

**Legal Services Commission / Department for
Constitutional Affairs consultation**

**LEGAL AID:
A SUSTAINABLE FUTURE**

Consultation Response

Please contact

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October 2006



1. **About BAAF**

The British Association for Adoption & Fostering (BAAF) is pleased to respond to this consultation. BAAF is the leading charity and membership organisation in fostering and adoption in the UK. We:

- promote the highest standards of child-centred policies and services
- speak out on behalf of looked-after children
- influence UK-wide policy and legislation
- provide much-needed information and advice
- promote greater public understanding of adoption and fostering
- support our members in their work

BAAF's main activities are the development, promotion and advocacy of best policy and practice; the provision of advice and information to our members and to the general public; training, consultancy and seminars; child placement services including the publication of our flagship monthly newspaper, *Be My Parent*. We also publish a quarterly professional journal, *Adoption and Fostering*, books and guides for professionals, academics, parents and carers and research studies. The main users of our services are our members comprising local authorities across the UK, voluntary adoption agencies, independent fostering agencies and also individual social work, legal and medical professionals and carers.

2. This response has been informed by discussion with BAAF's Legal Group Advisory Committee, whose members include local authority lawyers, solicitors and barristers in private practice, children's guardians, and academics. Members of the Group believe that if implemented these proposals would have very serious and damaging consequences for the conduct of public family law and adoption cases, and, consequently for the children involved in these proceedings and their families.
3. This response is supported by The Fostering Network, The Who Cares? Trust and Voice.
4. We note that the intention is to move towards 'fewer and larger' contracts with providers, and the fixed fee proposals appear to be based on the principle that larger firms will be able to provide economies of scale, and that those cases that require more work than is paid for by the fixed fee will be balanced out by those where less work is required. BAAF's Legal Group Advisory Committee was aware of a number of areas where only small to medium sized firms currently operate, so that the effect of the proposals could be to cause **all** the firms in such an area to cease undertaking this work, leaving children and families without access to support. There is also anxiety that the proposals would impact disproportionately on black and minority ethnic firms, many of which are smaller than average, but which provide an invaluable service to clients from a range of ethnic and linguistic backgrounds.
5. We welcome proposals to increase availability of legal advice pre-proceedings, but are not confident that a great deal is to be gained by

targeting 'level 2' controlled work at those cases where the local authority has already provided written notice of their intention to issue proceedings. The time when specialist advice is most likely to be helpful (and when it holds the best chance of encouraging parties to co-operate so that proceedings can be avoided altogether) is from the beginning of formal involvement by the local authority, through an investigation under s 47 of the Children Act 1989, and/or the convening of a child protection conference. The only advantage of extending the pre-proceedings legal help to the period between the service of the notice of intention to issue and the actual issue of proceedings is the potential for avoiding delay through the parties' lack of representation at the first hearing, and this would indeed be of benefit to children.

6. We emphasise however that it is **essential** that this advice, and the eventual representation within proceedings, should come from specialist practitioners, and for this reason we deplore the proposal to remove the current uplift in fees for Children Panel members. We welcome Lord Carter's and the LSC's eventual aim to restrict child care funding to panel members. While targeted training fund contracts may perhaps assist in increasing the numbers of solicitors with the relevant expertise, it is hard to see what incentive there could be for undertaking the training if the eventual rates of pay received do not acknowledge that expertise.
7. Many of BAAF's individual members are local authority legal advisers who know only too well the additional harm that may be done to a child by the delay and overly adversarial approach caused by representation – whether of children or their parents - by inexperienced practitioners, or lack of any representation at all. If, as the evidence suggests is likely to be the case, implementation of these proposals were to result in the reduction in numbers of solicitors available to represent children and parents, this would not only be a great disservice to the children and families in terms of their rights, but would also in practical terms result in considerable extra work for local authority lawyers, CAFCASS officers, the judiciary and court staff.
8. Family proceedings vary hugely in terms of complexity, and it is highly improbable in our view that a fixed fee system could be an appropriate means of remuneration, particularly with the setting of the 'exceptional' level at four times the standard fee. It will be against the interests of children if their legal representatives are forced to cut corners.
9. In answer to specific questions:

Question 7.2

We support the extension of a higher rate of legal help pre-proceedings, but please see the remarks above (paragraph 6).

Question 7.3

We have particular concerns about paragraph 7.40 and the denial of any uplift, or separate certificates, for, in particular, placement order proceedings. Since the proposed fees are based on claims data for

2004/2005, **before the Adoption and Children Act 2002 – and therefore the possibility of placement order proceedings – came into force**, it is hard to see how the LSC can have formed any notion of what the likely costs of such proceedings will be.

Question 7.4

We are strongly opposed to the proposal to make no distinction in remuneration for those who are members of the Law Society Children Panel (see paragraph 7 above).

Question 7.5

Clarification is needed about where adoption sits in the public/private law divide. Since placement order applications (and revocation applications) are specified proceedings, we assume that they are seen as public law proceedings, but what of:

- Applications under s 26 ACA 2002
- Applications for adoption orders, including possible applications under s 8 Children Act 1989 for a contact order to be made post adoption
- Applications for leave to oppose the making of an adoption order under section 47 ACA 2002
- Applications for leave to apply for a residence order or special guardianship order (and the application itself if leave is granted) when a placement order is in force under section 29(4) or (5) ACA 2002
- Other applications under ACA 2002?

Question 7.8

We are opposed to the removal of the uplift for Children Panel members in private as well as public law proceedings.

10. Immigration and Asylum

We note that it is proposed that advice and representation for unaccompanied asylum seeking children would be restricted to a small number of specialist providers. While we agree that this important work should be carried out by those with specialist knowledge and experience, we are concerned that the result might be a lack of access to services for children in certain parts of the country. These children are exceptionally vulnerable and it is essential that they are able to obtain legal help wherever they are in the country.