



The Law Society

## **There is a better way**

The Law Society's alternative proposals  
for saving the required £350 million  
from the civil legal aid budget

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## The Law Society's alternative proposals for saving the required £350 million from the civil legal aid budget

### Overview

This document sets out in detail the viable and credible alternative to the Government's proposals to cut civil legal aid in the Legal Aid, Sentencing and Punishment of Offenders Bill.

The Law Society accepts that public money must be spent effectively and that savings need to be made.

Unfortunately, we do not believe that the Government's proposals will achieve the budget savings they require. Instead, they will devastate legal advice and access to justice for civil cases and family law in England and Wales, removing legal aid support for more than 645,000 cases each year while exposing the Government to additional unaccounted-for costs.

During the consultation before the Bill was introduced we offered an alternative package of measures that saved more than the Government is seeking, based on our six principles of access to justice.

The Government rejected our alternative although it didn't provide evidence to refute our arguments. Instead its criticism misunderstood the effect of our proposals, dismissed existing evidence and failed to supply countervailing data.

We have considered the Government's critique of our alternative and accepted some elements of it. We have checked the evidence available. We have requested more evidence from both the Ministry of Justice and the Legal Services Commission. In the absence of government data we have had to make assumptions about the impacts of the cuts and the effects on behaviour. We have been very open about our assumptions and the reasons behind them.

Now we have asked our members and other experts in the field to review the assumptions used to build our argument.

As a result we stand by much of our original work, but invite the MoJ to provide better evidence upon which to base such analysis if they have it. We have repeatedly expressed our willingness to revise our proposals with fresh data as it becomes available, although to date the Government has not provided any.

We now present our alternative package of savings which betters the Government's desire to make £350 million of cuts.

#### **The Law Society proposals will:**

- Save £360m without removing legal aid for civil cases and family law for hundreds of thousands of vulnerable people
- Increase productivity in courts
- Lead to more efficient prosecutions
- Make better use of technology
- Apply penalties for wasting court time
- Restrict fees of the highest-paid advocates to more sustainable levels and limit claimable travel expenses

The Law Society's alternative proposals provide at least £10m more in savings than the Government says is required.

We believe they stand up to scrutiny better than the evidence used by the government to justify proposals in the Legal Aid, Sentencing and Punishment of Offenders Bill. The Law Society's savings package achieves the efficiencies that all public bodies are now having to make, without sacrificing access to justice for those who most need it.



## The alternative

Over the past year, we have campaigned against both the damage the cuts will cause and the likely knock-on costs, greater than the supposed savings.

We recognise that now more than ever, public spending must be efficient as possible, and that savings need to be found. Yet unlike the Government, we believe that this can be done without cuts to frontline legal aid provision.

In February 2011, the Law Society published its package of alternative savings.

Although Government has been unable to support key elements of its own proposals with solid data, a recurring theme in its response to our alternative savings was to query the evidence behind them. Its response was notable for attacking our proposals on these grounds without any data, anecdotal or otherwise, to suggest that our assumptions and calculations were wrong.

We nevertheless carefully considered the Government's response, and have now sought to address in detail the substance of its comments. Our updated savings are laid out in the tables enclosed with this report.

**In summary, we believe the MoJ response to our proposals was flawed on a number of counts:**

- Misunderstanding the effect of proposals - This was particularly true of our proposal that the CPS should bear the cost of dropped cases, which could save £79 million a year. The proposal did not seek to transfer these costs to the CPS, but to produce better decision-making on pursuing bad cases. The proposal would therefore be cost neutral for the CPS and would result in a saving from the legal aid budget. This proposal was expressly adopted as Liberal Democrat party policy at the Spring Conference in 2011.
- Speculative dismissal of existing evidence - For example, rejecting the proposal that 20 per cent of cases could be moved from the Crown Court to the Magistrates' Court, when such a large change, albeit in the opposite direction, has recently occurred in a single year.
- Failure to supply any countervailing data - Throughout its response, the Ministry of Justice failed to indicate any data or other evidence that supported its dismissal of our proposals - even where its arguments depended on datasets the Government has at its disposal.

## Evidence-based policymaking

The merit of our proposals has been reaffirmed during the time since our package's initial publication by developments that lend them further credence.

For example, the Legal Services Commission is now introducing measures similar to our proposal to cut travel and hotels for advocates, and recently suggested that in due course, the advocacy accreditation scheme might not permit payments for QCs over and above the rates payable to any other advocate sufficiently qualified for the case in question.

Similarly, the recent establishment of an inquiry into wasted costs within the CPS, and the conclusions of a recent survey on improving efficiency in the criminal justice system come as acknowledgement that there are efficiencies to be found that do not rely on cuts to frontline legal aid provision.

The values behind our proposals, such as the 'polluter pays principle' - where agencies that lose high levels of public appeals against their decisions are responsible for some of the complainants' legal aid costs - have also been endorsed widely, for example, by the Justice Select Committee, the Liberal Democrat Spring Conference, and the Haldane Society.

We do not suggest that the data and calculations behind our proposals are perfect. But the same flaws the Government identifies in our data are present in its own. Unlike those of the Government however, the sources of our estimates are transparent, the strength of our data is quantifiable, and our proposals realistic. They have been made in extended consultation with legal practitioners and partner organisations, and corroborated by our expert policy committees. We have full confidence that our estimates are the best possible on the evidence available to us.

We sincerely hope that the Government comes to recognise the value of this approach, and the disadvantages of their own up until now. The Government risks making an avoidable error with serious consequences.

We have also provided a full response to the MoJ's comments on our original savings package, showing that the MoJ's rejection of the alternatives is based on factual errors and does not provide supporting evidence.

Although the Law Society put forward these savings in February, the MoJ has declined offers of meetings and refused to discuss the alternatives in detail.

It isn't too late for the Government to reconsider its cuts to legal aid, and look again at the alternatives.

If you would like to support the Sound Off For Justice campaign in favour of justice and against the Government's changes, please visit <http://soundoffforjustice.org>

## The Law Society's principles of legal aid

1. The right to legal representation is a fundamental principle of a civilised society and is a cornerstone of our way of life.
2. No one should be denied legal help because they cannot afford it.
3. Everyone should be entitled to challenge the decisions of public authorities, institutions and big business and receive the help to do so.
4. Access to justice needs to be both fair and efficient with the system free of waste, unnecessary bureaucracy and expenditure.
5. The courts, their officers, suppliers and contractors have a duty to manage the judicial process with fairness and efficiency.
6. The state has a right to recoup money from those who misuse the system.



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