



## Ministry of Justice Consultation

### 'Legal Aid Financial Eligibility and Universal Credit':

#### A Response from the Law Centres Network

#### **About us**

The Law Centres Network (LCN) is the national membership body for Law Centres. Each Law Centre is a not-for-profit legal practice that is also a charity. They specialise in social welfare law and target their services at the most disadvantaged people in their communities. The first Law Centres in the UK were set up in 1970, and LCN has been their co-ordinating body since 1978. Currently there are Law Centres in 43 permanent locations across England and Wales.

Law Centres have been longstanding legal aid practitioners. Nearly all Law Centres hold civil legal aid contracts and together they make up over a third of not-for-profit civil legal aid providers. Since the civil legal aid cuts of 2013, Law Centres have sought to maintain as many services in social welfare law as possible, to respond to the growing problem of unmet legal need among disadvantaged populations.

**Q1. Is limiting passporting through the legal aid means tests to Universal Credit recipients with zero income from employment (while continuing to passport recipients of legacy benefits) a reasonable measure to accommodate the expansion of Universal Credit?**

No.

Our concern is that no-one currently eligible for legal aid is adversely affected by the proposals in this consultation. This would be achieved through preserving a parity between claimants of older benefits and claimants of Universal Credit (UC). The Ministry of Justice (MoJ) proposal to passport onto legal aid only UC claimants with zero income from work does not preserve this parity. Therefore, we consider that it is not a reasonable measure for MoJ to take.

Two groups in particular would be adversely affected by this proposal. The first group is that of current IS and JSA claimants undertaking limited permitted work. The second group is that of ESA claimants undertaking limited work in order to get back into work and off ESA. For both groups the extent of permitted work is up to 16 hours per week on average. In both cases, rather than being passported, the proposed change would have UC claimants means-assessed twice: for claiming UC for income-based benefits, and then again for legal aid. This does not meet MoJ's stated policy aim of 'efficiency in information sharing across government'.

We believe that, instead of passporting only UC claimants with zero income from work, MoJ should look again and more favourably at an option it rejected (Consultation Paper, paras. 3.10-3.13): to passport UC claimants with work income of up to £500 per month. This would be consistent with DWP's permission for this work and the limited income from it (which is about £520 on the National Minimum Wage). Doing so would require fewer means assessments for UC claimants, thereby reducing administrative burden on providers and the Legal Aid Agency (LAA).

The grounds on which the £500 option was rejected, as set out in para. 3.11 of the Consultation Paper, are weak. Firstly, a 'best fit' with current IT systems is not remotely a sufficient reason to reject an otherwise valid change, especially if DWP has already agreed in principle to cover the expected cost of £300,000 of updating LAA's systems (IA, para. 31). Secondly, this option would not disadvantage people on similar income who are not in receipt of UC, because at their level of income their own eligibility for legal aid should remain unaffected. In addition, as argued below, 'steady state' is the wrong assumption about household benefits income in the medium term.

We urge MoJ to reconsider its proposals and, instead of the current option 1, to pursue the option of passporting UC claimants with up to £500 a month of work income.

**Q2. Should the total amount for housing in the Universal Credit award be disregarded when assessing a claim for legal aid?**

Yes.

We consider that disregarding the housing element of UC when assessing legal aid applications would preserve parity with the way means eligibility is established with older benefits.

**Q3. Do you agree with the proposal that where there are contrary interests both parties should be assessed using the Universal Credit award amount for their household circumstances but any earnings would be taken account of separately?**

Yes.

**Q4. Have we correctly identified the range of impacts of the proposals as currently drafted in this consultation paper?**

No.

The impact assessment offers too little detail for us to establish whether MoJ has correctly identified the full range of the proposal's impact. Specifically, there is too little to demonstrate how certain figures and assumptions were arrived at.

Some assumptions made in the Impact Assessment seem overly confident given recent experience. In IA para. 42 MoJ expects that UC will be rolled out according to its published timescale and that UC entitlements would remain unchanged. To date, UC roll-out has notoriously run well behind repeatedly updated schedules. Entitlements have only just reduced significantly in the lowering of the Benefit Cap in November 2016 from £26,000 p.a. to £23,000

in London and £20,000 elsewhere, and planned benefits cuts over the next three years are expected to further reduce incomes for most claimants.<sup>1</sup> This would also mean that, of those already eligible for legal aid by scope and merits, more would be eligible by means and likely more of them on a non-contributory basis. In both welfare provisions and legal aid, policy changes as well as their lingering impact on their largely overlapping beneficiary groups have not reached a steady state over the past six years, and this is the wrong assumption on which to base medium-term modelling.

Another questionable assertion is that, in steady state, continuing to passport all UC claimants (option 0) would burden the legal aid budget with an additional expenditure of up to £14m per annum (IA, para. 14). Even if we ignore the fallacy of the steady state assumption, and even if we take this figure at face value despite no detail on how it was calculated, we must remember that this is a worst-case scenario figure and not the likeliest or best assumption. It assumes that all those eligible by means for legal aid would also have a problem that is still in scope of legal aid and that all their cases would have sufficient merit. This is after ignoring endemic issues known to reduce the amount of actual legal aid applicants, such as understanding one's problem as a legal one; awareness that legal aid is still available for it (despite the prohibition on providers to advertise it); or provider distribution and capacity problems and the existence of effective 'legal aid deserts' among others.

**Q5. Have we correctly identified the extent of the impacts of the proposals as currently drafted?**

The Impact Assessment acknowledges (para. 47) that more families in receipt of Child Tax Credit may become eligible for legal aid through passporting rather than through means testing. This is because Child Tax Credits are set to be reduced, thereby affecting the overall income of families with children. We suggest that MoJ explore the aggregate effect of cuts to benefits and tax credits, beyond Child Tax Credits. This would include several forthcoming cuts to which the government is already committed, such as expected working-age benefits and local housing allowance freezes, the abolition of ESA's work-related activity group, or the removal of the family element in tax credits. This is because, as the IFS acknowledges, families with children will be affected by these cuts to a much greater extent than the rest of the population. It is reasonable to expect that more of these families would become eligible for legal aid, and more of them by passporting than by means testing, suggesting a reduction in the administrative burden on providers and LAA in handling them.

**Q6. Are there any forms of mitigation in relation to the impacts that we have not considered?**

With too little detail on how the impacts identified were arrived at, we would not be able to propose forms of mitigation for them.

---

<sup>1</sup> Cf. Institute for Fiscal Studies, *The Impact of Tax and Benefit Reforms on Household Incomes*, Briefing Note 196, April 2017, <https://www.ifs.org.uk/uploads/publications/bns/BN196.pdf>.

**Q7. Do you have any other evidence or information concerning impacts or equalities that we should consider when formulating the more detailed policy proposals?**

No.

\*

11 May 2017

Nimrod Ben-Cnaan, Head of Policy and Profile, Law Centres Network

E: [Nimrod@lawcentres.org.uk](mailto:Nimrod@lawcentres.org.uk) | T: 020 3637 1330