**Civil Legal Aid Means test review**

We are responding as London Citizens Advice; 28 local charities delivering services in all London Boroughs. Our collaboration includes RCJ Advice, which provides civil and family legal services including FLOWS (Finding Legal Options for Women Survivors), a national domestic abuse legal service linking women to legal aid for family law as well assisting women who chose not to access legal advice.

Our comments are brief and don’t address all questions, but we hope will be noted. Whilst overall it is extremely welcome to see new policy ideas coming forward in this review to bring more people on low income into eligibility for legal aid, the proposals however are extremely complex. The removal of passporting from Universal Credit (UC) and the discretionary element of disregards will be a significant problem for Legal Help cases, both in terms of eligibility for clients and administrative burdens for providers.

A simpler process is needed allow for easier passporting for those on benefits, UC or other forms of state support and should be able to use existing DWP data, rather than expecting lawyers and the Legal Aid Agency to be checking bank statements, payslips for proof of income to determine whether applicants fall above or below the proposed thresholds. From the perspective of simplicity, it is important be enable Citizens Advice and other first points of contact for support and referrals to be able to check legal aid eligibility, and provide easy to use tools (eg., online calculators) to do this.

**Chapter 2: Overarching proposals: Single approach to income assessment and equivalisation (Questions 1 – 12)**

Whilst we welcome that that the understanding of income is adjusted to take household composition into account (Q1), a preferable approach might me to use the Joseph Rowntree Foundation’s Minimum Income Standard (MIS) which benchmarks the income needed to reach a socially acceptable standard of living for differently composed households. The equivalisation approach proposed by the Ministry of Justice using “the OECD modified equivalence scale” may be questioned as the OECD methodology has been criticised as arbitrary and underestimate the needs of children.

Whilst we agree with most of the deductions proposals (eg deductions of actual rent and mortgage payments and childcare costs for the means assessments), we do not agree with proposal to remove housing benefit payments from the civil and criminal income disregards regulations (Q 10). The proposal in the consultation is not to remove the housing benefit payments from the income disregards but to add it to the gross income of the applicant. So housing benefit is therefore counted towards gross income, with the full rent is deducted when calculating disposable income. As housing benefit is now a component of Universal Credit (UC), the inference is that the whole of UC including its housing element is also be counted as income. This change may have the effect of excluding some applicants with high housing costs on the basis of income allocated to help cover those costs; overall this will have a negative impact for people living in more expensive parts of the country – ie., London.

**Chapter 3: Civil income thresholds, passporting and contributions (Questions 13-28)**

We support the uprating of income thresholds and the removal of the cap on housing costs. Whilst we welcome the introduction (Q 18) of a “Cost of Living Allowance” drawing on essential household spending as the basis of our proposed lower income threshold, the threshold levels should be set at a level that ensures an individual’s income and capital will not fall below a minimum standard of living if they have to pay their own legal costs. Again we refer to the Minimum Income Standards as a benchmark. Also disabled people face additional costs due to living with a disability, and the cost of living allowance needs to account for these.

We do not agree with the proposal (Qs 24-26) to implement a £500 earnings threshold for applicants in receipt of UC who are currently passported through the income assessment for civil legal aid. UC should fully remain as a passporting benefit in conjunction with the removal of capital means testing for passporting benefits, including homeowners. These proposals will reduce eligibility, make it harder for people to know if they qualify, create extra work for providers and will leave many people without the legal advice, assistance or representation they need

**Chapter 4: Civil capital thresholds, disregards and passporting (Question 29 – 39)**

We welcome proposals to increase capital limits and the equity disregards. We have significant concerns though around the proposed charging system to recoup costs (Q 33); the proposals are complex and some of the definitions (eg recovery against “inaccessible capital”) are unclear – they may be difficult to administer and have result in a serious deterrent in some areas of litigation (eg., Public Law) and disincentives for legal aid providers to take on cases in which the charging system might kick in.

**Chapter 5: Immigration and asylum, under-18s and non-means tested cases (Questions 40 – 50)**

The proposals apply a simplistic policy logic for treating immigration and asylum representation the same as other legal aid claims (Qs 40 – 42), but in practice this would be extremely unjust. It needs to be recognised that immigration and asylum clients are usually vulnerable, in precarious situations or even facing destitution, whilst also facing deportation or removal. When combined with other no recourse to public funds rules, the impact of seeking legal aid contributions could be devastating.

As regards under 18s, we believe that all applications should be not means tested. Applications for protective injunctions in family law and domestic violence cases should also be removed from means-testing altogether. The safety on women and children should be the primary consideration, and in situations where women are fleeing domestic violence and controlling partners, it is inconceivable that that would be in a position to pay for legal advice if their income and assets moderately exceed the means test thresholds. Domestic abuse often involves financial abuse, with abusive ex-partners seeking to control victims’ finance. At the very least there should be a discretion to disapply the means test.

As FLOWS is a national service we are only too aware of the barriers that the means test presents to women accessing legal aid. The Domestic Abuse Commissioner has been clear that the current system of means testing leaves victims and survivors of domestic abuse unable to access legal support and where victims have to act as litigants in person they face be retraumatised in having to deal with their abusers. The Domestic Abuse Commissioner has recommended that all victims and survivors of domestic abuse should be exempt from being means-tested for legal aid; rather, where someone has experienced domestic abuse, they should automatically be granted state-funded legal support. If means testing is applies to victims and survivors of domestic abuse, we would support the Commissioner’s recommendations that:-

* they should be exempt from having their capital included as part of the legal aid means test assessment
* the value of their equity should be disregarded on the basis that applying a charge on their properties could impact the outcome of their proceedings
* should be exempt from having to contribute towards legal aid fees.
* provisions should be made to ensure that victims and survivors on benefits are passported

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