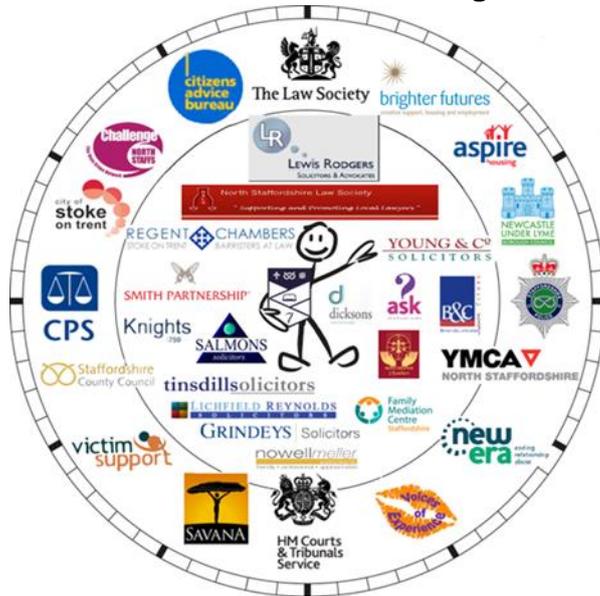


CLOCK (The Community Legal Outreach Collaboration Keele)

Response to the Consultation on the Legal Aid Means Test Review



About CLOCK clock.uk.net

The Community Legal Outreach Collaboration Keele was formed in response to a research project listening to the 'Voices of Experience' of women in a domestic refuge share their concerns regarding how they would be able to represent themselves in Children Proceedings in the Family Court, following the significant withdrawal of legal aid, under the Legal Aid Sentencing and Punishment of Offenders Act, 2012.

CLOCK founded a multi-agency voluntary network, by Keele University, with local law firms, mediation services, domestic and sexual abuse services, the Staffordshire North and Stoke on Trent Citizens Advice Bureau, with guidance from the Stoke on Trent Family Court, Staffordshire Police, the Crown Prosecution Service and the Law Society.

The CLOCK Steering Committee designed and developed a comprehensive 5 day course, to train students in the unique role of the Community Legal Companion to signpost litigants in person for legal aid, affordable fixed fee and pro bono and charitable support and where this is not available, then to assist within the remit of the McKenzie Friend Principles to assist fill in forms, arrange paper work, take notes and accompany in court, and to monitor to inform legal aid policy and research.

Since 2012 CLOCK has been cascaded to 12 University Law Schools and is currently operating in 8 Courts; Brighton, Canterbury, Leicester, Oxford, Wolverhampton, Stoke, Liverpool, York.

Over the last 10 years, CLOCK has assisted more than 5,000 litigants in persons from all genders, abilities and backgrounds on a range of Civil matters and has identified an increasing number of cases where parents satisfy the merit test due to the evidence of domestic abuse, but are unable to access legal aid due to the means test, posing significant risk of harm to victim/survivors and their children.

CLOCK submitted evidence of our concerns regarding the risk of harm to children due to the financial barriers to the LASPO Review, which was accepted by Lucy Frazer's QC written commitment to reviewing the Means Test:

'[t]he CLOCK evidence submission has raised particular issues with the financial eligibility test in family which demands; i) a comprehensive review of the legal aid means testing thresholds, ii) proposals for extending eligibility for non-means tested legal aid for parents, or those with parental responsibility, who wish to oppose applications for placement orders or adoption orders in public family law proceedings and iii) to expand the scope of legal aid to cover special guardianship orders' hence extending public funding for private family law. (Lucy Frazer QC, MP, Parliamentary Under Secretary of State for Justice, 2019).

We have welcomed the opportunity to contribute to the proposals and we would like to highlight our key proposals for reform, on the basis of our response to the questions below, with our evidence based key findings regarding **the potential barriers to accessing the proposed means test.**

CLOCK's Evidence-based Findings.

During the Covid-19 crisis, in the period 18 March 2020 to 18 March 2021, there were 212 applications for CLOCK assistance. Of these, 170 were child arrangement matters, 35 per cent had been signposted to CLOCK by the local authority children's services, and 18 per cent by doctors' surgeries, domestic abuse support services, and the Children and Family Court Advisory and Support Service (CAFCASS), (Krishnadas, in Maclean et al 'What is the Family Court For, 2022).

The CLOCK data presents an initial insight into the presentations of domestic abuse, mental health difficulties and vulnerabilities, as the majority of applicants expressed anxieties regarding the court process. Of the 170 applications for CLOCK assistance, 57 referred to experiences of domestic abuse and raised concerns for the children's well-being and impact upon their mental health restricting their ability to represent themselves in the court proceedings.

As detailed in the Response to the Consultation questions below, CLOCK welcomes the overall intention to increase accessibility for legal aid, however it is important to note the **specific practical administrative barriers which may create and aggravate barriers to accessing the proposed means test and impact risk of harm to children.** Through the CLOCK signposting and assistance procedures, CLOCK has identified barriers which are likely to have significant costs to the Legal Aid Agency, Court and critically impact the risk of harm to survivors of domestic abuse and their children. These every day barriers have been noted as restricting the fundamental rights under General Recommendation 33, 'Women's Access to Justice'. For the accessibility of justice systems, the Committee recommends that State parties: (a) **Remove economic barriers to justice by providing legal aid.** According to the recognition of children as victims of domestic abuse under the **Domestic Abuse Act, 2021, we propose that the children, or their primary carer, should have access to legal aid to prevent the impact of the children witnessing the aggravated conflict of their parents representing themselves in family court proceedings.**

CONCERNS RE DISCRIMINATORY IMPACT OF PROPOSALS ON DOMESTIC ABUSE VICTIM/SURVIVORS RE: NEEDS AND FACTORS OF DOMESTIC ABUSE VICTIM/SURVIVORS APPLICATION FOR CIVIL LEGAL AID.

1. **URGENCY**; Applications for Children Proceedings by domestic abuse victims/survivors are mostly urgent, due to concerns re risk of harm to a child. At present CLOCK is able to use the Universal Credit as a tickbox for our Community Legal Companions to signpost urgent domestic abuse cases to local Legal Aid lawyers. The removal of the Universal Credit passport, will significantly DELAY and potentially DENY ACCESS to legal representation. the proposed means test changes, will have a significant administrative cost and human cost regarding the significant risk of harm to the parent and child.
2. **MENTAL HEALTH**; Poor mental health is a common consequence of domestic abuse. A significant number of CLOCK applicants express concerns re mental health as a factor which limits the capacity to compile and submit financial EVIDENCE and results in victim/survivors withdrawing from applications to live/survive in unsafe settings from themselves and their children.
3. **FINANCIAL CONTROL**; CLOCK applicants have demonstrated that due to emotional and financial abuse they are unable to access financial documents due to ongoing control by the ex partner
4. **CHANGES IN HOUSEHOLD COMPOSITION**; During domestic abuse the parent and child may try to move to safe accommodation, and there may be changes in whom the child lives with on a regular basis.
5. **CHANGES IN INCOME**, Our CLOCK findings demonstrate that the parent may need to leave or change employment and may struggled to maintain a regular income whilst trying to start a new life with their children. Many CLOCK applicants have part-time, zero contract jobs so they can attend to the challenge of moving location re new schools, new friends. The cost of recalculating income will have a significant administrative and life costs for the parent. Child Benefits should be never be taken into account as this is for the child's basic needs, not to fund legal expenses.
6. **BARRIERS TO ACCESSING THE FAMILY HOME/ASSETS** the guidance accepts that some people may still have to choose between selling or taking out a loan on their house, not bringing their case to court or representing themselves. The concept of the 'equity disregard' seems to suggest that a perpetrator would agree to sell the home in order for the domestic abuse victim to fund their case against them - which is not a reasonable assumption. The parallel charging system is also a significant concern regarding the survivor's ability to repay back the charge whilst trying to restart their lives as a lone parent. Loans for re-paying the contribution, can put victims of domestic abuse at significant risk of debt.
7. **DISCRIMINATION** – it is a particular concern that the types of households which are likely to be affected by the removal of the UC passport will be people with children and lone parents. Lone parents will struggle to afford any legal costs without sacrificing their child benefit for funding legal cases to protect the child. Discrimination will be aggravated on due to race, religion, sexuality, trans identities, disability, pregnancy, maternity, and factors such as mental health, literacy, care-givers and migrant women or persons with no recourse to public funds.

- 8. CHILDREN AS VICTIMS -According to the Domestic Abuse Act children who have witnessed domestic abuse are to be recognised as victims of domestic abuse. Where children are subjects in proceedings re domestic abuse –we recommend that there is a waiver for the means test for private law proceedings.**

Means Test Review full list of questions

Chapter 2

Question 1: do you agree with our proposal to take household composition into account in the means test by using the OECD Modified approach to equivalisation? Please state yes/no/maybe and provide reasons.

Maybe - We agree it is important to take household composition into account in the means test, but we are concerned whether this may have a discriminatory effect on lone parents. We are also concerned how the OECD modified approach, will be able to take into account different potential needs of the household. How will it distinguish and take into consideration the needs of children with disabilities, pensioners and carers? We are also concerned how the OECD modified approach will be able to take into account the changing composition of the household- particularly if there is domestic abuse and the applicant is seeking legal advice to remove the perpetrator from the home. Or if there are children, the changing composition of the household depending on whom the children are living with and who they are having contact with.

Further, based on the CLOCK data we are aware of complex living arrangements with extended family members. In domestic abuse cases, it may be that the applicant is seeking legal aid to remove an abusive ex-partner from the home- yet to remove a member of the household could reduce the access to legal aid, creating increased risk of harm to the household members, and potentially children.

Question 2: do you agree that we should continue to deduct actual rent and mortgage payments and childcare costs for the civil and criminal means assessments? Please state yes/no/maybe and provide reasons.

Yes – and it is important to calculate financial and non-financial costs for carers who are providing childcare.

Question 3: do you agree with our proposal to deduct jobholder pension contributions as part of the disposable income assessments for civil and criminal legal aid? Please state yes/no/maybe and provide reasons.

Yes – as this fund is inaccessible and it is in the public interest to encourage, not penalise pension contributions.

Question 4: do you agree with our proposal to limit the amount of jobholder pension contributions we deduct as part of the civil and criminal means assessments to 5% of earnings? Please state yes/no and provide reasons.

YES – Note a restriction of 5% may limit applicants from contributing to their pension, is important to encourage people to increase pension contributions to avoid longterm costs.

Question 5: do you agree with our proposal to deduct any Prisoners' Earnings Act levy as part of the disposable income assessment for legal aid? Please state yes/no/maybe and provide reasons.

Yes as this is inaccessible.

Question 6: do you agree with the proposal to deduct agreed repayments of priority debt and student loan repayments taken directly from salary or deducted as part of the applicant's tax return as part of the disposable income assessment for civil and criminal legal aid? Please state yes/no/maybe and provide reasons.

Yes – and we would propose that all debt repayments should be deducted as all debts will impact the applicant's disposable income.

Question 7: Do you agree with our proposals to disregard Modern Slavery Victim Care Contract (MSVCC) financial support payments from the income assessment? Please state yes/no/maybe and provide reasons.

Yes – We propose that any victim of modern slavery should be non-means tested.

Question 8: do you agree with our proposals to disregard Victims of Overseas Terrorism Compensation Scheme (VOTCS) payments from the income assessment? Please state yes/no/maybe and provide reasons.

Yes – VOTCS payments should not be used for legal services.

Question 9: do you agree with our proposal to remove back to work bonus payments from the civil and criminal income disregards regulations? Please state yes/no/maybe and provide reasons.

Yes – because we understand this scheme has ended.

Question 10: do you agree with our proposal to remove housing benefit payments from the civil and criminal income disregards regulations? Please state yes/no/maybe and provide reasons.

NO- we understand that the benefits system only provides housing benefit payments to people who could not afford to live in the accommodation without the housing benefit. If this housing benefit is removed from the income disregards regulations,

then the applicant would need to draw upon the money to pay for the legal services, rather than paying for the rent, putting the applicant at risk of becoming homeless (which is against the Homelessness Reduction Act, 2017).

The proposal has a discriminatory impact on applicants according to:

- i) **Where they live, as some areas have higher rent than others**
- ii) **Discrimination of households with disabled family members**
- iii) **Discrimination for persons experiencing domestic abuse who may have had to access temporary accommodation**
- iv) **Discrimination for persons experiencing domestic abuse who cannot leave the family home and may not be in control or be able to access the housing benefits.**

Question 11: do you agree that we should continue to passport any remaining recipients of income-based Jobseeker's Allowance, income-related Employment Support Allowance and Income Support through the income element of the civil and criminal means tests? Please state yes/no/maybe and provide reasons.

Yes as these benefits are provided to provide essential support, for which it would be unethical and not practical for applicants to be able to afford to pay for legal services. Passporting would reduce administrative costs.

Question 12: do you agree that we should continue to passport recipients of the Guarantee element of Pension Credit through the income element of the civil and criminal means tests? Please state yes/no/maybe and provide reasons.

Yes – on the same grounds that they would not be able to afford legal expenses and it would reduce administrative costs.

Chapter 3

Question 13: do you agree with our proposal to raise the gross income threshold for civil legal aid for a single person to £34,950 per year? Please state yes/no/maybe and provide reasons.

Maybe- We welcome the proposal to raise the gross income threshold for a single person, but we are aware that this may not relate to the whether the applicant can afford to pay for legal services, and we are concerned that this may have a discriminatory impact on persons according to their expenses, due to disabilities, medical conditions, caring responsibilities, and needs to address different costs of living in different geographical areas.

Question 14: do you agree with our proposal to introduce a lower gross income threshold for civil legal help cases, with the threshold set at £946 per month? Please state yes/no/maybe and provide reasons.

Yes – with the understanding that this figure needs to be in line with the cost of living

Question 15: do you agree with our proposal to remove the £545 monthly cap on allowable housing costs for applicants for civil legal aid with no partner or children? Please state yes/no/maybe and provide reasons.

Yes – as housing costs are essential

Question 16: do you agree with our proposal to deduct actual Council Tax as part of the civil means assessment? Please state yes/no/maybe and provide reasons.

Yes – as council tax is mandatory

Question 17: do you agree with our proposal to increase the work allowance in the civil legal aid means test to £66 per month? Please state yes/no/maybe and provide reasons.

Yes – but again this figure needs to be adjusted in line with the increase in cost of living and travel expenses.

Question 18: do you agree with our proposal to use a Cost of Living Allowance drawing on essential household spending as the basis of our proposed lower income threshold? Please state yes/no/maybe and provide reasons.

Maybe – this proposal needs to be considered on whether the applicant can afford contributions.

Question 19: do you agree with our proposal to set the Cost of Living Allowance at £622 per month for an individual? Please state yes/no/maybe and provide reasons.

Maybe – this figure needs to be recalculated on the basis of the changing cost of living.

Question 20: do you agree with our proposal to use median household spending as the basis for the proposed upper income threshold? Please state yes/no/maybe and provide reasons.

No- in the case of domestic abuse it is difficult to calculate ‘median household spending’ when the applicant may not be in control of finances and be repaying debts.

Question 21: do you agree with our proposal to set the upper disposable income threshold at £946 per month for an individual? Please state yes/no/maybe and provide reasons.

Maybe – we agree that the upper disposable income needs to be increased but we are concerned that this figure will not take into account the drastic changes in the cost of living and the possible additional expenses.

Where there is domestic abuse we propose there should be no financial barriers to legal aid

Question 22: do you agree with our proposal to set allowances for dependents at £448 per month for each adult and child aged 14 or over, and £211 for each child under 14? Please state yes/no/maybe and provide reasons.

No- the figures of £211 for each child under 14, is inadequate to cover the costs for the child.

We propose that following the Domestic Abuse Act, where children have witnessed domestic abuse they are victims, and there should be no barriers for the parent to access legal aid to protect and care for the children.

Question 23: do you agree with our proposal to not take into account the means of anyone providing temporary assistance to the applicant in the civil legal aid means assessment? Please state yes/no/maybe and provide reasons.

Yes – this is particularly important in situations where temporary assistance is offered to persons fleeing domestic abuse. It is important that the definition of a person providing temporary assistance does not have any evidential requirements as this would restrict people from offering assistance, and increase administrative costs.

Question 24: do you agree with our proposal to implement a £500 earnings threshold for applicants in receipt of UC who are currently passported through the income assessment for civil legal aid? Please state yes/no/maybe and provide reasons.

NO- We understand that Universal Credit is provided in order to ensure persons can cover their basis needs. The earnings threshold will have a significant discriminatory impact.

According to our CLOCK data this will have a significant discriminatory impact on working single mothers with enhanced discrimination according to race, gender, sexuality age and disability, with additional barriers re mental health, literacy and migrant status.

According to our CLOCK applicants, such applicants are zero contract earners or working in the caring profession as care workers, teaching assistants. This will have a significant and discriminatory impact on the applicants, who will not be able to afford legal services.

This creates another financial barrier to accessing legal aid, particularly for victim/survivors of domestic abuse creating significant risk to themselves and children. Universal Credit may also be controlled by the perpetrator.

To create a barrier due to the applicant's contribution to employment will create a further barrier to the longterm rehabilitation and economic independence of the victim/survivor.

It will also be extremely difficult to administer. CLOCK uses the Universal Credit as a key indicator to signpost applicants for legal aid assessments. If there is no UC passport, then it will be very difficult to get a legal aid assessment and create further barriers.

The income assessment will also have to be recalculated regularly creating additional administrative costs to the provider and the legal aid agency.

Question 25: what administrative impacts do you anticipate this policy will have for providers and applicants?

This policy will have significant and highly costly impacts for the legal aid providers and legal aid agency.

Key Administrative Impacts:

- i) Delays- due to the time spent submitting applications and waiting for results**
- ii) Recalculations – due to zero hour contracts**
- iii) Recalculations due to changing cost of living**
- iv) Difficult to access documents – particularly for domestic abuse victim/survivors**
- v) Recalculations- due to changing household composition**
- vi) Recalculations – due to changing benefits**

CLOCK trains law students to signpost litigants in person for legal aid. At present the student community legal companions tick the box for Universal Credit as a key indicator to be able to signpost for legal aid.

As a voluntary network we will not have the resource to conduct detailed assessments and the legal aid law firms are not going to take on cases without a clear indication that they are likely to be eligible for legal aid.

Question 26: do you have any suggestions for ameliorating any administrative burden that this policy (if enacted) may cause for providers and applicants?

The Universal Credit is a government standard to recognise a persons' financial needs and should continue as a passport to legal aid, and ameliorate administrative burdens

The removal of the means test for domestic abuse victim/survivors in Children Arrangement applications would reduce the administrative barriers.

Question 27: do you agree with our proposal to use a tiered model approach (40%/60%/80%) to determine the monthly income contribution? Please state yes/no/maybe and provide reasons.

Maybe – We agree that it appears fair for higher earners to pay higher contributions- but in the case of domestic abuse we have evidence of CLOCK applicants who may have higher earnings but due to the impact of domestic abuse they may not be able to

sustain such earnings, or they may have higher expenses and costs to manage the demands of a higher earning job, for which many applicants have had to withdraw from their applications due to the financial pressures.

Question 28: do you agree with our proposals for setting a minimum monthly income contribution of £20? Please state yes/no/maybe and provide reasons.

Maybe- this seems to be an affordable amount, but it can potentially lead to higher costs for the Legal Aid Agency to monitor and enforce payments.

Chapter 4:

Question 29: do you agree with our proposal to increase the lower capital threshold to £7,000 and the upper capital threshold to £11,000? Please state yes/no/maybe and provide reasons.

Maybe – this question highlights our key concerns as exemplified in two of the CLOCK cases submitted to the LASPO review, and National Family Justice Board Escalation Report;

- i) **the case study of a mother who left the family home in her inherited camper van, which had been a place of safety from domestic abuse. The Mother had no income, and the Local Authority put petrol in the camper van and gave the children sandwiches for their journey 150 miles to the refuge. Despite passing the Merit test on the basis of the domestic and sexual abuse, the Mother was denied access to legal aid on the Means Test due to the capital asset of her campervan. The mother had to represent herself in a Fact Finding Hearing with the assistance of the CLOCK Community Legal Companion. The Judge highlighted it was ‘not a level playing field’ and concluded saying the father’s evidence was more calm (due to having full legal representation), and the mother appeared ‘angry’. Mum was forced to give up her place of safety and sold the camper van, but still could not afford the legal aid contributions and expenses.**
- ii) **A second case study was a mother who had experienced longterm domestic abuse, yet she was not eligible for the legal aid means test due to her lifelong savings for her adult disabled son.**

It is not clear if in either of the cases would still pass the revised lower capital threshold. Despite having the capital assets, the camper van was a place of safety for the mother and children, and the savings was a lifeline for her disabled son.

In such cases there can be no price on safety and a lifeline for the victim/survivor and the children and therefore they should not be taken into account.

Question 30: do you agree with our proposal to increase the equity disregard from £100,000 to £185,000? Please state yes/no/maybe and provide reasons.

The recent judgment in the Trapped Assets case, R (oao) GR v Director of Legal Aid casework(2020) which found that this equity is not accessible, and questions why domestic abuse victims should be trapped in their domestic abuse homes because they won't be able to sell their houses? The concept of the 'equity disregard' seems to suggest that a perpetrator would agree to sell the home in order for the domestic abuse victim to fund their case against them - which is not a reasonable assumption.

Question 31: do you agree with our proposal to amend the means test so that where a victim has temporarily left their home, the equity disregard should be applied? Please state yes/no/maybe and provide reasons.

Maybe – This is a positive development, but it increases the onus to be upon the victim/survivor to leave the family home- creating distress and disruption for the children's schooling, friendship groups and wellbeing, rather than the perpetrator who has the security to stay in the home.

Under the Domestic Abuse Act, the Domestic Abuse Protection Notices provide a window for the perpetrator to leave the home, and it is essential that the equity disregard should be applied immediately to for the victim/survivor to access legal aid to be able to apply for a longterm order for the perpetrator to leave the home.

It is important to remember the duties under the Homelessness Reduction Act 2017, that all efforts should be made to reduce homelessness.

Question 32: do you agree with our proposal to remove the £100,000 cap on the disregard for assets which are the Subject Matter of Dispute? Please state yes/no/maybe and provide reasons.

Yes – this is essential as it is not fair to include assets for which the applicant is not able to access.

Question 33: would you support creating a new mandatory disregard in relation to inaccessible capital, and introducing a charging system to recoup legal costs in these cases?

We would support creating a new mandatory disregard in relation to inaccessible capital but we would not support a charging system to recoup legal costs in these cases.

A waiver should apply for cases where there has been domestic abuse, and the parent is not able to access or make decisions regarding the property

We have concerns that this provision should not undermine the R (oao) GR v Director of Legal Aid casework(2020), as it is essential the applicant should be able to access legal aid to be able to secure the property.

Do you have any concerns in terms either of how this proposal would operate practically, or its impact on access to justice?

Yes through the CLOCK signposting and assistance procedures, CLOCK has identified barriers which are likely to have significant costs to the Legal Aid Agency, Court and critically impact the risk of harm to survivors of domestic abuse and their children. These every day barriers have been noted as restricting the fundamental rights under General Recommendation 33, 'Women's Access to Justice'. For the accessibility of justice systems, the Committee recommends that State parties: (a) Remove economic barriers to justice by providing legal aid. The Domestic Abuse Act has recognised children as victims of domestic abuse under the Domestic Abuse Act, 2021, which proposes that the children, or their primary carer, should have access to legal aid to prevent the impact of the children witnessing the aggravated conflict of their parents representing themselves in family court proceedings.

Please see our summary points to ensure that this proposal does not discriminate against victim/survivors of domestic abuse, and note the international and domestic obligations.

Question 34: do you agree that we should revise the pensioners disregard as set out, by:

- increasing the qualifying age to the State Pension Age
- increasing the disposable income bands to align with the proposed lower disposable income threshold for civil legal aid; and reducing the number of income bands?

Yes

Question 35: do you agree with our proposal to disregard payments under the Scotland and Northern Ireland Redress Schemes for historical child abuse from the capital assessment? Please state yes/no/maybe and provide reasons.

Yes – it is important that any payments to compensate harm should be disregarded so as not to undermine their purpose

Question 36: do you agree with our proposal to create a discretion for the DLAC to disregard VOTCS payments? Please state yes/no/maybe and provide reasons.

Yes - it is important that VOTCS payments should be disregarded.

Question 37: do you agree with our proposal to create a discretionary disregard for benefit and child maintenance back payments from the capital assessment? Please state yes/no/maybe and provide reasons.

Yes – it is important that benefit and child maintenance back payments should be disregarded on a mandatory basis, as the delay in the payments is often used as a mechanism of control by an abusive parent, and this should not add to further disadvantage.

Question 38: do you agree with our proposal to create a discretion to allow the DLAC and providers to disregard compensation, damages and/or ex-gratia payments for personal harm? Please state yes/no/maybe and provide reasons.

Yes – it is clear that compensation, damages and ex-gratia payments for personal harm should be disregarded on a mandatory basis, as any discretion would involve questioning the purposes of that payment which has already been decided by the DLAC and providers. Any discretion would challenge the purpose of the payment and add administrative costs.

Question 39: do you agree with our proposal to reintroduce capital passporting for non-homeowners in receipt of passporting benefits through the capital assessment for civil legal aid? Please state yes/no/maybe and provide reasons.

Yes – we agree it is important to reintroduce capital passporting for non-homeowners in receipt of passporting benefits through capital assessment for legal aid.

In the case of victim/survivors we strongly propose that homeowners should also be included on the grounds of the consultation's acceptance that the homeowner will not have access to the capital due to the trapped assets, and would not be able to arrange sale in time for the legal proceedings, and if they did arrange sale they would have to move themselves and potentially their children into temporary accommodation to incur further costs.

Chapter 5:

Question 40: do you agree with our proposal to align the immigration representation Upper Tribunal capital threshold (currently £3,000) with those usually used for civil legal aid – namely a lower threshold of £7,000 and an upper threshold of £11,000? Please state yes/no/maybe and provide reasons.

YES – this would avoid the discrimination between the threshold used for civil legal aid and the immigration Upper Tribunal capital threshold.

Question 41: do you agree with our proposal to remove the exemptions on the payment of income and capital contributions for immigration and asylum representation in the Upper Tribunal, replacing them with the new lower threshold, £7,000, and higher threshold, £11,000? Please state yes/no/maybe and provide reasons.

No – This would discriminate against migrants who have to rely on capital for basic sustenance due to having no right to work and No Recourse to Public Funds, because applicants will need to save capital in order to survive and those with No Recourse to Public Funds will not have access to any income.

Question 42: do you agree with our proposal to increase the immigration representation First-tier Tribunal capital threshold from £3,000 to £11,000? Please state yes/no/maybe and provide reasons.

YES -again this will avoid discrimination for migrants, and we would say the same considerations need to be given to a higher level of £11,000 due to essential savings/transport/costs for disabled persons, or domestic abuse victim/survivors.

Question 43: do you agree with our proposal to remove the means test for applicants under 18 for criminal advice and assistance and advocacy assistance? Please state yes/no/maybe and provide reasons.

YES – Under 18's may be considered as vulnerable, and would not be able to pay for legal representations. As they are unlikely to fail the means test it would save administration costs to remove the means test for all under 18's in all legal proceedings to avoid discrimination.

Question 44: do you agree with our proposal to non-means test applicants under 18 for all civil representation? Please state yes/no/maybe and provide reasons.

YES- under 18's will have vulnerabilities and will not be able to pay for legal representation or manage their own proceedings.

CLOCK would argue that under the Domestic Abuse Act, 2021, children who witness domestic abuse are victims and hence even if they are not the parties- the means test should be removed for parents who are disputing where the children should live, or who they should visit.

Question 45: do you agree with our proposal to introduce guidance which indicates when the means testing of an applicant who has turned 18 during their case may be unnecessary? Please state yes/no/maybe and provide reasons.

YES – this is unnecessary and will cause additional administrative costs.

Question 46: do you agree with our proposal to continue means-testing applicants under 18 for civil legal help, Family help (lower and higher) and Help at court? Please state yes/no/maybe and provide reasons

NO- for the same reasons as set out in response to Q.44, it is understood that under 18's would require non-means tested access to civil legal help, Family Help and Help at court – on the understanding that they do not have the legal literacy or qualification to be able to conduct legal advice, negotiations and preparation for court proceedings. This could put them at a disadvantage and open to exploitation by other parties in the case.

It is essential that under 18's have access to legal help and legal aid to ensure they understand their rights and that their voice is heard, as a duty under the Children Act 1989, and as a signatory of the Convention for the Rights of the Child.

Question 47 do you agree with our proposal to introduce a simplified means test for applicants under 18 for civil legal help, Family help (lower and higher) and Help at court? Please state yes/no/maybe and provide reasons.

NO – due to our response above that under 18's should not be means tested.

Question 48: Do you agree with our proposal to remove the means test for legal representation for parents/those with parental responsibility whose children are facing proceedings in relation to the withdrawal or withholding of life-sustaining treatment? Please state yes/no/maybe and provide reasons.

YES – we agree with the proposal to remove the means test for legal representation for parents or those with parental responsibility for children in relation to the withdrawal of life-sustaining treatment.

We would argue that on principle the same analogy can be applied to remove the means test for parents/those with parental responsibility making life changing decisions for the child, which could potentially put the child at risk of significant harm or loss of life, as evidenced by child deaths in domestic abuse cases.

Chapter 8:

Question 87: do you agree with our proposal to implement the new means tests via a staggered approach, rather than on a single date? Please state yes/no/maybe and provide reasons.

Yes – we would support a staggered approach that prioritises the removal of the means test where there is a significant risk of harm to children in private law proceedings, in line with the Domestic Abuse Act, 2021

Question 88: do you agree with our proposal to implement the non-means tested areas of civil legal aid (if confirmed following consultation) before any other areas? Please state yes/no/maybe and provide reasons.

Yes – We have been waiting for the legal aid means test review proposals and consultation since 2019 which we have highlighted the significant risk of harm to children which has been evidenced by the tragic deaths of children in domestic abuse situations.

We would propose that the removal of the means test where there are children as victims of domestic abuse, should be a necessary response to the Domestic Abuse Act, 2021.

We would also propose that the family home, and capital in the form of transport, savings for children should be excluded from capital assets as inaccessible assets, as directed in case law

Question 89: do you agree with our proposal to implement the remainder of the new civil means test as Phase 2 of the implementation process, in advance of the new criminal means tests? Please state yes/no/maybe and provide reasons.

Maybe – It is important that wherever there is a risk of harm to a person or child (as evidence in Domestic Abuse Cases) due to not being able to access the protection of the courts -that this is a priority to implement the proposals to remove or improve the means test.

Question 90: do you agree with our proposal to implement the new criminal means tests as Phase 3, and the removal of Crown Court capital passporting for benefits recipients who are homeowners as Phase 4? Please state yes/no/maybe and provide reasons.

Maybe – according to the above

Question 91: do you have any further comments in relation to the implementation phasing of the new means tests? Please state yes/no/maybe and provide reasons.

It is important that the immediate risks of harm to persons and children in domestic abuse situations are addressed as urgent.

It is important that the administrative barriers for updating the means-test do not restrict or further delay access to justice.

Question 92: do you agree with our proposal to allow existing recipients of legal aid to seek a reassessment under the new means-testing rules, when implemented? Please state yes/no/maybe and provide reasons.

Yes – it should be optional not compulsory as we understand that removing Universal Credit as a passport to legal aid, may disadvantage some applicants.

Question 93: do you agree with our proposal that reassessments for civil legal aid recipients should be carried out under the new means-testing regime, but with the proviso that recipients who have benefitted from the previous rules on UC income passporting and/or the pensioner disregard should continue to be subject to the previous means-testing rules in these areas? Please state yes/no/maybe and provide reasons.

Yes- this is an important admission that the new proposals may have a detrimental impact on persons who previously were eligible for the means test- it is important that these are redressed so the proposals are not regressive.

Question 94: do you agree with our proposal that, following the implementation of the new Crown Court means test, any reassessments carried out due to a change of income, new information, administrative error or hardship should use the previous means test as a default, but allow the defendant to opt for the new means test if they prefer? Please state yes/no/maybe and provide reasons.

Maybe- no one should be at a disadvantage.

Question 95: do you have any further comments about our proposals in relation to the transition from the old to the new means-testing regime?

Yes- we would propose that every applicant should have the option of being assessed according to the old and new means test – so that they can chose the best option, so that no one is penalised by a regressive policy.

Question 96: do you agree with our proposal to carry out a review of the means test thresholds within 3–5 years after the implementation of the new means tests? Please state yes/no/maybe and provide reasons.

Maybe- it would be better to have a regular review and an option to respond to any evidence based concerns raised by stakeholders.

Question 97: do you have any views on the potential impact of our proposals on groups with protected characteristics? These are: age; race; disability; sex; sexual orientation; gender reassignment; marriage and civil partnership; pregnancy and maternity; religion or belief. We would particularly welcome information on the protected groups which we do not have legal aid data on: gender reassignment, marriage and civil partnership, pregnancy and maternity, and religion or belief.

Yes - according to our CLOCK data , people with protected characteristics will have additional barriers to accessing the means test, in terms of being able to access and provide the financial evidence requirements.

This is due to the precarious and changing situation as a likely factor for persons with protected characteristics which makes it difficult to complete a standard application which assumes fixed address, income, household composition.

Domestic abuse cases have a disproportionate impact on women with regard the number of incidents , types of abuse and longterm consequences of abuse. The intersection of protected characteristics of race, religion, sexuality, disability, age, gender reassignment, marital status and pregnancy and maternity creates additional barriers to being able to access the means test.

Domestic abuse victim/survivors are in emergency situations, and are likely to be in transient positions where they are likely to have to move accommodation, change or leave jobs, and may have changing living arrangements with their children, especially for carers of children with disabilities and health needs.

Domestic abuse victim/survivors are likely to have limited access to their documentation and access to their income and capital assets and family home.

It is important to add migrant status to the list of protected characteristics, particularly regarding the status of No Recourse to Public Funds, creating immediate barriers to being able to access justice.

According to to our CLOCK data, we would recommend the MoJ also considers poor mental health, as a significant barrier to being able to submit the financial evidence required for the means test.

Literacy is also a significant barrier for litigants in person to be able to understand how to make an application for legal aid.

Question 98: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for legal aid for civil representation, increase it or leave it broadly similar? Please state yes/no/maybe and provide reasons.

NO- we are deeply concerned regarding the administrative burden for the applicants, legal aid providers and the legal aid agency.

This is particularly due to the changing and transient situation of domestic abuse victim/survivors who would need to reassess their applications according to their change in accommodation/employment/childcare.

Question 99: do you think these proposals, if enacted, will improve the sustainability of civil legal aid? Please state yes/no/maybe and provide reasons.

No- these proposals create additional administrative burdens – particularly through the removal of the UC passport for means test. This is going to have a significant impact on legal aid providers and reduce accessibility to civil legal aid. This will have an increased cost in terms of the risk to lives in domestic abuse cases and knock on costs regarding potential homelessness, restrictions on contributing to the economy through part time work, and impact on child safety, well being and their education.

Question 100: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for legal aid for civil legal help, increase it or leave it broadly similar? Please state yes/no/maybe and provide reasons.

No – these will increase the burden- esp re the proposals for U 18's.

Question 101: do you think these proposals, if enacted, will improve the sustainability of civil legal aid? Please state yes/no/maybe and provide reasons.

No– though the minimal increase in threshold is a welcome start, the administrative barriers will create additional and unnecessary costs and create undue pressure on the providers of legal aid and have longterm regressive impact on civil legal aid.

CLOCK has witnessed a significant decrease in legal aid providers being able to offer legal aid, which has a significant impact on the sustainability of legal aid.

Question 102: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for legal aid for public family cases, increase it or leave it broadly similar? Please state yes/o/maybe and provide reasons.

NO - Our CLOCK data has demonstrated that there is a cross over with public and private law cases, where there are significant administrative burdens to evidence whether the case is non-means tested public law, or means-tested public or private law. We would recommend that any case which involves public law involvement should be non-means tested in the private law proceedings. This has significant additional costs for the courts due to delays in proceedings.

Question 103: do you think these proposals, if enacted, will improve the sustainability of legal aid for public family matters? Please state yes/no/maybe and provide reasons.

NO – CLOCK Data has demonstrated that where cases are ‘safely diverted’ to private law proceedings, they are returning to public law interventions which makes the cases very complicated and delays proceedings, and increases the costs for public law proceedings (Krishnadas, in Maclean et al, “What is a Family Court For?”)

We propose that applications should be non-means tested wherever there is local authority involvement.

Question 104: do you think that these proposals, taken as a whole, would reduce the administrative burden for providers of and applicants for of legal aid for private family cases, increase it or leave it broadly similar? Please state yes/no/maybe and provide reasons.

The proposal to remove Universal Credit as a passport will significantly increase the administrative burden for providers of and applicant for legal for private family law matters.

Question 105: do you think these proposals, if enacted, will improve the sustainability of legal aid for family matters? Please state yes/no/maybe and provide reasons.

MAYBE – in order to improve the sustainability for legal aid it should avoid the additional administrative costs and barriers that have been created.

CLOCK Recommends that - under the International Convention for the Elimination of Discrimination against Women, General Recommendation 33, ‘Women’s Access to Justice’ On accessibility of justice systems, the Committee recommends that State parties: (a) Remove economic barriers to justice by providing legal aid.

Lucy Frazer QC Parliamentary under Secretary, 2019 accepted CLOCK evidence to the LASPO review; noting “the excellent work that CLOCK do in supporting people underlines the value of effective signposting, coordination and advertising of the support already available. As such, we are undertaking a pilot to explore how we can better coordinate and signpost legal support, as well as launching an awareness campaign for legal support and legal aid”.

To sustain civil legal aid we propose following the CLOCK model to establish non-means tested justice access centres for domestic abuse victim/survivors under the CEDAW directions to create “one-stop centers”, which include a range of legal and social services, in order to reduce the number of steps that a woman or person who has experienced domestic abuse, has to take to access justice. Such centres could triage for non-means tested legal advice and aid, coordinate support services for domestic abuse victim/survivors re: family matters, health, social security, employment, property and immigration.

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