





FREQUENTLY ASKED QUESTIONS

Legal Aid Reform

1. [Are the Courts on board with the Expert Fees that have been announced?](#)
2. [Will clients have to ring the CLA service first to apply for Legal Aid or would clients have to see a Solicitor who would then ring CLA, as this would have cost implications?](#)
3. [Is the Access to Justice Act and the Funding Code being rewritten?](#)
4. [Are the Government pursuing the proposal to take interest from client accounts?](#)
5. [Where can I find more information on legal aid reform policy?](#)

Remuneration

6. [Where can I find training materials related to the remuneration reforms?](#)
7. [Where can I access a preview of the new forms for the October changes?](#)
8. [Where can I find details of the new rates coming into force from 3 October?](#)
9. [Is there an updated version of the litigator fee calculator as a result of the remuneration changes?](#)
10. [Do the new LGFS and AGFS fixed fees for either way cases suitable for summary trial apply if the reason for the trial not going ahead is that the case has been discontinued by the prosecution rather than because the defendant has changed his plea to guilty?](#)
11. [When do the new remuneration changes apply if I have a Unified Contract?](#)
12. [When do the new rates apply if I have a Standard Civil Contract?](#)
13. [What cases do the codified rates for expert witnesses apply to?](#) 
14. [What determines whether the London or non-London expert rate will apply?](#) 
15. [The expert type I wish to instruct does not appear in the codified rates. What rate will be acceptable?](#) 
16. [Do the codified rates also apply to overseas experts?](#) 

17. [At what rates will DNA testing be paid?](#) 

Scope

18. [When do we expect the scope and eligibility changes to be implemented?](#)

19. [Will the changes to scope be introduced by primary legislation \(i.e. the bill\) or through secondary legislation \(i.e. funding orders\)?](#)

20. [If housing work \(with the exception of homelessness or cases where someone's home is at immediate risk\) is being removed from the scope of Legal Aid will we introduce more help at Court Schemes?](#)

21. [Will we be publishing strict definitions about what is classed as Domestic Violence? Is one of the implications to get Legal Aid not to exaggerate Domestic Violence so that clients would then be in scope?](#)

22. [Will ancillary relief remain within the scope of Legal Aid?](#)

23. [What happens to exceptional cases and basic human rights?](#)

Eligibility

24. [Will the changes being introduced as part of the eligibility reforms result in the LSC requesting contributions from clients when the Statutory Charge applies too?](#)

25. [Do the eligibility proposals mean that all clients requesting Legal Aid will now have to undergo a means test?](#)

Provider impact

26. [Will we be getting rid of provider Contracts?](#)

27. [What will the impact on the provider base be as a result the Legal Aid reforms? Will it result in providers not renewing their contracts and will we be reducing the number of providers we contract with?](#)

28. [Are we going to publish what Providers are allowed to claim so we all know?](#)

1. Are the Courts on board with the Expert Fees that have been announced?

HMCTS were fully consulted on all Legal Aid Reforms proposals.

2. Will clients have to ring the CLA service first to apply for Legal Aid or would clients have to see a Solicitor who would then ring CLA, as this would have cost implications?

In most normal circumstances clients will be expected to call the gateway service themselves. However, if a client has difficulties using a telephone based service they can ask a third-party to call on their behalf. In some circumstances they may ask a solicitor to do this for them, although we would expect this to be an unusual occurrence. Please note that clients will not be expected to apply for legal aid via the gateway in all circumstances, see pages 43 and 43 of the Reform of Legal Aid in England and Wales: the Government Response for details.

3. Is the Access to Justice Act and the Funding Code being rewritten?

The provisions of the Access to Justice Act relating to legal aid will be replaced by the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act when enacted. The funding code will be replaced by regulations made under the new Act which will govern the criteria and procedures for funding cases.

4. Are the Government pursuing the proposal to take interest from client accounts?

No, the response to the consultation paper (page 244-246) states that this proposal will not be pursued at this time.

5. Where can I find more information on the legal aid reform policy?

Details of the legal aid reform policy can be found on the MoJ website by clicking here:
<http://www.justice.gov.uk/consultations/legal-aid-reform.htm>

6. Where can I find training materials related to the remuneration reforms?

You can access on-line training modules here: <http://training.legalservices.gov.uk>

7. Where can I access a preview of the new forms for the October changes?

You can access the new and revised crime forms on the LSC website by clicking here:
http://www.legalservices.gov.uk/criminal/forms/oct_crime_forms_preview.asp

8. Where can I find details of the new rates coming into force from 3 October?

You can view the revised rates on the LSC website by clicking here:

Crime providers and Experts (crime):

http://www.legalservices.gov.uk/criminal/contracting/2010_crime_contract.asp

Civil Providers, Experts (civil) and Barristers:

http://www.legalservices.gov.uk/civil/2010_civil_contract.asp

Family Providers, Experts:

http://www.legalservices.gov.uk/civil/unified_contract_civil.asp

9. Is there an updated version of the litigator fee calculator as a result of the remuneration changes?

The litigator fee calculator is in the process of being updated to reflect the changes and we hope to release it shortly on our website.

10. Do the new LGFS and AGFS fixed fees for either way cases suitable for summary trial apply if the reason for the trial not going ahead is that the case has been discontinued by the prosecution rather than because the defendant has changed his plea to guilty?

Yes. The new fixed fees apply where the case is suitable for summary trial, the defendant elects Crown Court trial, and, for whatever reason, the trial does not proceed. It therefore applies to: guilty pleas, cracked trials, discontinuances (i.e. where the prosecution offer no evidence) and acceptance of a plea to a lesser offence.

11. When do the new remuneration changes apply if I have a Unified Contract?

New expert rates – applies October 2011

New rates for Legal Help, Enhancement Caps (for upper and lower courts), Care Proceedings Graduated Fee Scheme (CPFGS), Private Family Law Representation Scheme (PFLRS) and Family Advocacy Scheme (FAS) – applies February 2012

New codified Barrister's rates only apply to all proceedings under the Trusts of Land and Appointment of Trustees Act 1996 and the Inheritance (Provision for Family and Dependents) Act 1975 – applies October 2011

12. When do the new rates apply if I have a Standard Civil Contract?

New expert rates – applies October 2011

New rates for Legal Help, Enhancement Caps (for upper and lower courts), certificated claims – applies October 2011

New codified Barrister's rates – applies October 2011

13. What cases do the codified rates for expert witnesses apply to?

Civil

Experts instructed in cases where the date of application (for licensed work) or case start date (for all other cases) is on or after 3 October 2011 are subject to the new codified rates.

The new rates apply, regardless of whether the contract held by the provider is Unified or Standard.

In licensed work:

- **The new rates for experts** will apply to all applications signed on or after 3 October 2011, as well as those applications which have been signed before 3 Oct 2011 but not received by the LSC by 10 October 2011.
- **The old rates/expert provisions** will apply to certificates where the application for funding was made prior to 3 October 2011 (i.e. it will need to have been signed prior to 3 October 2011) and received by the LSC on or before 10 October 2011.

Crime

The changes will apply to claims with Representation Order dates on or after 3 October 2011.

14. What determines whether the London or non-London expert rate will apply?

The location of the expert will be the determining factor as to whether London or non-London rates or fees apply. London rates will apply where the expert is based within a London Borough.

Where applicable the location of the expert's registered office will be used to determine which rate will apply.

Where an expert is a consultant to a number of different hospitals, or has offices in more than one location, the proximity of those offices to the instructing provider will be taken into account in deciding the appropriate rates. For instance, the London rate will be applicable where the expert's nearest office to the provider is in London.

Providers must have regard to the purpose and importance of the expert witness service to the case, and the extent to which there is a choice of alternative expert. For instance, if the expert is based some distance from the client's home and the client is required to attend a meeting with the expert (or vice versa), justification should be provided as to why a local expert should not or could not be instructed.

15. The expert type I wish to instruct does not appear in the codified rates. What rate will be acceptable?

Caseworkers will have regard to the codified rates where a comparison with a codified expert type is appropriate.

Where the expert type is not listed in the codified rates and comparison with the codified rates is not appropriate the LSC may require a provider to submit multiple quotes from different experts of that type to demonstrate that the rates being charged are in line with market rates.

16. Do the codified rates also apply to overseas experts?

The codified rates apply to all experts undertaking legally aided work, whether they are located within the UK or overseas.

Under the Practice Direction (Experts in Family Proceedings Relating to Children (1st April 2008) in public law proceedings under the Children Act 1989 the proposal to instruct an expert should be considered "by or at the Case Management Conference". As prior authority is necessary to instruct an expert who exceeds the maximum rate in 'exceptional circumstances' should an application for prior authority be submitted to the LSC before or after the Case Management Conference?

The LSC can approve a prior authority without the court having previously approved the expert; however this would be rendered ineffectual if the court subsequently decided that the expert was not necessary or appropriate. Providers will need to submit the Court Order alongside the prior authority approval when submitting their application for a Payment on Account for the expert.

If there is uncertainty as to the need for an expert or the type of expert required then it will be advisable for court to make a determination of that issue before prior authority is sought.

If time is at issue a provider may apply to the LSC for prior authority in parallel with making an application to Court, however:

- The LSC cannot bind the Court on the use of an expert in court.
- The Court cannot bind the LSC to pay a particular hourly rate for an expert.

17. At what rates will DNA testing be paid?

The cost for a sample to be tested is £315. The preparation time for any report will be allowed at an hourly rate of £90 per hour.

18. When do we expect the scope and eligibility changes to be implemented?

The legal aid reform team is in the process of assessing the MoJ's consultation response and determining what the impacts will be on the Legal Services Commission and legal aid providers. We are therefore still investigating when we can implement the elements of the legal aid reforms concerning scope and eligibility changes. In addition, the implementation of these reforms is entirely dependent on the passage of the Bill through parliament.

19. Will the changes to scope be introduced by primary legislation (i.e. the bill) or through secondary legislation (i.e. funding orders)?

The scope changes will be introduced by primary legislation (the Bill), but will also require some secondary legislation (funding orders) before they are fully operational.

20. If housing work (with the exception of homelessness or cases where someone's home is at immediate risk) is being removed from the scope of Legal Aid will we introduce more help at Court Schemes?

Currently we have no plans to offer any further schemes to compensate for Housing cases coming out of scope. However we do already and will continue to offer a service at courts known as the Housing Possession Court Duty Scheme which assists clients without prior representation in Housing matters at court.

21. Will we be publishing strict definitions about what is classed as Domestic Violence? Is one of the implications to get Legal Aid not to exaggerate Domestic Violence so that clients would then be in scope?

The consultation response sets out the circumstances which would be accepted as evidence of domestic violence. These criteria are listed on page 15 of the Reform of Legal Aid in England and Wales: the Government Response for details. The legal aid reform team is in the process of considering the response to determine how these criteria will be implemented and assessed on applications for funding.

22. Will ancillary relief remain within the scope of Legal Aid?

Under the scope proposals, which are subject to parliamentary approval, Legal Aid will not be as widely available for ancillary relief cases as at present. However, there will be provision for the victims of Domestic Violence who meet the criteria, and for legal advice and assistance in cases where mediation is on-going or to provide legal advice in drafting a court order to give effect to a mediated settlement.

23. What happens to exceptional cases and basic human rights?

In developing the proposals MoJ have taken into account its legal obligations. MoJ have decided to replace the existing exceptional funding scheme with a new expanded excluded cases scheme. This new scheme will provide funding for excluded cases where, in the particular circumstances of a case, the failure to do so would result in a breach of the individual's rights to legal aid under the Human Rights Act 1998 or European Union law.

24. Will the changes being introduced as part of the eligibility reforms result in the LSC requesting contributions from clients when the Statutory Charge applies too?

There are three main ways that clients under the civil legal aid scheme may be required to pay towards the costs of their case: a contribution from capital, monthly contributions from disposable income and repaying costs at the end of the case via the Statutory Charge. Contributions from income and capital are determined by the client's financial circumstances through the means test; the Statutory Charge arises at the end of the case where money or property are kept or gained as a result of the case. In the future, as happens now, a client may have to use all of these methods to pay towards their costs.

Clients are required to pay income contributions where their monthly disposable income is £316 or more (i.e. clients with monthly disposable income of £315 or less are not required to pay income contributions); this lower threshold is unchanged but in the future the proportion of income required for the contribution will be moderately increased.

25. Do the eligibility proposals mean that all clients requesting Legal Aid will now have to undergo a means test?

The consultation response confirms that capital passporting is to be abolished, so that in the future we will apply the capital means test to all applicants whether or not they are in receipt of income-based benefits. However, civil legal aid is not means tested for certain types of proceedings, including for parents in care or supervision proceedings, or for people detained under mental capacity legislation seeking release; the consultation paper was clear that none of the proposed changes will affect those cases

26. Will we be getting rid of provider Contracts?

We currently have no plans to remove contracts as a method for procuring Legal Aid.

27. What will the impact on the provider base be as a result the Legal Aid reforms? Will it result in providers not renewing their contracts and will we be reducing the number of providers we contract with?

Each provider will need to assess the impact of the proposals on their own business model and decide how the legal aid reforms affect their position. The LAR's do not contain any specific proposal to reduce the number of provider contracts, although some firms will inevitably take this opportunity to review their ongoing viability. The LSC is in the process of assessing the MoJ's consultation response and determining what the impacts will be on how we contract with legal aid providers. The key issue will be to ensure client access is maintained for all remaining areas of legal aid provision through the various mediums available, including telephone, online and face-to-face.

28. Are we going to publish what Providers are allowed to claim so we all know?

Yes, all fee changes will be communicated to providers in due course.