further information will be requested so that the application can be referred to the LSC for a decision.

It is important to note the following points:

- It is our intention that any provider and case risk criteria we use to grant Devolved Powers will be continually available to providers and they will be able to see where they stand against each criterion at all times and always prior to the start of any application.
- Where the system confirms that legal aid can be granted without prior referral of the application to the LSC, or the provider has the option of exercising Devolved Powers, the provider will always have the option of referral to the LSC for assistance in making the decision or submitting a full application.
- Where the system confirms that legal aid can be granted without prior referral to the LSC, or the provider has the option of exercising Devolved Powers, providers must still supply all of the information requested by the system and retain any evidence they have stated they have seen and verified on file.
- Providers will have the option of submitting applications wherein they state their decision to refuse the application using their Devolved Powers but wish the LSC to verify that this was the correct decision.
- No application will ever be automatically refused by the system on its merits by the system – it will always be referred to a caseworker first.
- When an application is referred to the LSC it is our intention that a provider will be able to see the status of an application through the system. As now, the provider should only submit an application that they think will pass the merits test. We will give feedback on refusals, so as to minimise the instances of refused applications.

4.3.58. We will design this process to reduce to a minimum the risk of providers making an incorrect decision. For example, we believe that by requiring providers to choose scope and proceedings from a series of 'drop-down' lists prior to granting legal aid the proposed system will make it difficult for funding to be granted ultra vires.

4.3.59. There also needs to be mutual confidence that decisions are being made by individuals within provider organisations who consistently apply the Funding Code correctly. We are therefore considering whether, in addition to meeting 'provider risk and performance criteria,' it would be appropriate or beneficial for provider organisations to certify that a decision has been made or overseen by a supervisor or an individual formally accredited by the LSC. It may be that this is a mechanism we can develop to enable providers to take on more decisions over time without increasing risk for each party. We have yet to determine the detail of the risk criteria, an accreditation scheme or its equivalents. However, we will be discussing this with providers and their representative bodies before making any final decision.

4.3.60. It is also clear that an onerous audit process will not serve the interests of any party well, and is likely to be detrimental to the system proposed. We therefore propose to deploy "Quality Control" via in built system controls rather than retrospective audits. This means that where the LSC needs to check that decision-making is correct or that evidence has been collected it will do so before a final decision has been made to minimise the impact on all parties. We expect the volume of Quality Control activity to reduce over time and also recognise that this system will only be efficient if the process can be completed in a very short time frame.

4.3.61. Whilst we would need to reserve retrospective audit activity to address potentially more serious issues detected at Quality Control, the application of contract sanctions as a result of disagreement over funding decisions would

represent a bad outcome for all parties. We envisage that where we have allowed a provider to make a decision provided it is not incorrect, ultra vires or fraudulent, we will bear the risk where a case has proceeded on the basis of misinformation from clients, as is the case currently. In terms of liability for incorrect decisions detected at audit we are working on the basis that where a decision has no impact on the client or the Fund, providers will bear no liability, although there may be some consideration of whether providers' decisions in that category should be referred to the LSC for a period of time.

- 4.3.62. Whilst losing the right to make merits decisions would also represent an unfavourable outcome for all parties, we think that we need to retain this control. Contractual sanctions will be reserved for serious transgressions, persistent misapplication of the rules or fraud. We will be discussing this proposal in more detail with the representative bodies and will provide illustrative scenarios to add further clarity in due course.
- 4.3.63. There will be support for the provider in all aspects of decision-making and we envisage that the instances of this will therefore be rare. However, where there is an impact on clients or the Fund, providers may not be able to claim for that work depending on the severity of the issue. Although this is the case currently, in that if a provider submits incorrect information and we subsequently grant, we may take action, we will discuss in detail the scenarios that need to be addressed with providers and provider representative bodies prior to outlining the requisite contractual liabilities. An essentially voluntary scheme that is not considered to be reasonable or beneficial by all parties will not deliver the intended results of reduced bureaucracy and a faster decision making process for clients.
- 4.3.64. The same risk process will apply to amendments i.e. amendments will be requested electronically. The system will then determine whether or not they can be granted without referral to an LSC caseworker on the basis of historical provider decisions and performance, and the risks attached to that particular decision. Again, providers will have continual visibility (electronically) of the criteria that are used to make these decisions and where they stand against them.
- 4.3.65. Devolved powers already in existence will not change. This will be applicable to emergency certificates, and we will replace the current reporting on fax with an online submission.
- 4.3.66. A certificate will be issued once all the current criteria are fulfilled, i.e. that the client has passed both the means and merits test, the LSC has received appropriate contributions where applicable, the client is not in arrears or has any outstanding debt with us, and they have accepted the offer. The certificate will be issued electronically to the provider. We are exploring options as to how we could best issue the certificate to clients and keep them involved in the process, given that access to an electronic version may be difficult for some clients. For example, this may involve use of mobile technology.

4.4. Certificate Discharge

We consulted on the proposal that the power to discharge certificates be devolved to providers in certain circumstances in order to avoid unnecessary delay. Respondents were also invited to comment on any additional circumstances they would like to discharge certificates

The circumstances where a provider would have the power to discharge a certificate would be:

- where the case the certificate relates to has been concluded
- where the funded client consents to the discharge
- where the client has died during proceedings.

Questions:

11. Do you think the circumstances where the provider would have the power to discharge certificates are reasonable? Are there any circumstances you would add or remove?

- 4.4.1. Of the respondents to this question, 67% found the circumstances very reasonable or reasonable. 18% were neutral and 4 % found them not reasonable. 10% gave other responses.
- 4.4.2. There was a general consensus that giving providers this power would be sensible, and there are many cases where the provider could effectively discharge. It was felt it would speed up the process, and reduce the administrative burden.
- 4.4.3. It was also requested that the powers be extended where there has been no contact from the client in a given period of time.
- 4.4.4. The only concerns raised were about when there is contention with the discharge, and the client and provider or LSC are in disagreement. One respondent felt that it would also be necessary to validate the client's consent in some way.

Decisions

- 4.4.5. We will devolve the power to discharge certificates where the case the certificate relates to has been concluded and the funded client agrees to this, or has died during proceedings. We will also devolve the power to discharge where the client has ceased to cooperate or acted in an unreasonable way, although all current rights of appeal will remain in order to protect the client.
- 4.4.6. Where there is a risk to the client, such as when they don't agree with the discharge, the provider will have the option to request the LSC discharge the certificate. Any referrals to the LSC will be electronic.

4.5. Client Contributions

The key proposals we consulted on regarding client contributions were to simplify the way in which client contributions are managed. This would enable clients to better understand the cost to their case. We proposed that rather than the complexity of allocating contributions over multiple cases they would be allocated to the oldest case only until completion and then if still required would be allocated to the next oldest and so on. We stated that the Legal Services Commission (LSC) would continue to receive and process contribution payments.

Our proposed approach to contributions is that when a client first contacts a provider, it would be necessary for the provider to establish if the client is already set up on the system and importantly, if the client is currently paying a contribution on another certificate. Where it is confirmed that the client does have another live certificate and the merits of the new case were also authorised, the application process would proceed as normal with no contribution payable, as long as the first matter remained live and no capital contribution was payable on the new case.

Questions:

12. We believe that changes to the contribution process are essential, in order to be clearer, more transparent and equitable. They will also be a key element of simplifying other processes. Do you agree with our approach on this change? What changes would you suggest?

- 4.5.1 A large proportion of respondents to this question, 45%, were neutral to the proposals. 32% agreed with them, and 13% either disagreed or strongly disagreed. 11% gave other answers.
- 4.5.2 A number of people felt that this was not a significant change, and were therefore supportive of it. Shelter, however, stated that it would be preferable to retain the current system rather than make these minimal changes, due to the costs and risks associated with implementation.
- 4.5.3 A number of people felt that it was a sensible move and clearer. The ALC stated that many clients currently find it difficult to understand how their contributions are allocated on more than one certificate, and this proposal would make this process simpler and more streamlined.
- 4.5.4 There was concern raised about how these proposals would impact clients where the statutory charge arose on their second case, and how they would be put at a disadvantage if none or little of their contributions were allocated to this. In the main, this would be where any costs were not recovered on their first case, and their contributory payments would be absorbed into the statutory charge. Little would therefore remain to offset against the second case. Although it was acknowledged that this could be a rare scenario, it was felt that we had inadequately stated the impacts on clients.
- 4.5.5 Although we proposed to electronically notify providers to stop work on a case following a show cause, a number of people have suggested it would be advantageous for the provider to have access to the details of contribution payments made by clients, and may assist in reducing the instances of Show Cause. HLPAs suggested that providers may be able to prompt clients to make

payments, and avoid scenarios of having to immediately stop work. Although the provider collecting the contributions directly may achieve this, concerns were raised about this possibility and ILCA, for example, stated that they would strongly resist any such proposal.

- 4.5.6 A number of other suggestions were made about the Show Cause process, and how it can often disadvantage providers and clients. Examples given included instances where a client would receive Show Cause after making a payment, due to delays in the system. Concern was also raised about client comprehension of the Show Cause letter, and making it clearer would better prompt payment and reduce any burden on providers needing to explain the process. Although we wish to move as much as possible to an electronic basis, in order to reduce the overheads and administration involved in processing paper-based systems, we understand the need to continue to notify clients by letter and will be simplifying the wording to improve understanding.
- 4.5.7 A number of respondents questioned the current method of paying a contribution. For example, the Legal Aid Practitioners' Group suggested that waiting for a payment book can delay the process and can be easily lost. A number of respondents suggested that electronic methods of payments, such as Direct Debit, would be preferable.

Decisions

- 4.5.8 Client impact is a key consideration in our proposals going forward, and although our initial analysis indicated that on average clients would not be disadvantaged and would benefit from a simpler system, we need to further analyse what impacts there may be on cases where the statutory charge arises. We are not in a position to indicate our policy intentions on this at present, but acknowledge the concerns.
- 4.5.9 We agree that the current methods of payment are onerous on all parties concerned, and as part of this programme of work will evaluate the possibility of implementing a Direct Debit system. We believe this will facilitate more regular payments, faster processing and less instances of Show Cause. We do recognise that not all clients would have the ability to use this facility, so we would ensure there is an alternative available. We will investigate a full range of options for payment to ensure that everyone is afforded every opportunity to make their payments on time and in a way which suits their needs.
- 4.5.10 We also think that allowing providers to monitor their clients' payments via our systems would provide a way to reduce 'show cause' situations and we will endeavour to provide this facility. We will also look into ways to use technology to keep the client involved in the process.
- 4.5.11 Although we agree that the suggested changes to the show cause process may make the system more streamlined, we need to better understand consent and data protection issues with this proposal.
- 4.5.12 Although we have previously considered the possibility of devolving the responsibility for the collection of contributions to providers, we are not proposing this at present, and the LSC will continue to receive, process and

allocate contributions. We would need to take account of a number of things before proposing this, including administrative burden on providers and whether they have an ability to receive monies. We would consult on any proposals to this effect.

4.6. Electronic Billing

We consulted on the proposal that all claim submissions made directly to the Legal Services Commission (LSC) for cases starting after April 2010 will be electronic and usage of electronic billing systems will be mandatory from that point. This would be applicable to both crime and civil bills.

Questions:

13. What benefits or disbenefits do you perceive can be achieved from electronic billing?

4.6.1 There was significant support for the concept of expanding electronic billing to certificated level, both from respondents to the online consultation and the representative bodies. It was stated that benefits could include:

- less time completing standard information
- enabling a single point of entry, reducing errors and improving consistency
- opportunity for validation checks
- quicker processing of claims
- ability to review past claims

4.6.1 There, were however, significant reservations and the support for the proposals was contingent on a number of factors. The biggest concern related to the recent problems with LSC Online, and that providers should not have to undergo similar inconvenience again. There was also concern raised about the number of people that would need to access the system, and the increased traffic. A significant emphasis was placed on testing, both for capacity and functionality.

4.6.2 As was the general theme throughout the proposals, there was also significant emphasis placed on the need to work closely with suppliers of case management software, in order to ensure that the system effectively functions with providers' software. The Legal Software Supplier's Association stated in their response that they would be able to deliver the changes under the proposals by 2010, provided they are consulted and involved in the technical design at an early stage. They also stated that the specification would need to be agreed and set out at least 6 months prior to the changes being needed.

4.6.3 There was widespread support for the proposal to allow bulk uploading from a provider's own case management software, and that this would enable much more efficient processing of bills. Indeed, LSSA state that manual submissions by an individual line should not be allowed, and that only bulk upload should be available, thus enabling better integrity between accounts and submissions.

4.6.4 Whilst we agree that this would be the case, we think that doing this would effectively mandate the use of electronic case management systems. Our recent IT survey indicated that 74% of provider respondents use an electronic case management system, and we do not wish to mandate an investment for the remaining 26%. We believe the choice as to whether a provider has an

ECMS should be their own, and therefore need to ensure we cater for people who need to enter individual lines.

- 4.6.5 Although they see advantages in proposals, the ALC stated that they thought it would not reduce the administrative burden on providers, as bills would still need to be drawn up and costed. We believe this is particularly relevant when a bill needs to be submitted to the courts for detailed assessment.
- 4.6.6 Concern was also raised about the fact that we would not be able to receive supporting case files electronically, and that the postal or DX system would still need to be used. We agree that this is not the ideal solution, and seek to have a consistent approach to the proposals and allow for such documents to be submitted electronically. However, we are mindful of the potential size of such files, and that this approach would significantly increase the risk around system performance. We are, however, considering how we can mitigate any impacts of this. For example, we may take a more risk-based approach to reviewing final bills, rather than calling for all files. We will also endeavour to process claims faster than currently, even where case files are sent in via post or DX.
- 4.6.7 ILPA expressed concern that we have stated it likely that we will need more information than currently needed for controlled work submission. Whilst we agree that there is a need to rationalise the information we are requesting, there will naturally be more information required for certificated work, and we cannot guarantee being able to reduce this at present. It will also be dependant on requirements under a fixed fee system.
- 4.6.8 In our original proposals, we indicated that electronic billing would be extended to CDS7s. The Law Society was supportive of this proposal, stating it would speedier and assist in monthly and annual reconciliation of standard monthly payments. However, the same general concerns around online billing still apply. We agree that there is benefit to making CDS7s electronic, but our focus will initially be on civil bills, as we think this is the most logical progression.

Decisions

- 4.6.9 Given the support for the proposals, and the advantages that can be attained, we have decided to implement electronic billing for civil certificated cases. This will become the usual form of submitting bills at some point from April 2010. We will expand the system for CDS7s from 2011.
- 4.6.10 Our intention is to provide technology that allows a provider to track their claim, and also to view previous claims made.
- 4.6.11 We will enable manual electronic submission of bills, as well as a bulk uploading facility.
- 4.6.12 We will continue to receive supporting case files via the postal system, but will implement an effective document management system to match up with claims, and will turn these around faster. We will also investigate the possibility of risk based bill assessment, and will work with Her Majesty's Court Service to ensure that the process for bills subject to detailed assessment is as efficient as possible.

- 4.6.13 As proposed in the consultation, we will enable cost draftsmen to have access to the system if the contracted provider feels this to be appropriate and beneficial.

Questions:

14. Do you agree with our approach to electronic working for [self-employed] advocates⁷, including payment using BACS? What changes would you suggest?

- 4.6.14 72% of respondents to the online consultation question agreed or strongly agreed with this approach. 11% were neutral, 7% disagreed and 2% strongly disagreed. The remaining 9% gave other responses.⁸
- 4.6.15 There was generally a lot of support on these proposals. The Bar Council stated that it should be achievable and desirable. However, it was requested that an assessment be undertaken on the costs and benefits. In particular, it was felt that if it were to only apply to a small number of cases, any efficiency savings would be outweighed by the cost of investment. It was requested that this be extended to Payment on Account, extradition cases and Very High Cost Cases.
- 4.6.16 With regards to Payment on Account, it was stated that hundreds were sent in each week directly to the LSC. It was questioned how the arrangements would work with regards to submitting final claims; i.e. counsel fee notes are currently submitted with the solicitor's final bill, and it was questioned whether under the proposals, self-employed advocates would claim directly. We are currently consulting separately on changes to payments for advocacy, but will ensure that our systems cope with any future changes.

Decisions

- 4.6.17 Based on the support for these proposals, we will introduce electronic billing as a replacement to paper billing for advocates that the LSC pays directly. As per our other proposals for electronic working this will be phased in from April 2010 onwards. This will include Family Graduated Fees, Payments on Account, extradition cases and payment of Civil VHCC (we do not anticipate Case Plans will change as a result of this project). We expect Inter Parties Costs to be excluded. We will also start requiring self-employed advocates to receive payment via BACS.
- 4.6.18 With regards to claim processes, we are not proposing any changes to the current arrangements in these proposals. A separate consultation has been launched on the civil fee schemes, which includes proposals on paying for advocacy. Our decision is to move all claims onto an electronic basis wherever feasible.
- 4.6.19 We will acknowledge the receipt of claims and payments will be notified through the BACS remittance advice, which will be sent electronically. We will also endeavour to enable counsel to track the progress of their claims online.

⁷ Those who we pay directly, not through a Unified Contract

⁸ Figures may not sum to total 100% due to rounding

We have also received feedback that it would be useful to understand what claims have been submitted and paid, for both the solicitor and advocate under a certificate. We will investigate the possibility of this, although we are wary of data protection and confidentiality issues.

- 4.6.20 As with solicitors' electronic case management software, we will work with the Bar's software providers to integrate IT as much as possible. We will also be conducting an IT survey for the Bar, to gain a better picture of the impacts and how we facilitate better electronic working with them. We do not require advocates to have any particular software in place and technical requirements to use our systems are very basic. (PC, Internet, Email, Printer)

4.7 Risk

We recognised that there are a number of risks that would need mitigation as the introduction of new processes and systems would change how the legal aid fund may be misspent through non-compliance. However, we also stated that we believe the changes proposed would strengthen control in key areas and that overall risk management can be made a more efficient process.

We proposed a list of controls, such as the requirement to refer complex means assessments to the Legal Services Commission (LSC), for how best to manage the change in risk profile, and ensure that public funds are appropriately spent.

Questions:

15. Do you think the controls under consideration are sufficient to manage risks associated with these proposals? What additional controls would you suggest?

- 4.7.1 From those who answered this question, 30% agreed to the controls under consideration, 46% were neutral, and 23% disagreed or strongly disagreed. The remaining respondents gave an alternative answer.⁹
- 4.7.2 Concerns were raised about the ability to comment on the proposed risks measures without fully understanding what the processes will be and the technology behind them. The Association of Lawyers for Children, for example, commented that it may take some time for risks to be identified and addressed.
- 4.7.3 With regards to risks surrounding use of IT, the ICO commented that it would be necessary to have a role and responsibilities framework within the system, staff will need to fully understand these, and there will need to be adequate training on data security issues. There are a number of other concerns around risk in the chapter on the Client Database.
- 4.7.4 There was significant concern around both the administrative impacts of risk management and what risks would fall with the provider under the proposals. It was expressed that we need to be very clear on the obligations and consequences, as well as being clear on our approach to auditing. It was stated that the system of auditing by sampling needs to be clear and transparent, as the experience has often been that it has not been random. There was also concern raised about the LSC “second guessing” decisions made by a provider, particularly in more discretionary cases. The LSC is currently working with Provider Representative Bodies to define a mutually acceptable auditing approach for controlled work, and will publish this in due course. We believe this will have some impact on the proposals in this consultation and we will take the same approach to working out the detailed process required for these proposals.
- 4.7.5 A number of representative bodies question the proposal in Paragraph 9.3(e) to introduce client identity checks. IPLA and Shelter sought clarification on what we will expect as proof. Shelter argues that for the most vulnerable clients, particularly those seeking housing and homelessness advice,

⁹ Figures may not sum to total 100% due to rounding

attaining proof of identity would be extremely difficult and may cause a barrier to seeking and getting advice. The Law Society felt that the issue of identity is more complex than the brief paragraph in the consultation document, and that further thought and clarity is needed to ensure no additional burden is placed on providers.

- 4.7.6 ILPA also argue that there will be cases where supporting evidence will not be easily available, particularly with destitute clients, and that providers representing these clients will have more difficulty retaining the evidence.

Decisions

- 4.7.7 We will implement the risk management measures identified in the consultation, but will undertake further work in defining our audit approach, evidentiary requirements and issues relating to proof of identity. We will publish clear exceptions to the rules and guidance on applying them. As previously mentioned, we will only seek to penalise providers via contract sanctions where there has been a consistent misapplication of the rules or fraud.
- 4.7.8 Whilst in theory DT implementation could expose the Fund to additional risk, (and this is being taken extremely seriously), we believe that a cautious approach to the implementation and management of these processes would mean that ultimately the greater risk would be around losing the potential to realise the programme's benefits, rather than to the Fund or to clients. The LSC will also agree with the National Audit Office that its control measures are sufficient prior to implementation.
- 4.7.9 When certificates are granted without prior referral of the legal (merits) and/or eligibility (means) decisions to an LSC caseworker, we acknowledge that there is a risk of funds being misspent and overall, a risk of Fund overspend. The DT processes and systems will therefore be designed to reduce this risk to an absolute minimum. The key measures will include:
- Only allowing decisions to be made without referral to the LSC where:
 - The system can calculate eligibility/legal merit on the basis of information provided by the provider i.e. risk is limited to the requisite evidence being in place which the LSC may check at any time or
 - Providers' historical decision making and performance profile meets pre-set criteria and cases are considered to be of sufficiently low risk and
 - Historically, the levels of refusals in a category of law have been low.
 - Designing each process and system with ongoing provider input and testing;
 - Designing each process and system with in-built guidance and worked examples;
 - Quality Controlling a sufficient proportion of means and merits decisions immediately after DT's implementation and on an ongoing basis to ensure that requisite assurance levels are reached by providers;

- Allowing providers to request LSC assistance in making any decision they are uncertain of making themselves, even if the system or their contractual status allows them to progress the case without prior referral to the LSC;
- Deploying automated trend analysis of management information generated by each process and all provider activity, which will drive assurance activity;
- Investment in the LSC's fraud detection and case management capability.

4.7.10 We are implementing the government-wide information assurance standards, and regardless of the decisions under Delivery Transformation, will need to appropriately reflect these in the Unified Contract. We will ensure that these take account of new systems and processes being implemented.

4.7.11 We appreciate there will be a number of clients for whom providing proof of identity will be difficult. We are, however, conscious that our proposals must not result in the legal aid Fund being spent inappropriately. We believe that proof of identity will assist with this, but accept there will be exceptions. We will conduct further research on this, and publish as part of our guidance in due course.

4.7.12 We acknowledge that there will be certificated cases where providing evidence of means is difficult. As a basic rule, we will retain our evidentiary requirements, and where this cannot be provided will require the decision to be referred to us.

4.7.13 We are due to define more detail on our proposed assurance programme for devolved certificated work in early 2009 following collaboration with Provider Representative bodies and the National Audit Office.

4.8. Supporting Providers Through the Transition

Questions:

16. Do you agree that our transition proposals are appropriate? If not, what changes would you suggest?

- 4.8.1 40% of respondents to this question agreed with the proposals. A further 17% were neutral, and 28% disagreed or strongly disagreed. 15% gave other answers.
- 4.8.2 A number of organisations and representative bodies stressed the importance of phased implementation. ILCA, for example, stated that implementation should be phased area-by-area. Other respondents felt a process-by-process approach would be beneficial.
- 4.8.3 Several respondents argue that we have an unrealistic timeframe, and that we should be cautious about committing to a fixed timetable. The ALC indicated it was difficult to comment on the timeframes, as the technical details are not yet available, and cannot anticipate what it will take to integrate the software and working practices. The Bar Council felt that there may not be enough time for the Bar's software providers to adapt and update their products.
- 4.8.4 The lack of piloting proposals raised concerns from a number of respondents. HLPAs suggest this needs to be reviewed and we should consider conducting a limited pilot. Shelter state that we should "consider jointly deciding with the sector when the IT seems capable of being rolled out and used."
- 4.8.5 Respondents stressed the need to have contingency arrangements, and to allow provision for manual working in the event of system difficulties, and to have some flexibility to accept non-electronic billing post 2010. However, concern was also raised about the prolonged period of legacy systems, notably by the Bar Council.

Decisions

- 4.8.6 We accept the need to phase the implementation of systems before rolling them out to the sector in order to manage risk. Given the scale of the change, we will phase implementation both by process area and by geographical area. We believe this will help mitigate risks, as well as minimise the impact of training. We will publish detailed roll-out plans when available.
- 4.8.7 With regards to the timeframes, our intention is to roll-out changes to civil processes over a six month period, starting from April 2010. Affected providers will need to be able to work with us under the new ways of working from April 2010. We will publish more details of our roll-out plan during 2009, and at what point processes will be rolled out to a particular provider. As highlighted above, the LSSA expect that the changes can be made within the time frames proposed, but we will keep our dates under constant review, and work with suppliers of case management software for both solicitors and the Bar.

- 4.8.8 We will not be in a position to run and evaluate a pilot before the first phase of roll-out. However, we will use this first phase as a way of evaluating and correcting difficulties before moving on to the second phase, and will ensure that we learn lessons from the first phase. We will also, wherever possible, use the systems on an internal basis only prior to rolling out to providers, and ensuring that all systems are properly tested for both functionality and capacity. We will work with providers to ensure this.
- 4.8.9 We are conscious that the transition proposals as stated in the consultation could lead to a significant amount of legacy work, and hence the need to maintain dual systems both by providers and us. We are looking at ways to minimise this impact, to ensure that providers need only work with us in one way under normal circumstances. We will continue to work with providers in looking at the impacts and potentials, and publish our legacy management and transition plans at an appropriate time.

Questions:

17. Are there any other areas of support you think would be beneficial?

- 4.8.10 An emphasis was placed on the importance of high-quality training. ASA and Shelter felt that the proposed package was general, and that more detail is needed. It was requested that we work with the sector in designing this. The Law Society also suggests that we trial any training package, so that it can be evaluated before national roll-out.
- 4.8.11 The ALC request that technical details be made available in the package, and that this should happen as soon as possible.
- 4.8.12 A number of suggestions were made as to how the support could be delivered. These included onsite training, refresher training, and rolling out an education package a year before implementation (ALC).
- 4.8.13 There were also comments that we should ensure that we appropriately train our internal staff, including account managers and relationship managers, to ensure that ongoing support can be given.
- 4.8.14 The LAPG raised concerns about the costs involved in implementing the changes, including changing office procedures, IT, legacy, training and needing to maintain paper for the courts.
- 4.8.15 A number of respondents made reference to the financial support for IT modernisation recommended by Lord Carter. HLPAs expressed concern that “the LSC continues to ignore this recommendation, and does not propose to offer any financial support to providers to meet the cost of transition.”

Decisions

- 4.8.16 We will introduce the broad support package suggested in the consultation, but will work closely with the sector in designing the detail of this. We will target training as much as we can, and be clear on content at an early stage, so organisations can make a decision on who they should send. We will also

make training available for advocates. The training we envisage includes the following areas:

- technical support, specifically around the use of new IT tools and submission systems
- process support, helping providers and clients when difficulties are encountered with new processes (i.e. non-IT related support)
- a provider education programme, including training providers in the new ways of working
- providing the opportunity to attend workshops and training interventions
- user acceptance testing of new IT systems, ensuring that the tools and submission systems are accessible to providers
- supporting providers who do not wish to continue working with the LSC, but have live cases
- supporting providers with cases that cannot be run using the new systems and processes.

4.8.17 We will ensure we have ongoing support. This will include well-resourced telephone support in the early stages of implementation and months that follow. Although we expect the level of support needed to reduce over time, we will ensure that there is always an appropriate point of contact for organisations, for both operational support and technical support.

4.8.18 We will endeavour to reduce the impact of training, and will deliver it far enough in advance for it to be appropriately cascaded by attendees. Training is an essential part of our risk management strategy, and key to enabling providers to make most effective use of new processes and systems.

4.8.19 We will introduce self-training materials, either online or on CD-ROM. We will also build appropriate guidance into the systems, so that users can access help and support through this.

4.8.20 We will ensure that all appropriate LSC staff are trained in new ways of working, so as to be able to provide support, as well as operate under new processes.

4.8.21 We will release further details of our support package well in advance of implementation, and start an education programme as soon as feasible. This will take account of any IT literacy issues, and we will monitor the effectiveness of the programme to ensure it is meeting the needs of users.

4.8.22 In 'Legal Aid Reform: The Way Ahead' published in November 2006, we stated that, given the pressures faced by the legal aid budget, the funding recommended could only be afforded at the cost of fee reductions, or by bringing forward the introduction of fixed and graduated fees.¹⁰ We continue to take the view that the wider interests are not served by allocating this money to these grant schemes, and are therefore not currently in a position to provide this funding. However, we have tried to limit the impacts of our proposals, in particular on investment costs. We believe that once we have a detailed system design and have identified all ongoing benefits, these benefits and improved efficiency will outweigh the costs involved in implementing it.

¹⁰ Legal Aid Reform: The Way Ahead, para 19, at page 44

4.9. Impact Assessment

Questions:

18. Do you agree with the assessment of impact outlines in Annex 1? Do you have any evidence of impacts that we have not yet considered?

4.9.1 Of respondents to this question, 21% agreed, 50% were neutral, 12% disagreed and 5% strongly disagreed. The remaining 12% gave other answers.

4.9.2 Comments on this question have been incorporated in the Final Impact Assessment at Annex 1.

4.10. General

Questions:

19. Do you think the approach we have proposed makes for good policy on improving efficiency and experience for clients, providers and the LSC?

4.10.1 34% of respondents to this question strongly agreed or agreed that the approach we have proposed makes for good policy on improving efficiency and experience for clients. The majority of respondents (38%) were neutral in their views whilst 21% disagreed or strongly disagreed that our approach would be beneficial for clients. 6% gave other answers.

4.10.2 48% of respondents to the online consultation strongly agreed or agreed that the approach we have proposed makes for good policy on improving efficiency and experience for Providers. 28% disagreed or strongly disagreed. The remaining were either neutral or gave other answers (17% and 7% respectively).

4.10.3 70% of respondents to the online consultation strongly agreed or agreed that the approach we have proposed makes for good policy on improving efficiency and experience for the LSC.

4.10.4 A number of representative bodies felt there were advantages to the LSC, but at a cost to providers. The LAPG, for example, commented that “practitioners may feel that the LSC’s administrative processes are being passed on to them without sufficient financial reward,” a view echoed by a number of other respondents. The Law Society believed that the proposals would result in benefits for most providers, although stressed that any administrative burden be kept at an absolute minimum, and firms should be properly compensated for their time.

4.10.5 A number of other respondents felt that, until a more detailed design is available, it is difficult to comment on this question.

Questions:

20. Do you have any additional comments that are not covered in the questions asked in the consultation?

4.10.6 Most respondents covered additional issues under the appropriate questions, and we have reflected this in this document, but 17 respondents did answer this question directly.

4.10.7 Some respondents stressed the need to ensure that systems are piloted properly and providers continue to be involved in the development of the proposals. HLPAs, for example, stated

“HLPAs are not opposed to streamlining application and claim procedures by on-line working. It is, in principle, a good idea. But HLPAs think it is essential that suppliers are fully involved in the development of these proposals, and that the new systems are adequately piloted. HLPAs hope that the LSC will take this on board and work with HLPAs's members to ensure that there is no repeat of the LSC Online fiasco.”

4.10.8 Concerns were expressed that the cost to providers has been underestimated (Shelter), and that IT requirements will be detrimental to smaller firms (ALC).

4.10.9 Other comments included;

- the need to engage with providers of software for the Bar (The Bar Council)
- that clients may find it helpful if their solicitors can proceed without intervention from the LSC, and
- that practitioners will need to rewrite office procedures (LAPG).

4.10.10 A number of respondents also perceived a possible shift in administrative burden, especially around the means proposals, and expressed concern at this.

Decisions

4.10.11 Additional comments have been considered and addressed under the various questions above, and will be considered as part of our ongoing design process.

5. Next Steps

- 5.1 There are a number of actions that need to be taken over the coming months and years to ensure that the decisions we have taken are put into effect, whilst addressing the concerns raised by stakeholders and providing increasing information for providers to make business decisions.
- 5.2 The first stage is for us to continue with the process design. We will be working with volunteer providers in this, usually through workshops and visits.
- 5.3 The Software Vendors group has now been reconvened, and a protocol agreed to limit the amount of changes made in a year and ensure that changes are communicated in good time.
- 5.4 Throughout the project, we anticipate that our relationship with software vendors will continue to grow, in order to ensure a solution is developed which appropriately fits with providers' IT systems.
- 5.5 Early in the New Year, we expect to be in a position to publish more details on the processes and the expected technical solution. We will then start developing the IT systems, and will give iterative updates as and when we know more about the solutions.
- 5.6 We will start working on a more detailed training, education and transition plan in early 2009, and will involve representative bodies in this.
- 5.7 We expect to have a clearer direction on our audit approach by early 2009.
- 5.8 We will consult with the representative bodies on the contractual and regulatory changes needed in early 2009
- 5.9 Given the difficulty in formulating an accurate Impact Assessment without understanding the technical design, as discussed above, we will provide an update to the Impact Assessment in Spring 2009. This will be facilitated by a more targeted approach to minority groups, in order to assess the impacts in more detail and with a greater evidence base than we have been able to use in the final Impact Assessment.
- 5.10 We will work with disability groups and experts in order to carry out a disability audit of our software.
- 5.11 We still anticipate starting implementation from April 2010, but will keep under review throughout the project; much will depend on technical solutions and results of full testing.

Annex 1 – Respondents to the Delivery Transformation Consultation

This annex lists the representative bodies and individuals who have provided written responses to the questions set out in the Consultation paper.

Representative Bodies:

- The Advice Services Alliance (ASA)
- Association of Lawyers for Children
- The Bar Council
- Citizens Advice Bureau
- Criminal Law Solicitors Association (CLSA)
- Foxhill & Parson Cross Advice Service
- Housing Law Practitioners Association (HLPAs)
- Immigration Advisory Service
- Immigration Law Practitioners Association (ILPA)
- Information Commissioner's Office (ICO)
- Institute of Legal Cashiers (ILCA)
- Kent Family Mediation Service
- Legal Aid Practitioners Group (LAPG)
- Legal Software Suppliers Association (LSSA)
- The Law Society (TLS)
- Shelter
- The Welsh Language Board

Individual Responses:

The list below details responses received from individuals and other groups who submitted written responses to the Delivery Transformation consultation paper and did not wish to remain anonymous. A further 6 written responses were received from individual legal aid providers who were responding personally and not on behalf of their organisations.

Alan D Green	Hewitts
Alex Hughes	Rushmoor CAB
Alisa Willows	Wolferstans
Angela Oliver	
Anne Hall	The Roland Partnership
Anne Hudson	
Anne Hume	
Belinda Knight	
Billy Smith	
Claire Blades	Citizens Advice
Daniel Prigs	
David and Snape	
David Melville Walker	
Elsbeth Thomson	David Gray
Gerry Ferguson	Withy King
Helen Dent	
Howard Field	
Ian Wright	

Managing Legal Aid Cases in Partnership - Delivery Transformation:
A Response to Consultation

J Bull
Jane Marston
John Scruton
Jordans Solicitors
Julian Connigham
Keith Jones
Michael Robinson
Robin Murray
Rowland
S A Kelly
S.Wiener
Sophia Yau
Steve Kirwan
Steve Randerson
Sue Hughes
Tim Astley
Tim Smith
Tony Griffin
Trish Whiting and Sian Clarke
William Flack

Atkins Hope
Marston Harbottle
Cartwright King

Peterborough CAB
Emmersons Solicitors
Robin Murray & Co
Lanyon Bowdler Solicitors

Roshen
Nowell Meller Solicitors Ltd
IIZUKA
David and Snape

AlphaLAW
Cartridges

