



The Law Society

Annex A

Legal aid: the Law Society's alternative cost saving measures

Last amended 25/03/2011

supporting
solicitors

Law Society proposals for MoJ savings	
<p>More efficient prosecutions/reimbursement of legal aid fund</p> <p>In 2010, 9.5% of Magistrates Court cases (almost 81,000 cases) and 12.6% of Crown Court cases (14,745 cases) resulted in a dropped prosecution or a judge-directed acquittal. The legal aid fund should not have to pay for these cases. They should be much fewer in number, and the CPS should bear the costs of the defence when they do arise.</p> <p>Assuming the cost of these cases is proportionate to the whole legal aid spend, and assuming the numbers of cases started but later dropped could be halved, there could be a significant saving to the legal aid fund. Further assumptions are that all cases in the Crown Court would have representation and half of the cases in the Magistrates Court.</p> <p>The cost to the CPS of having to meet the defence costs in the remaining cases would be offset from the saved resources in the non-continuation or earlier discontinuance of these bad cases.</p> <p>Mags Court savings: 40,000 cases @ £475 per case (average case cost from LSC Stats Pack 2009-10): £19 million</p> <p>Crown Court savings: 14,745 cases @ £4,069 per case (average combined LGFS and AGFS claim per case from LSC Stats Pack 2009-10): £60 million</p> <p>Total:</p>	<p>£79 million</p>
<p>Consideration of more cases being dealt with in the Magistrates' Courts rather than the Crown Court provided that there are safeguards to preserve right to trial by jury.</p> <p>A pending amendment to Section 20(3) of the Magistrates Courts Act 1980, by Paragraph 6 of Part 1 of Schedule 3 to the Criminal Justice Act 2003, would allow for an indication of whether a custodial or non-custodial sentence would be imposed on a plea of guilty. This could</p>	

<p>encourage early guilty pleas in the Magistrates' Courts.</p> <p>The number of either way cases heard in the Crown Court in 2009 was 68,500, a rise of 20% on 2008. For the purposes of this calculation, we assume that this figure could be reduced back down to the 2008 figure of approximately 57,000; and that these cases would be average cost in each Court.</p> <p>2009-10 average crime lower bill where Representation Order granted: £475</p> <p>2009-10 average Crown Court bill: £4,069</p> <p>11,500 cases @ £3594 less per case, rounded:</p>	<p>£41million</p>
<p>Single fee for Crown Court</p> <p>Over a relatively short time we believe that the administrative savings for both practitioners and the LSC from having a single fee would reduce the cost of delivering services in a way that would enable significant financial savings to be made</p>	<p>£ 30 million</p>
<p>More robust enforcement of merits test for private law family contact disputes</p> <p>Based on anecdotal evidence, we believe that a more effective application of the current means test could reduce the volume of contact cases by between 20 and 30%. For the purposes of this estimate, we have assumed a 25% reduction in volumes. The new fee scheme is designed to be cost neutral as against 2008-9 fees, so we have applied the average cost per case from 2008-9 for Children Act only cases.</p> <p>Published LSC figures do not distinguish between contact disputes and residence disputes. We have assumed that contact disputes account for 85% of the 46,000 private law children certificates (2008-9 figures)</p> <p>Reduction of 9,775 cases @ £3,002 per case, rounded:</p>	<p>£29 million</p>
<p>Capping fees so no individual can earn a personal income of more than £250,000 in a year from legal aid</p> <p>Based on statistics for payment to advocates published by MoJ in March 2010</p> <p>Mechanisms for achieving this could include:</p> <p>Aligning QCs' and Leading Juniors' fees at the latter rate</p> <p>Reducing the "event rate" for QCs in family cases from £2310 per event, and ensuring that a substantially reduced</p>	

event fee is paid for events lasting less than half a day	£16 million
<p>Review of approach to prosecutions in VHCCs</p> <p>CPS could be more selective about the number of charges brought, the number of individual defendants prosecuted and the volume of evidence produced.</p> <p>Such an approach could generate a saving in the cost of VHCCs of 10-20%. For this calculation, we have assumed savings of 15%.</p> <p>15% of £95 million:</p>	£14 million
<p>Limit all but essential Advocates' travel to court and hotel expenses and no longer pay for first class travel.</p> <p>In 2011 there is likely ample local coverage by Advocates of almost all Crown Court centres, thereby reducing the need for travel & hotel expenses. These expenses (under code THE), according to MoJ data, amounted to over £11m in 2009-10. Allowing for some exceptional travel, £10m could be saved.</p>	£10 million
<p>Reduce waste</p> <p>Mechanisms will include:</p> <p>Increase efficiency of Court Service by improving listings systems, case management and implementing Jackson proposal for 'ticketing' of judges to ensure that cases are heard by judges with the appropriate expertise.</p> <p>Increase use of wasted costs orders. In the short term, this would cause an increased cost to other public bodies, but only to the extent that they were the cause of inefficiency in the Court system. In the longer term, the penalty of such orders should reduce the amount of waste in the system, generating savings for the public purse across a number of budgets, including Courts, prison delivery and CPS as well as legal aid.</p> <p>Review use of Associate Prosecutors. APs are in practice often reluctant to make decisions on cases leading to costs of unnecessary delays and adjournments.</p> <p>For the purposes of this calculation we have assumed that there is one unnecessary delay or adjournment caused by failures in the system other than on the defence side for every two representation orders, and that each hearing adds £40 to the costs of the case on average.</p> <p>450,000 Representation orders x one half @ £40 each</p>	£9 million

<p>Funding from seized assets of defendants</p> <p>The SOCA Annual Report 2009-10 states that assets denied to criminals totalled £238 million. SOCA spent over £8.5 million on professional services and fees; and it is likely that a proportion of staff costs were also dedicated to asset recovery. For the purposes of this calculation, and in the absence of data from the LSC, we have assumed that a similar sum was spent on behalf of those whose assets were being pursued. This may be a significant underestimate.</p>	<p>£9 million</p>
<p>Remove hearsay and bad character provisions</p> <p>There are no reliable figures for what this proposal might save. We do not know in how many cases such applications are made; in how many they directly cause a need for an additional hearing; or what impact that has overall on the fees paid under the Standard or Graduated Fee Schemes</p> <p>For the purposes of this estimate, we have assumed that an extra hearing is required in 25-40% of prosecutions where a Representation Order is granted, and that on average, it increases the costs claimed on the case by £40.</p> <p>450,000 Representation orders x 25% x £40 = £4.5 million 450,000 Representation orders x 40% x £40 = £7.2 million Best estimate – mid point, rounded</p>	<p>£6 million</p>
<p>Single fee for family</p> <p>This could save an estimated 2.5% on the total spent on advocacy fees for family</p> <p>Counsel's fees total £124 million. We do not have at this stage an accurate figure for solicitor advocacy in family cases, so we have based the calculation just on Counsel's fees.</p>	<p>£3 million</p>
<p>Family mediated settlements should become subject to the legal aid statutory charge subject to a 50% discount.</p> <p>In a mediation briefing for the judiciary, the LSC stated that in 2008-9 they spent £13.8 million on publicly funded mediation. 68% of cases resulted in an agreement of which an estimated one half produced a financial settlement.</p> <p>50% of half of 68% of £13.8 million, rounded</p>	<p>£2 million</p>

<p>Reduce need to produce prisoners on Governor's warrant</p> <p>This would reduce the number of interim hearing and thus produce savings for legal aid, the Court Service and the Prison Service. The Crown Court remands approximately 35,000 prisoners per year, who spend on average 13 weeks in custody. Figures do not appear to be available for the number of hearings that serve no purpose other than producing the prisoner. For the purposes of this calculation, we have assumed that there is on average two such hearings for every three remand prisoners, and that each such hearing increases the legal aid costs by £40 on average, rounded.</p>	£1 million
Total Law Society proposed savings for MoJ:	£249 million
Law Society proposals for wider savings	
<p>Make the financial sector pay for its own fraud cases</p> <p>Total fraud costs, per LSC estimate: £148 million</p> <p>Assume 50% relates to the financial services sector – LSC has no accurate figures:</p>	<p>£74 million</p> <p>Note: some potential overlap with £250,000 cap and with review of approach to VHCCs</p> <p>Additional saving: £63 million</p>
<p>Simplification of housing law along the lines proposed by the Law Commission report 'Renting Homes' (2006)</p> <p>Current legal aid expenditure on housing is around £50m. Implementing the simplification proposals would reduce spending by around 20%. Increase use of legal expenses insurance</p>	£10 million
<p>Increase use of legal expenses insurance</p> <p>No significant savings under current limited scope of LEI. Possible savings if insurers could be persuaded to increase scope and if take of LEI could be increased</p>	Not quantifiable
<p>Compulsory legal insurance for company directors for offences arising from their office as director.</p> <p>This would largely duplicate savings arising from our proposed levy on the financial services industry</p>	Not quantifiable

Total Law Society proposals for wider savings	£73 million
Measures from Green Paper	
Litigators Graduated Fee Scheme adjustments Subject to recycling of part of the savings in fraud cases	£20 million
Equity taken into account; property waiver scheme The Society is prepared to accept this proposal subject to there being no capital limit for eligibility for the property waiver scheme for those on means tested benefits. Given the number of cases affected, the fact that the money will still be repayable to the state and the degree of error already inherent in the Government's figures, we do not believe this will make a significant difference to the savings. Equity taken into account; property waiver scheme.	£12 million
Experts' fees	£11 million
Supplementary Legal Aid Scheme	£10 million
Sundry minor accepted changes to scope A levy on defendants convicted of violent crimes to fund legal aid for Criminal Injuries Compensation Claims Greater use of CFAs in Housing and Clinical Negligence where available Minor housing adjustments Miscellaneous	£6 million
VHCC extension to 40-60 day cases We believe there are some minor adjustments needed before the LGFS scheme can be appropriate for such cases, and have therefore estimated slightly lower savings than the impact assessment	£2 million
£100 contribution from capital The Society is prepared to accept this proposal to the extent that the capital assets are liquid and excluding those on means tested benefits. For the purposes of this calculation we have taken the low end savings from the impact assessment as the best estimate	£1 million

Limit use of QCs/two advocates	Impact assessment gives no figure
Codify and reduce barristers' fees in civil non-family	Impact assessment gives no figure
Use of QCs in family cases	Impact assessment gives no figure
Total Green Paper measures accepted by the Law Society	£62 million plus savings from barristers' fees
Total of accepted Green Paper and Law Society proposals	£384 million