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7 June 2009

Tessa Jowell

FAMILY LEGAL AID FUNDING FROM 2010

Thank you for your letters of 16 and 23 April regarding concerns expressed by a number of your constituents. They are concerned about the proposed reforms to family barristers' legal aid payments to be implemented this summer as a result of changes to the Family Graduated Fee Scheme (FGFS), and the proposed reforms to legal aid payments for family advocacy work contained in the recent consultation paper, *Family Legal Aid Funding from 2010*.

It may be helpful if I set out the context and rationale for the reform of family legal aid payments. Spending across all levels of family legal aid has increased dramatically in the last seven years. Expenditure on family representation has increased from £349 million in 2001-02 to £512 million in 2007-08, an increase in real terms of 25%. During the same period, the number of funding certificates issued in family proceedings has decreased from 128,723 in 2001-02 to 115,086 in 2007-08, a fall of 11%.

These cost increases are unsustainable within a limited budget. Pressure on the legal aid budget is likely to increase in the current economic climate as more people require advice on housing, debt, welfare benefits and family breakdown. If we do not control rising family advocacy costs then, in order to live within budget, we will be forced to cut services to clients, either through cutting the scope of the services that are funded, or by reducing the financial eligibility for services.

On 12 February Lord Bach announced reductions to legal aid fees paid to family barristers under the FGFS to focus help on the most vulnerable families and children. This reform will increase basic fees for cases relating to child protection and children in local authority cases. It will also control expenditure on private family law disputes such as child contact and residence/custody disputes between parents, by reducing some of the extra payments that barristers can claim for undertaking these cases. Similarly, some extra payments will be abolished while others are reduced in cases where divorcing couples have disputes over property. These changes are expected to

generate savings to the taxpayer of £6.5 million per year, while maintaining existing services to the public. Fees for domestic violence work remain unchanged.

Your constituents also express concerns about proposed reforms to legal aid payments for family advocacy work due to be implemented in April 2010, contained in the consultation paper, *Family Legal Aid Funding from 2010*. The consultation closed on 3 April following an extension of the original closing date of 18 March, which was granted following requests from representative bodies to allow providers further time to set out their concerns. The main aim of the consultation is to pay barristers and solicitor advocates the same fee for the same advocacy work. We consider that this is intrinsically fair. There are no cuts to the family legal aid budget under the new fee scheme, but some funding will be moved from barristers to solicitor advocates. The fee scheme proposals do not involve cuts to the services received by children and families.


Barristers tend to deal with the more complex family cases, and they can continue to do so. The new scheme pays higher fees for more complex work e.g. by paying for additional interim hearings or paying extra for lengthy final hearings. The government's priority has to be that the public gets good quality advocacy services and if these can be provided by solicitor advocates as well as by counsel, then we should be remunerating those solicitor advocates fairly.

There has been extensive communication with stakeholders throughout the reform programme, but especially in relation to the *Family Legal Aid Funding from 2010* consultation. As well as the public consultation, the LSC has continued a close dialogue with contracted providers and those paid directly by the LSC, through regular meetings with stakeholder groups through the LSC's Family Representative Body Group and its Family Stakeholder Group. Membership of both these groups includes representatives from the Law Society, Resolution, the Family Law Bar Association, the Legal Aid Practitioners Group, the Department for Children, Schools and Families (DCSF), Cafcass and Cafcass Cymru.

Barristers, solicitors and independent social workers were invited to some of the workshops that the LSC ran across the country to help facilitate providers understanding of the reforms and to further take account of their views. Feedback from providers about these events was generally good and I know that the LSC received many useful suggestions from stakeholders which will inform our decision on the way ahead.

I understand that the LSC has received a large number of responses to the consultation, which they will be evaluating over the coming weeks. I hope that your constituents were able to submit a response so that their views can be considered as part of this process. Our dialogue with stakeholders will continue throughout the evaluation period.

I enclose a copy of this letter for you to pass onto your constituents, should you wish to do so.



JACK STRAW