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Full name

Job title or capacity in which you are responding (e.g. member of the public etc.)

If 'Other', please specify

Date

Company name/organisation (if applicable)

Address

Postcode

If you would like us to acknowledge receipt of your response please tick this box.

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If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent

The National Association for Youth Justice (NAYJ) is the only membership organisation which is exclusively concerned with the rights of and justice for children and young people in trouble with the law.

NAYJ was formed in 1995 following the amalgamation of two existing organisations, the Association for Youth Justice and the National Intermediate Treatment Federation and in 2010 became a registered charity.

NAYJ seeks to promote the welfare of children and young people in the Youth Justice system in England by conducting research; publishing newsletters and briefing papers on youth justice policy and practice; organising training events and conferences; responding to government consultations/lobbying and campaigning on issues that directly affect the needs and rights of children in trouble.

This response has also been prepared in consultation with the Standing Committee for Youth Justice (SCYJ). SCYJ is a membership body which provides a forum for organisations, primarily in the non-statutory sector, working to improve the youth justice system and to promote the welfare of children who become engaged in it. SCYJ advocates a child-focused youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large. Over 30 organisations are members of SCYJ, including NAYJ.

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to legalaidreformmoj@justice.gsi.gov.uk or it fax to 020 3334 4295.

Question 1: Do you agree with the modified model described in Chapter 3?

Yes No

Please give reasons.

We are against the modified model. We recognise that the MOJ has stepped back from the initial Price Competitive Tendering (PCT) model but the current proposals are still dependent on a 17.5% cut on fees and the proposed reduced Duty Provider Work model suggested means that Duty Contracts will still be assigned following PCT.

We believe that this violates the legal duties that the UK has towards children and ask the MOJ again to consider the following: -

Article 3 (1) of the United Nations Convention on the Rights of Child states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the 'best interests of a child shall be a primary consideration'. These proposals do not specifically consider children and the failure to do so is a concern.

Furthermore, Rule 5 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice known as the "Beijing Rules" refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions.

In addition rule 22 of the Beijing Rules is the need for professionalism and training. The proposals for the awarding of both Own Client Contracts and Duty Provider Work makes no specific reference to the needs of children and young people.

The Supreme Court has held that the best interests' principle has been translated into national law by the Children Act 2004 (section 11):

"This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law. Section 11 of the Children Act 2004 places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children..." (ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 WLR 148 (Paragraph 23)).

Our concerns regarding professionalism and training in respect of Duty Provider Work are raised Question 3 below.

In respect of Own Client Contracts there are no specific criteria referred to in respect of the necessity of staff experience and specialism for representing children and young people.

Our concern is how this will affect children in the criminal justice system. It is still accepted that children should be treated differently to adults and this requires lawyers to be specialist in their knowledge of the youth justice system, youth court procedures as well as the extremely important client care and communication skills required. Children who find themselves involved in the criminal justice system often have many other problems such as learning and communication difficulties as well as mental health issues and the obvious vulnerabilities as a result of age.

We recognise that the role of youth court criminal advocate involves work that is nearly always more intensive, complicated and involved, requiring liaison with many different parties in comparison to adult defence work. Children's cases are on average more complex than those of adults and the proposed fixed fee remuneration for both investigation and proceedings work puts children and those who provide specialist representation at a disadvantage.

The proposed supervisor ratios go no way to ensuring the level of expertise and knowledge required for children and young people cases will be available for them.

The proposals are clear that the focus is on cost saving and explicitly accepts that the quality of legal advice will reduce as a result. The proposal lays out a roadmap for dramatically lowering the number of legal aid firms who will have a Duty Provider Contract and limiting the scope of work available for those firms who achieve only an Own Client Contract. The outcome is the likely decimation of the sector.

The effect of these changes will be devastating as it threatens the very core of the fairness of the criminal justice system, especially for children and young persons.

It is clear that the MOJ is determined to save £220 million a year over the next five years. It still remains unclear how this has been quantified and no calculations have been published to justify the figure, even though there is a public interest in understanding how the savings will come about.

The recent ComRes poll, commissioned by the Bar Council, demonstrates that 67% of the British public agree that legal aid is a price worth paying for living in a fair society and therefore the Minister's comments in the Foreword that this modified model offers value for the taxpayer is irrelevant to the majority view that the current system at the current cost already achieves this.

Without robust, quality and specialist solicitors there is a risk that confidence in the criminal justice system will be lost. This is based on the costs of the system as it currently stands. There is evidence from a range of experts in the field that the changes will have a detrimental impact on the opportunity of children and young people to effectively participate in the criminal justice process. (See for example the JustRights briefing available at: <http://www.howardleague.org/transforminglegalaid/>). There is no evidence to suggest that the public's views towards criminal legal aid will be improved by the proposals. We echo the widespread concern that they will affect the quality of the service provided.

We also express concerns that the MOJ remains of the view that the Public Defender Service (PDS) should remain exempt from all these proposals and do not accept that it offers "benchmarking" or provides a "safeguard against market failure" when the PDS in operation operate at a higher costs than the current non PDS providers do.

We do not see the need to change the existing system, impose the cross the board cuts of 17.5% or limit the number of Duty Provider Contracts available.

Question 2: Do you agree with the proposed procurement areas under the modified model (described at paragraphs 3.20 to 3.24)?

Yes No

Please give reasons.

It is a welcomed that Own Client Contracts will not be limited in terms of procurement areas.

It is acknowledged that the MOJ has now decided that the procurement areas should be based, by and large, on the current CJS areas.

However, it remains of concern that some of the suggested procurement areas remain too large, for instance only 10 proposed contracts for Devon and Cornwall, 4 for North Yorkshire. These are not the only procurement areas which could suffer. They are demonstrative that the size of certain rural areas will severely impede children and young persons' access to justice. We are of the view that the suggested 1.5 hours travel by car between two points of delivery remains too far and could result in delays in the representation of children and young people and potentially resulting in longer time in police/court custody thus impacting on costs in other areas of the Criminal Justice System.

The length of time that children spend in police custody has already been raised as a concern in the Inspection Report led by HMI Constabulary "Who's looking out for the children?" (2011). A recent report by the Howard League for Penal Reform, Overnight Detention of Children in Police Custody 2010-11, found that 800 children are locked up overnight in police cells each week.

Question 3: Do you agree with the proposed methodology (including the factors outlined) for determining the number of contracts for Duty Provider Work (described at paragraphs 3.27 to 3.35)?

Yes No

Please give reasons.

The methodology described at paras 3.27 - 3.35 is based upon an argued model for sustainability for those firms achieving a Duty Provider Work contract after a cut of 17.5% has been applied. We do not agree with any cuts and therefore do not agree with the methodology. We remain of the view that the number of Duty Provider Work contracts should not be limited but awarded in each area on merit, based on capacity and capability.

In respect of capability, we would strongly urge that the MOJ considers the importance of including in the criteria the need for firms to have youth defence specialists. This is something long overdue and will be considered in the Parliamentary Inquiry into the Youth Justice System recently announced by Lord Carlile.

Question 4: Do you agree with the proposed remuneration mechanisms under the modified model (as described at paragraphs 3.52 to 3.73)?

Yes No

Please give reasons.

We draw the MOJ's attention to the number of cuts that have already been made in criminal legal aid by the clear reduction in work as a result of policing methods and diversion, especially in Youth Justice.

The proposed cuts of 17.5% over 2 years are unsustainable. There are concerns that some firms will not survive the first round of cuts of 8.75% in 2014.

There is particular concern for providers in those large procurement areas where the MOJ have calculated these proposals on a basis of a 1.5 hour journey between two points of delivery.

The proposed police station national fixed fee amounts to approximately £160.00 (after VAT) with no breakout. This is said to be a national average. However, only 3 out of 92 current schemes receive a fixed fee of £160 or less. We therefore do not accept that this figure can be based on a national average. We are opposed to the fact that no escape route is included.

The proposed national fixed fee for police station work would reduce in cuts far in excess of 17.5% in some areas for example: -

Heathrow: a reduction of approx 47%

Kent: a reduction of 31%

Surrey: a reduction of 29%

Essex: a reduction of 30%

Hertfordshire: a reduction of 35%

London: a reduction of 34.4%

Stanstead: a reduction of 43%

Crawley: a reduction of 35.8%

By their very nature, police investigations resulting in the need for an attendance at the police station tend to be longer and more involved for cases involving children and young persons than those involving adults. In every case now there will be the need to consult not only with the young detained person, but also with the appropriate adult. In many cases this will be an anxious or zealous parent or guardian. The explanation of the offence they face requires particular expertise as does the explanation of the implications of any advice set against the caution. More frequent breaks in interview are often required and, in lengthy investigations, the need for more bail backs. These proposals will particularly affect the remuneration and financial value of investigation work involving children and young persons. They will also affect the remaining prison law work for children and young people who require a specialist service

We are of the view that the proposed national fixed fee is set too low and the escape route for lengthy police investigations should be maintained. In any event, police investigations involving children and young people

should be exempt from these proposals and the current system maintained.

The proposal that the same fee will be paid for a not guilty plea or a guilty plea in the Youth Court could potentially place a financial drive on lawyers to advise a guilty plea where a not guilty one should be entered and a trial take place. The Professional Code of Conduct demands that solicitors act in the best interests of their clients. This raises serious concerns, not because solicitors will cease to comply with the Professional Code of Conduct but because it will seriously undermine public confidence in the Criminal Justice System, knowing that a defence lawyer is paid the same whether they work for 30 mins or 10 hours. This has to be seen against a dramatic scene change of who will bid for and be assigned a contract, where quality only needs to be "acceptable" and lower bids will certainly win favour above specialisms.

We repeat our concerns expressed in Question 1 that it is accepted that children should be treated differently to adults in the criminal justice system and these remuneration proposals do not take account of the particular expertise of advocates required, the need to communicate with many different agencies within the Youth Justice System, such as Social Services, Education providers, Youth Offending Services and the extended length of many cases.

Specifically, Youth Court trials also often involve young complainants and prosecution witnesses as well. They therefore tend to take more specialist and involved case management and preparation. These may well be cases that will demand more work from the solicitor, but not enough to "escape" the fixed fee. We are concerned that this will make youth court work less inviting than other criminal work. It could also result in less sensitive handling of young complainants and witnesses at trial.

Again the statistical basis for the need for any cuts has not been made out. Those contained in the consultation document are incomplete and do not represent a fully evaluated consideration of impact of previous cuts on the Legal Aid budget and the reduction in criminal defence work at both the police station and youth courts.

We are opposed to the proposed cuts of 17.5% to Crown Court work. Crown Court cases involving children and young persons must only make up a very small proportion of Crown Court work, given that jurisdiction should only be reserved for the most serious of cases or where children are sent in the interest of justice if they are co-accused with an adult, who is sent to the Crown Court on allocation. We are of the view that the current system of remuneration should remain for all Crown Court work, and if not, then a distinction should be made for it to remain for children and young persons.

As the amount of cases involving children in trouble represents a relatively small proportion of overall criminal justice system throughput, it would appear unlikely that as a consequence of the economies of scale required by the proposals, that legal practices would be able to maintain youth specialisms. This would be a wholly retrograde step as NAYJ/SCYJ consider that an expansion of youth specialist lawyers is required, as proposed by a variety of commentators in the field e.g.) Centre for Social Justice Report. This is likely to render such a development unfeasible for the foreseeable future. This has to be directly contrasted with the recent announcement of the Parliamentary Inquiry led by Lord Carlile into the Youth Justice System.

We do not support any cuts to legal aid however we are strongly opposed to cutting legal aid for vulnerable children. We ask that special consideration be given to the exemption of children and young persons in the event of their imposition.

In any event we ask the MOJ to await the outcome of the Otterburn Report.

Question 5: Do you agree with the proposed interim fee reduction (as described at paragraphs 3.52 to 3.55) for all classes of work in scope of the 2010 Standard Crime Contract (except Associated Civil Work)? Please give reasons.

Yes No

Please give reasons.

The proposed interim fee reduction would not assist the sustainability of many medium and small providers. We remain of the view that no cuts should be considered and this consultation delayed until the outcome of the Otterburn report is known. Without the results of that financial analysis the financial viability of providers will not be known.

Question 6: Do you prefer the approach in:

- Option 1 (revised harmonisation and tapering proposal); or,
- Option 2 (the modified CPS advocacy fee scheme model)

Yes No

Please give reasons.

We remain of the view that there should be no cuts in Crown Court Advocacy fees. In the event of any cuts, cases involving children and young persons should be exempt and remain as they currently are.

Question 7: Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper?

Yes No

Please give reasons.

Please see our above responses.

Question 8: Do you agree that we have correctly identified the extent of impacts under these proposals?

Yes No

Please give reasons.

Please see our above responses.

Question 9: Are there forms of mitigation in relation to impacts that we have not considered?

Yes No

Please give reasons.

The proposals have wholly disregarded the needs of children and young persons within the criminal justice system.

We ask that the consultation process go no further until the outcome of the Otterburn report is known.