



Ministry of Justice

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Dear Miss Edwards

FAMILY LEGAL AID

Thank you for your letter of 9 June, jointly with Maud Davis and Susan Jacklin QC. I appreciate the time and effort you and your members have invested in gathering your observations. I welcome the dialogue and I hope that it can continue.

Before I address your main points in more detail, I think it is important to be clear about why the reforms to legal aid were made. Reducing expenditure was one of the key drivers for reform, given the economic circumstances, but it was also clear that legal aid had expanded far beyond its original intentions, and was available in a wide range of situations, many of which did not need to be resolved through the courts.

The reforms were necessary to put the legal aid scheme on a sustainable footing to ensure that public funding remained available for those cases that need it most. It is not possible to achieve the reductions in spending that we have had to make without impacting to a greater or lesser extent on those who would previously have benefited from the service, both those seeking alternative ways of resolving their disputes and those choosing to represent themselves in court. While I and my colleagues are keen to explore how these impacts can be mitigated for the most vulnerable, the value for money arguments that drove legal aid reform will very much be at the forefront of our thinking.

I note the concerns raised, regarding those without capacity who rely on the Official Solicitor for representation. In the interests of ensuring that the Guidance is as plain to LAA caseworkers as possible, we have said that we intend to make two minor amendments to the *Lord Chancellor's Guidance on Exceptional Funding (Non Inquests)*: to clarify that, where the Official Solicitor is in principle prepared to act for a person who lacks litigation capacity, the consequence of a failure to grant exceptional funding will be that, in the absence of any alternative source of funding, the Official Solicitor will usually not do so; and to clarify that in cases where there is no litigation friend the applicant is unable to be a party to the litigation in question.

With regard to those parents facing special guardianship orders (SGO) made by other family members, the Department for Education has recently published updated statutory guidance for local authorities on court orders relating to the Children Act

1989. The updated guidance contains a chapter on pre-proceedings practice which emphasises the importance of identifying possible family and friends who can support the child and help the parent to address their problems at the earliest possible stage. The guidance also states that 'local authorities should seek to place children with suitable wider family members where it is safe to do so'. This will avoid the need for full care proceedings, although it is correct that a wider family member's application for an SGO in these circumstances would be a private law matter and therefore not eligible for legal aid. However, settlement and agreed placement with a family member at pre-proceedings stage is to be encouraged.

As you note, I have recently made changes to the evidence of domestic violence required to access funding for private family law matters. Following an early review of the system, I approved changes that make it easier for victims to acquire evidence but also to provide alternative forms of evidence that are less likely to attract administrative fees. My officials have also worked with the representative bodies of evidence providing organisations, to raise the profile of the need to provide the evidence and also to distribute guidance and template letters to reduce the need for administrative charges. While I am happy to consider further, evidence based changes to the system, an objective test of the existence of or risk of domestic violence is required if the scheme is to function as intended.

With regard to exceptional case funding, we understand the concerns that have been raised about the low number of cases that have been granted, however, I believe that the scheme is operating effectively and as intended. Decisions in individual cases are a matter for the Director of Legal Aid Casework. The Director makes funding decisions according to his understanding of the law and having regard to the Lord Chancellor's Guidance on Exceptional Funding. The Director will have regard to Collins J's judgment in *Gudanaviciene and others* when making decisions pending the outcome of the appeal of that judgment to the Court of Appeal.

In terms of the impact of legal aid reform on the efficiency and timeliness of proceedings in the family court, we monitor the situation closely. While I recognise that data is showing an increase in litigants in person they have always been a feature of the justice system. Data on disposals in the financial year prior to April 2013 indicate that in 64% of private law cases there was at least one party without recorded legal representation. However, together with HM Court and Tribunal Service, we have taken steps to provide better information, advice and guidance to assist parties when they need to go to court and continue to look at further ways to support them.

I would be pleased to meet with you to discuss alternative means of mitigating the impacts of reform on the most vulnerable. My office will contact yours to arrange a suitable appointment.

Yours sincerely
Shailesh Vara

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