



Legal Aid Means Test Review  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ

Sent by email only to [legalaidmeanstestreview@justice.gov.uk](mailto:legalaidmeanstestreview@justice.gov.uk)

7 June 2022

Dear Policy Team,

### **Consultation: Legal Aid Means Test Review**

The Legal Services Consumer Panel (Panel) welcomes the opportunity to provide a response to your consultation regarding the legal aid means test review. The Consumer Panel is a statutory body created by the Legal Services Act, 2007 to provide independent advice regarding the interests of legal services consumers. We provide expert evidence-based advice to the Legal Services Board and others in order to facilitate regulatory decisions that are shaped by the needs of users, especially those who have lower bargaining power in the market such as individuals, small businesses, charities and especially vulnerable persons.

### **Access to Justice**

The Panel is in agreement that access to justice is a paramount principle in the English common law system and the rule of law.<sup>1</sup> More importantly, a functional and sustainable legal aid system that serves the needs of users who cannot afford legal services is necessary to bring about meaningful access to justice. While ensuring the legal aid scheme in England and Wales is fair, efficient and sustainable is important, the system needs to adequately meet the needs it exists to address. In 2019, prior to the coronavirus pandemic, the largest survey of legal needs in England and Wales estimated that 31% of people had an unmet legal need<sup>2</sup>. The onset of the pandemic has brought access to justice concerns into even greater focus.

We understand you have heard from many legal aid practitioners during stakeholder engagement who were concerned that some legal services consumers who were ineligible for legal aid are unable to pay for legal services.<sup>3</sup> The Panel has been equally concerned that this group of legal services consumers has been unable to access legal services due in large part to the extensive cuts to the legal aid system that occurred over the last ten years. Our research supports this view. Genuine and effective increases to legal aid provision are needed to stop this contraction of access to legal services.

---

<sup>1</sup> See MOJ consultation at para. 9.

<sup>2</sup> See LSB, Legal Needs Survey (2019), < <https://legalservicesboard.org.uk/online-survey-of-individuals-handling-of-legal-issues-in-england-and-wales-2019>>.

<sup>3</sup> See MOJ consultation at para. 55.

## **Legal Services Tracker Survey**

The Panel has conducted an annual tracker survey that monitors the experience of legal services consumers (including legal aid recipients) since 2012. This research clearly shows that the number of legal services consumers who are using legal aid has declined. 5% of legal services consumers used legal aid to pay for their services in 2012, which increased to 8% in 2014, but then there was a steady decline to 3% in 2019, 2020 and 2021. The tracker survey also shows a distinct decline in the use of legal services in certain areas of law over this time period which we suspect is due to cuts to legal aid provision. As the proportion of consumers using legal services in conveyancing, will writing, probate and power of attorney services increased between 2012 and 2021, those using legal services in housing, employment and benefits or tax credits all declined sharply from 5% in 2012 to 2% in 2021. It is also worth noting that according to our research, in 2021, the top four types of legal services used by people using legal aid were criminal (55%), family (12%), housing (12%) and benefits or tax credits (11%). These numbers suggest that rather than switching methods of payment to private fee arrangements, some of the consumers previously using legal aid may have dropped out of the market.

## **Segmentation Information**

Regulators in Legal Services have begun to use segmentation as a way of understanding consumer needs better, with the aim of targeting interventions and developing better solutions. It is our view that means testing needs to consider and reflect on the insight from the segmentation work that is taking place. This will enhance the accuracy of means testing and encourage a better focus on 'quality', meaning that consumers, in particular those who are vulnerable or who are dealing with legal issues of great impact to their lives, receive services better adapted to their needs.

## **Inflation**

Rising inflation rates are a new factor that must be given serious consideration. As inflation rises at a pace not seen in decades, the need to review the rates for the legal aid means tests frequently is unquestionable. In other words, the government cannot wait the usual three to five years before reviewing the new rates once implemented. A mechanism that allows the Ministry of Justice to respond to inflation and the consequential rising cost of living in a timely manner is needed to ensure that the proposals set out regarding the legal aid means test are not outdated before they are even implemented. If the legal aid means tests cannot adapt to current circumstances, the scheme will have no effect on increasing access to legal services (or even of maintaining it at the current poor level).

## **Equality**

Ethnic minority legal services consumers are more likely to use legal aid; 7% did in 2021 compared to just 3% of British white consumers. Specific groups used legal aid at the following rates: Mixed race (6%), Indian (7%), Pakistani (9%), Black African (7%), Black Caribbean (7%) and Asian (net) (6%). Legal aid users also appear to be younger, with it being used by 6% of 18 to 24 year olds, 7% of 25 to 34 years olds, 8% of 35 to 44 year olds, 4% of 45 to 54 year olds and only 1% of those 55 and over. This is in stark contrast to the 55% of our sample of people who had used legal services in the last two years being 55 or over.

The Panel consistently advocates that while working to improve the diversity of the legal profession is important, work must also focus on ensuring that the varying needs of all legal services consumers, in all their diversity, are met. Our data also shows that legal services consumers from ethnic minority backgrounds are less likely (by 3%) to be satisfied with the service they used. Similarly, though 84% of British white consumers were satisfied with the

customer service they received, only 79% of consumers from an ethnic minority background were.

## Summary

Most importantly, the Panel is deeply concerned about the decreasing availability of legal aid that has occurred over the last ten years and would like to see a meaningful expansion of access to legal services in the interests of access to justice. In order to ensure that such an expansion is having the desired effect, consumer segmentation information collected by legal regulators must be made use of and the means test rates must be reviewed regularly in light of cost of living increases.

The Panel appreciates the opportunity to provide input from the vantage point of legal services consumers. We hope you find these comments helpful. Please contact Heidi Evelyn, Consumer Panel Associate ([Heidi.Evelyn@legalservicesconsumerpanel.org.uk](mailto:Heidi.Evelyn@legalservicesconsumerpanel.org.uk)), with any enquiries.

Yours sincerely,



Sarah Chambers  
Chair  
Legal Services Consumer Panel