



**PROGRESS REPORT  
FOR BAR COUNCIL**

Meeting: 22.1.11

PREPARATION OF THE RESPONSES  
TO THE CONSULTATION PAPERS

CP12/10

CP13/10

Generally

1. Stephen Cobb QC, Max Hill QC and Christopher Hancock QC and Stephen Leslie QC ("the drafting team") have been drafting the Bar Council's responses to the Green Papers.
2. Reasonable progress has been made with the drafting; there are three weeks to go before the date for delivery of the responses - 14<sup>th</sup> February 2011. Drafts of responses to both consultations have been circulated to the SBA Chairs and the Circuit Leaders for comment.
3. The drafting team met with the SBA Chairs and Circuit Leaders at the beginning of the process (November 2010) and again on the 11<sup>th</sup> January 2011 to discuss the issues, and the shape and progress of the responses. There will be a further meeting when the near-final draft is available for discussion.
4. Our aim is to present a unified document reflecting the many views from the specialist branches of the Bar. We have endeavoured to blend these views as far as possible. We have not had yet to resolve any conflict of interest.
5. In the preparation of the final drafts, there is much work still to do.

Proposals for the Reform of Legal Aid: CP12/10

6. Our draft response reflects the views of the many SBAs and Circuits who have contributed to our work. The dominant themes to emerge from the responses to us, which we have highlighted and discussed in our draft, *inter alia*, are:
  - (a) the flawed data on which the proposals are based; deficiencies in the data/information on which the proposals are based, and inadequate evidence generally to support many of the proposals/assumptions;
  - (b) a range of anomalies within, and unintended consequences of, the proposals;
  - (c) the implications for access to justice for the most vulnerable including consideration of:
    - Article 6
    - Exclusion from scope: of many family and civil cases;
    - Telephone advice;
    - The effect on the vulnerable
    - The impact on the voluntary sector
    - Access to Justice: Family Courts
    - Access to Justice: Civil Courts
    - Access to Justice: Criminal Courts
  - (d) the role of mediation; the future of alternative dispute resolution and its relationship with litigation;
  - (e) the impact on the courts of the removal from scope of many cases; the increase in the number of litigants in person;
  - (f) the impact of the proposals on the legal profession and on the judiciary.
  
7. We are in the process of working up a Version 5 of the draft, and are addressing new sections on:
  - (a) the impact of the proposals on the regulatory aspect of our professional work;
  - (b) suggested cost savings.
  
8. We need final views from the SBAs, Circuits (and indeed the profession as a whole) ideally by 31<sup>st</sup> January 2011 (absolute latest by 4<sup>th</sup> February 2011). In particular we would like to receive:

- (a) examples of anomalies within, and/or unintended consequences of, the Legal Aid proposals;
  - (b) examples / illustrations / anecdotes of the difficulties experienced by (or likely to be experienced by) the courts, and for the administration of justice, by the increased number of litigants in person in the courts;
  - (c) suggestions of ways in which the MoJ can save money without slicing the legal aid fund;
  - (d) generally, detailed responses from the SBAs and the Circuits which have yet to contribute.
9. In order to provide detailed expert evaluation of the proposals on a wider perspective, we have commissioned some independent assistance.

#### Strategic Society Centre

10. We have commissioned a piece of research from the Strategic Society Centre. The Strategic Society Centre is a London-based public policy think-tank. The Centre applies evidence-based strategic policy analysis to complex societal problems; its work is independent, objective and free of partisan association.
11. The work is to be done using data from the Civil and Social Justice Survey (CSJS), into the potential impact of reforms to the legal aid system. This is original quantitative research to explore the likely impact of the proposed reforms for clients and *potential* clients of legal aid.
12. The CSJS was a continuous household survey of civil legal problems among adults in England and Wales. It was commissioned by the Legal Services Research Centre - the independent research unit based in the Legal Services Commission (LSC) - with funding partly derived from the LSC. It can be weighted for non-response, meaning that any statistically significant findings it generates can, with confidence, be assumed to reflect the true situation among the household population of England and Wales. The Centre has access to the most recent and final wave of data, i.e. 2008-2009

13. The work is largely to be conducted by Laura Bradley who is a Senior Research Fellow at the Strategic Society Centre. She has ten years' experience in public sector service development, policy and delivery, most recently as a policy developer at the Legal Services Commission with responsibilities involving service design, funding and procurement strategy, partnership development, and advice for government.
14. The Strategic Society will be looking at:
  - (a) **Who would be affected by the legal aid reforms?** (What kinds of people would no longer be eligible for legal aid? In what proportions, i.e. the extent to which legal aid is critical in certain types of matter? For example, what proportion of people with a divorce issue and/or legal issue relating to children would currently be eligible for legal aid? And therefore, what proportion of the population stand to lose if the reforms are implemented in full?)
  - (b) **What are the wider impacts for potential clients?** (Does having access to professional legal services speed up problem resolution; conversely, Is not having used professional legal services associated with greater likelihood/number of negative impacts of experiencing a legal problem)
  - (c) **What are the hidden costs of not resolving legal issues effectively? How do professional legal services save money?** For example, is receiving professional legal services for employment or family matters associated with those problems being shorter in duration, compared to the same problems experienced by people who did not receive professional legal services;
  - (d) **Access to services:** What proportions of people have access to phone/mobile among those who would be eligible for legal aid; how this compares to those who would not be eligible?
15. In due course, the research report will be promoted via email to the database of the Strategic Society Centre, which includes a range of relevant stakeholders
  - Civil servants at the Ministry of Justice;

- Ministers and officials at the Department of Health;
- Leaders and key decision-makers in the NHS;
- Ministers and officials at the Ministry of Justice and the Legal Services Commission;
- Members of the Law Society's Mental Health and Disability Committee and Access to Justice Committee;
- Parliamentarians, including members of the Health Select Committee, Work and Pensions Committee and Justice Select Committee;
- Selected local authorities, Local Government Association, and Welsh Local Government Association;
- Relevant charities and representative bodies.

Professor Martin Chalkley

16. The drafting team is receiving assistance from Professor Martin Chalkley (University of Dundee); he is analysing the statistical data on which the proposals of the Consultation papers are based.
17. Professor Chalkley has had long-standing connections with the Bar Council and has worked on many of its major consultation responses.
18. Each of the SBAs has submitted questions to Martin arising from the Consultation Paper; Martin is processing those questions, and providing answers to the SBAs. He has met with SCQC to discuss the same.

Bob Young

19. In order to strengthen the Bar's public interest arguments, it was agreed to explore the possibility of engaging an economic consultant in order to:
  - critique the Bar's arguments from the perspective of MoJ and Treasury economists; and
  - where appropriate, to provide support in helping the Bar to strengthen its case.
20. It was felt that such a contribution could enhance Professor Chalkley's statistical input as well as the work of Laura Bailey.

21. On 13 January, Mark Hatcher approached Bob Young, of Europe Economics, a London-based consultancy with a track record in applying economics to public policy issues: <http://www.europe-economics.com/>. Mr Young is not only a member of the Bar Council's Policy Advisory Group but has also undertaken work of a similar nature for the Bar Council in relation to evaluating MoJ proposals for Best Value Tendering in criminal legal aid and in relation to critiquing the CPS's claims to provide better value for money by using in-house advocates rather than the self employed Bar. His contributions undoubtedly strengthened the Bar's case in both those instances and would have played a part in persuading the Government to abandon their BVT proposals and in persuading the DPP and the Law Officers to change their policy.
22. Bob Young is ready, able and willing to help the Bar Council. He has agreed in principle to undertake this work for a modest fee (subject to agreement of formal terms of engagement, but it is considered unlikely to exceed £5k), for which provision in the existing Remuneration and Policy budget can be made. It was noted that other firms of economic consultants had also undertaken work for the Bar from time to time (such as Oxera, for the Family Law Bar Association in 2009) but their services were relatively expensive.

Proposals For The Reform Of Civil Litigation Funding And Costs In England And Wales: Implementation Of Lord Justice Jackson's Recommendations

23. Work on this paper has been delayed to some extent by the paucity of contributions from the relevant SBAs and members of the Bar. We encourage those of you who undertake this work, and/or have a view about the proposals which affect this work, and this consultation paper, to send in your views.
24. In formulating the response, we have concentrated on:
  - (a) Proportionality
  - (b) Access to Justice
  - (c) Specialist litigation and particular types of claim
  - (d) Success fees
  - (e) ATE insurance
  - (f) The proposed increase in general damages
  - (g) Part 36

- (h) Qualified one way costs shifting
- (i) The alternative packages
- (j) Damage based agreements.

### Conclusion

- 25. The work continues. In order for this response to be truly representative of the Bar as a whole, the drafting team need further detailed submissions and representations by 31<sup>st</sup> January 2011 at the latest.
- 26. Please send them to Stephen Cobb QC at [cobb@1gc.com](mailto:cobb@1gc.com), and Ariel Ricci at [ARicci@barcouncil.org.uk](mailto:ARicci@barcouncil.org.uk).

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Christopher Hancock QC  
Max Hill QC  
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17.1.11