



Ministry of Justice
Legal Aid Means Test Review
mailto: LegalAidMeansTestReview@justice.gov.uk

06/06/2022

To whom it may concern,

RE: Legal Aid Means Test Review

CILEX (The Chartered Institute of Legal Executives) is one of the three main professional bodies covering the legal profession in England and Wales. The 20,000-strong membership is made up of CILEX Lawyers, paralegals and other legal professionals. Our members are judges, advocates, partners in law firms and specialist lawyers working across every aspect of the law.

At the time of writing, there are approximately 1143 CILEX members working in criminal law. Nearly two-thirds of these members identify as female, while almost one in five is from an ethnic minority.

CILEX has engaged with members working in this space to gather relevant data and lived experiences relating to the Government's proposals to reform Legal Aid Means Testing. This response seeks to set out our position on the broad aspirations of the proposals, while addressing detailed questions where appropriate. CILEX commends the Government's attempt within the consultation to tackle this complex area, set against, as they are, the previous changes introduced by the likes of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

CILEX has previously noted how LASPO greatly impacted many individuals seeking legal help, leading them to self-representation with limited access to legal advice and understanding of processes. Whilst CILEX recognises that the focus of this work is not directed at LASPO, it is important to keep such areas in mind when discussing individuals' access to legal services.

When consulting with our members on these proposals that Legal Aid Means Testing be applicable to all Criminal and Civil Legal Aid cases, the majority of members providing evidence felt that the Government's removal of Means Testing for those under 18 was appropriate. Our members cite the financial difficulties faced by those under 18 as well as emotional challenges as reasoning for the removal of Means Testing¹.

Similarly, there is general agreement that Assistance & Advice and Advocacy Assistance testing methods should be aligned.

Proposals for discards and discounts when looking at Legal Aid Means Testing are also supported, with a significant amount feeling that no caps or limitations should be placed on individuals claiming these during Legal Aid application processes. Furthermore, such considerations are felt to be applicable to all Civil and Criminal Legal Aid Court & Tribunal settings by nearly all members providing evidence.

Government's position on the household earning threshold of £500 for those on Universal Credit (UC) being passported or undergoing full income assessments is not seen as positively, however.

¹ Member quotes: "Most under eighteens are either on very low income or in full time education in relation to criminal and civil proceedings so that makes sense."



Whilst some feel that the threshold is fair and could help contribute towards legal costs in certain circumstances², the majority indicated concern for those already in complex and precarious financial situations facing further hardship³.

We believe the introduction of new Means Testing should be implemented as a single change, as opposed to a graduated introduction. When CILEX looked at possible impacts, general concerns were raised towards possible 'chaos' and 'confusion' for both public and practitioners alike due to the introduction of new Means Testing methods. An 'all at once approach' is a positive public interest approach which would enable clients to know where they stand and would be more efficient⁴, offering Legal Aid to the widest audience. Only a minority of our practitioners favours a gradual approach on the basis that it will allow for sufficient adjustment time⁵.

There is agreement though that the proposed changes are likely to cause further administrative burdens, however when surveyed nearly half agreed that the changes within the consultation could improve sector sustainability.

CILEX members feel in general that changes need to be comprehensive and long lasting, allowing for proper remuneration and acknowledgement of the work undertaken in helping individuals apply for Legal Aid as well as the provision of legal advice, with members mentioning possibilities for alignment of means testing⁶ and the current limitations of those eligible to apply for legal aid⁷.

In considering our members' feedback on these key Government proposals as well as our previous understanding of Legal Aid and an individual's access to it, CILEX welcomes large parts of the review.

However, we remain keen that such changes should be enacted to provide further Legal Aid and advice to individuals in society facing situations for which they are not properly prepared to manage on their own.

Legal Aid Means Testing, when correctly used, can help to ensure that those accessing the Legal Aid system are individuals that truly require such services the most. As such, CILEX welcomes

² Member quote: "This is more fair as they can afford at least a contribution towards costs."

³ Member quotes:

- "People on universal credit are struggling as it is and would be denied justice if that was brought in as they would not have the means to fund their case. Anyone in receipt of universal credit should automatically be passported."
- "those figures are calculated to ensure people have funds to live life to a minimum standard. they do not take into account how paying for criminal defence on top of those outgoings are going to affect that minimum standard."
- "Receiving universal credit means that they already need financial assistance. This would increase were they to contribute to legal fees."
- "They are on benefits - all benefits should be passported and no one should be required to pay additional legal aid contributions."

⁴ Member quote: "Gradually - disadvantage of more complex calculations. At the same time - everyone knows where they stand - more efficient"

⁵ Member quote: "There will be confusion in any case. If there is a timeline for gradual implementation, all parties should have a chance to get used to the changes and be prepared for the next coming change. Gradual change will likely be more cost effective."

⁶ Member quote: "The current Magistrates Court means testing should be aligned with the means testing in the Crown Court. The current threshold is ridiculously too low leading to many not receiving representation. Alternatively, the RDCO system was a much fairer system than the current contributions system in the Crown Court. Many struggle to pay punishing contributions. It would lead to less admin for the recovery agency so that only those convicted pay towards their legal costs rather than punishing the innocent financially whilst their cases are running as under the current system."

⁷ Member quote: "Currently in a mess. If we are to have universal legal aid, let us have universal legal aid. Currently legal aid only assists those on very low income / benefits. There is a large majority who earn over the current limit but cannot access private representation because of the cost i.e they have to 'go it alone' or ask a duty solicitor to represent them in court. This increases the burden on duty solicitors. Increase in number of defendants requiring duty solicitor advice results in further pressure on duty solicitors - insufficient time to properly represent a defendant or can result in calling in additional duty solicitor to assist. Justice takes time."

certain removals of testing as well as discards and discounts.

In relation to proposals regarding Universal Credit household income thresholds for testing, CILEX urges the Government to continue to monitor the impact on households currently requiring UC. They tend to be financial vulnerable as well as below the average income and whilst we appreciate that most such households on UC earning £0-£500 will be eligible for non-contributory Legal Aid, there is the possibility for many to face the burden of further financial analysis if they surpass the indicated threshold.

Such monitoring will dove-tail with what we have suggested as part of our response to the Government's response to the Legal Aid Independent Review as the welcome injection of additional government funding there should complement and support the proposed changes to Legal Means Testing to work, enhancing the overall viability of the whole system

CILEX hopes that wider reforms to Legal Aid both harmonise and support the multifaceted areas held underneath its overarching umbrella and will continue to push for the long-term recovery of this vital legal lifeline in the public interest.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Walker', written in a cursive style.

Jonathan Walker
Head of Policy