

Family Team Response
Proposals for the Reform of Legal Aid in England and Wales

Question 1

Yes

Victims of domestic violence should have access to public funds. However this is likely to be a very crude test for deciding whether public funding should be available, particularly in cases concerning children. There is no definition of domestic violence, which can include both physical and non-physical abuse.

On the one hand a great deal of domestic violence goes unreported. On the other hand there are cases where false allegations are made, particularly in cases where residence of and contact children are issues.

In some of these cases, if the alleged perpetrator does not have access to public funds there is likely to be inequality of arms, which may well be to the detriment of the children, and it may create situations where the alleged perpetrator has to cross examine the alleged victim in person. These are serious allegations which, if found proved on a balance of probabilities may have a serious effect on the perpetrator's relationship with his or her children both at the time and in the future.

If the existence of domestic violence is going to be the test for eligibility for public funding will there be an increase in allegations? And will there have to be more contested hearings to establish whether or not the allegations are made out?

Question 2

Question 3

No

Withdrawing legal aid from all private law children cases save where there are allegations of domestic violence is likely to have serious consequences.

Most courts dealing with cases concerning children are already very overstretched, which leads to long delays, which are almost never in the interests of the children. There are not enough judges and there are not enough court staff. An increase in the

number of litigants in person is likely to increase the length of hearings. Not only does representation usually shorten the length of hearings, it also means that a great deal of negotiation takes place outside court which often leads to agreements. For court staff, it takes a great deal more time to deal with enquiries and issuing proceedings when they are dealing with litigants in person.

Where is the evidence that provision of legal aid in private law children's cases creates "unnecessary litigation" and encourages "long, drawn out and acrimonious cases"? There are such cases, but they are more likely to be drawn out in this way when there are litigants in person, sometimes with the children being represented through public funding and those representing the children having to hold the ring between the litigants in person.

If there is to be an increase in the use of mediation, it needs to be properly funded in order to be effective. Mediation is not suitable or appropriate in all cases – for instance where people have mental health problems or learning difficulties. Even if the parties do not have difficulties such as these there are many cases in which factual issues have to be resolved before matters can progress.

Once again, there is the problem of having no definition of domestic violence and this being a very crude test for eligibility for public funding. Will there need to be a greater number of hearings to decide whether the allegations are true or not? If one party is entitled to legal aid for representation and the other party is not, there will be a huge inequality of arms.

There are many private law children cases which raise child protection concerns, some to the extent that the judge will order a section 37 report and in doing so has the power to make an Interim Care Order. In some cases there are serious allegations of sexual or physical abuse. There may be real problems dealing with these sort of issues if both parents are unrepresented, and findings in such cases have a very serious impact on the person against whom the findings are made..

In some private law children cases the court needs the benefit of expert reports, which may be difficult to obtain if no party is represented and the parties themselves are unable to pay for expert reports.

Cases of international child abduction are still going to be eligible for legal aid. Cases of domestic child abduction are not, yet these cases may well be equally serious for the children and the parties.

Question 6

Most courts dealing with cases concerning children are already very overstretched, which leads to long delays, which are almost never in the interests of the children. There are not enough judges and there are not enough court staff. An increase in the number of litigants in person is likely to increase the length of hearings. Not only does representation usually shorten the length of hearings, it also means that a great deal of negotiation takes place outside court which often leads to agreements or at least to narrowing the issues. In very many cases proceedings are likely to be more adversarial when parties are unrepresented. There are likely to be much greater problems dealing with issues such as statements, gathering other evidence, expert reports etc.

For court staff, it takes a great deal more time to deal with enquiries and issuing proceedings when they are dealing with litigants in person. In many courts, staff numbers have already been reduced as have skill levels.

Questions 7 – 11

Telephone helplines have their place, and there may be relatively straightforward situations where there is a single issue where telephone helplines are extremely useful – provided that they are staffed by suitably qualified and experienced people.

However, family cases involving children often involve a range of personal and sensitive issues and long histories which are difficult to explain or to advise on by phone.

Many legal aid recipients are disadvantaged. Some have language difficulties. Some have mental health or learning difficulties. Again it is likely to be difficult for them to explain the circumstances by phone, and for the advisor to provide any effective advice or service of any kind.

Questions 32 & 34

No

The proposed cuts to legal aid fees are likely to cause experienced practitioners to move away from legally aided work and new practitioners to avoid these areas of work. Over time, the result is likely to be a downgrading of the level of skill and expertise in areas of work which are legally aided. Not only will clients suffer – in particular children and their parents – but the judiciary are reliant on having experienced, skilful and dedicated practitioners representing these parties. In family cases involving children, in addition to the role of the advocate in court, both barristers and solicitors have an important role to play in giving good advice to clients, in identifying and narrowing the issues, in putting together and marshalling the evidence, and in negotiating outcomes and settling cases if possible.

The decisions of the family court, whether it be in deciding whether an injury has been caused non-accidentally, deciding whether a child has been sexually abused and if so by whom, deciding whether a child should be removed from his or her parents, deciding whether a child should be removed permanently from his or her family, deciding which parent a child should live with or deciding whether or not a child should have contact with a parent, parents or other members of the family, have far reaching effects on individual families and on society.

Question 38

The use of QCs in legally aided family cases is already tightly controlled – at least as tightly controlled as in criminal cases, and particularly (it would seem) in London.

Question 39

There does need to be a clear structure for the fees paid to experts from legal aid. However, this should not result in the level of expertise available to the family courts

being downgraded – whether it be the expertise of a consultant neurosurgeon, a psychiatrist or an independent social worker.

Questions 49 -51

The impacts of the proposals do not seem to have been identified in any rational way or if they have been, the information is not set out in the paper so as to allow for any evaluation.