

ILPA information sheet

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Legal Aid 9 – Consultation: Scope

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This information sheet should be read with the “Legal Aid 8 – Consultation” information sheet. It provides information and ideas that may be useful for those intending to respond to the Legal Aid consultation. It is specifically concerned with the questions 1 to 6 of the consultation, which are concerned with “Scope”.

It is helpful to include real examples when responding to the consultation.

Questions 1-6 – scope:

These six questions are generally concerned with whether the Government’s proposals to reduce the scope of Legal Aid should be adopted. In simple terms – should Legal Aid be removed for the areas it is proposed to be removed, and should Legal Aid be kept for the areas it is proposed to be kept?

The Government sets out in the consultation document the following factors by which it says it has judged that Legal Aid should be kept for certain areas and removed for others:

- The importance of the issues at stake: Where there is an immediate risk of homelessness, serious physical harm or loss of liberty, this is considered to be most important.
- The ability of people to present cases by themselves: The Government notes that tribunals are intended to be user-friendly, and seeks to distinguish between areas where those affected are generally considered to be very vulnerable (e.g. by reason of age, disability or traumatic history) from areas where those affected are not.
- The complexity of the area: The Government considers that complexity may be about complexity of the law, the evidence or the subject matter.
- The availability of other sources of funding for legal assistance: A number of sources are discussed, including the availability of insurance.
- The availability of other ways to resolve disputes – i.e. without bringing a claim or appeal before a court or tribunal.

Further information about two of these six questions is set out below.

Question 3:

This question asks whether you agree that Legal Aid should be removed for the areas proposed by the Government. These areas are set out in the consultation document between paragraphs 4.148 and 4.245. These areas (briefly described in the “Legal Aid 6” information sheet) include debt, education, employment, housing, immigration, private family disputes, social welfare and asylum

support. Some general points that ILPA will be making are:

- The proposals will significantly reduce access to justice for the poor as compared to the rich.
- Are distinctions that are drawn in the consultation sensible? For example, does it make sense that Legal Aid is not available for debt problems unless and until the problems have become so severe that a person is immediately at risk of losing his or her home? Does it make sense that Legal Aid is only available in relation to someone's immigration detention, when it is not available for the underlying cause of that detention (his or her immigration problem)? Does it make sense that Legal Aid is not available for asylum support when this may result in someone becoming or remaining destitute and homeless and so unable to effectively deal with his or her asylum claim?
- Generally, where it is proposed to remove Legal Aid from an area, it is proposed to remove it from all stages of a claim and appeal, including appeals beyond the first tier tribunal. Is this sensible? It is significant that, in most areas, appeals beyond the first tier tribunal are restricted to legal points, for which legal expertise will be necessary.
- Many of these areas concern decisions by the Government (or other public bodies), and some of them concern actions by the Government against individuals (e.g. a decision by the UK Border Agency to deport someone). It has been argued that the State has a particular responsibility to ensure that the machinery of law works alike for rich and poor because it is the State that makes the law. Where the State is the decision-maker, that responsibility may be particularly acute.
- In November 2010, Richard Thomas, Chair of the Administrative Justice and Tribunals Council, highlighted the failure of public bodies to get decisions right first time. He pointed to the appeals success rates in social security appeals (41%) and immigration appeals (37%). (In fact if asylum appeals are excluded and only immigration appeals considered, the success rate on appeal in 2009 was 48%.) If Legal Aid is removed, this may simply result in fewer cases where the decision is right first time or where the decision is corrected on appeal.
- Richard Thomas also complained that public bodies did not learn from their mistakes, repeating the same mistakes time and time again despite these being overturned in individual cases on appeal. Where the Government is the decision-maker, it may be questioned why the Government is not seeking to do more to save Legal Aid (and other costs) by reducing its mistakes and learning from its mistakes. If Legal Aid is removed, this may simply make it more likely that the Government gets away with this.
- If Legal Aid is removed, it does not mean there will be no representation before tribunals. Those who cannot afford legal representation may still find that the Government and other public bodies, banks and other creditors and employers, with whom they are in dispute, may continue to be represented.

You may also find it useful to consider the factors considered by the Government (set out above). Do you think that these areas, or any particular area, for which the Government proposes to remove Legal Aid, are important or very important? Can people deal with these sorts of cases by themselves? Are these areas simple or complex? Is other funding for legal assistance in these areas available? Is there any other way of resolving disputes in these areas?

Question 6:

This question asks for your views on how the proposals would affect those who are left to represent themselves and what impact this would have on court or tribunal proceedings. Some questions to think about include: Will people know or understand the relevant law? Will they know what evidence they need and be able to get it? Will people be able to prepare and present witness statements where these are relevant? Will they understand procedure rules? Will the other side be represented? How will this affect the efficiency of tribunal proceedings and the quality of tribunal decisions?