



# Consultation on Publication of Annual Payments to Suppliers of Legal Aid

4 February 2021

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# 1. Introduction

- 1.1. This consultation exercise seeks views on options for the re-establishment of the policy of the body responsible for the administration of legal aid publishing, on an annual basis, details of the payment of public funds to those suppliers who deliver services funded by legal aid.
- 1.2. As the consultation exercise seeks to re-establish a practice, it is necessary to explain something of the origins of the practice. The practice was established by the then Northern Ireland Legal Services Commission (NILSC) when the NILSC published the total amount of money paid to legal aid practitioners on 27 November 2008. The NILSC published the details of solicitors' practices and barristers paid the most from publicly funded legal aid during the financial years 2004/05 and 2005/06.
- 1.3. At that time, the publication of this information was limited to the 100 firms of solicitors who received the highest total payments in any given year. The corresponding list for barristers identified the sums paid directly to counsel. As this did not represent the total sum of payments to counsel, the remaining sums paid to counsel, via their instructing solicitor, were included in fees paid to solicitors. This meant that the 100 barristers' payments details published was primarily the payments to barristers who dealt with criminal cases. As such, the sums paid to barristers who dealt with family and civil cases were not visible at that time as their fees were paid through their instructing solicitor. This anomaly was corrected in June 2013 when the NILSC published the 2011/12 details and the list of payments to barristers reflected all payments, whether in respect of criminal, civil, or family cases.
- 1.4. When it first published the detail of these payments, the NILSC indicated the publication of this information was consistent with its commitment to the key principles of openness and transparency and its objective to ensure that such information is widely accessible on a routine basis. The use of the name of firms and of barristers was deployed as part of the NILSC's objective of transparency and provided a way of comparing the recipients across different years.

- 1.5. The information published evolved, as can be seen from Table 1 below, which compares the first and most recent year's publications.

**Table 1**

<b>Detail</b>	<b>Solicitor 04/05</b>	<b>Solicitor 14/15</b>	<b>Barrister 04/05</b>	<b>Barrister 14/15</b>
Ranking	√	√	√	√
Name of Practitioner	√	√	√	√
Costs	√	√	√	√
Vat on Costs	√	√	√	√
Counsel Fees	√	N/A	N/A	N/A
Vat on Counsel Fees	√	N/A	N/A	N/A
Disbursements	√	√	√	N/A
Gross Total Payments	√	√	√	√
Number of Certificates Payments represented	N/A	√	N/A	√
Average Gross Payment per Certificate	N/A	√	N/A	√
Average Net Payment per Certificate	N/A	√	N/A	√

- 1.6. The practice of publishing the total payments made to the 100 solicitors' practices and barristers, that received the largest amounts from legal aid, continued in respect of the financial years 2004/05 – 2014/15<sup>1</sup>.
- 1.7. Just before the Legal Services Agency (LSA), the public body which assumed the functions of the NILSC when it was dissolved on 31 March 2015, published the 2015/16 information, the process was challenged by two barristers. As the case was due to be heard before the new General Data Protection Regulations were to come into force, it was agreed that the process of publishing this information would be reviewed against the backdrop of the new Regulatory framework.
- 1.8. Views are sought on how the LSA should publish this information moving forward. While the focus of the challenge to publish the 2015/16 figures was on

<sup>1</sup> The information published for the year 2008/09 – 2014/15 is still available on the LSA's website: <https://www.justice-ni.gov.uk/articles/freedom-information-lsani>

the publication of the names of individuals, this consultation exercise seeks views on a wide range of issues relating to publication.

- 1.9. The LSA will adopt the approach which emerges following this consultation exercise when publishing information from 2015/16 onwards.
- 1.10. An anonymised summary of the consultation findings will be published following the conclusion of this consultation exercise. This will include the finalised format of the publication template.

## 2. Purpose of the Consultation

- 2.1 The original publication of this information took place against a background of significant increases in legal aid expenditure and sustained media interest in the sums of money paid to the leading legal aid practitioners.
- 2.2 In a reply to an Assembly Question in 2015<sup>2</sup> the then Justice Minister indicated that the total cash grant allocated to the NILSC increased from £63.3m in 2005/06 to £113.8m in 2014/15. This information, which includes the running costs of the NILSC, broadly covers the period in respect of which the NILSC and LSA have published information in respect of the value of payments to practitioners. The Question and Answer are set out in Table 2 below.

**Table 2**

Question: To ask the Minister of Justice to detail the budget of the Northern Ireland Legal Services Commission for each of the last ten years.

Answer: The figures contained in the table below represent the total cash grant allocated to the Northern Ireland Legal Services Commission in each of the last 10 years to fund expenditure on legal aid and running costs.

From 2010-11 to 2014-15 funding was provided by the Department of Justice. From 2005-06 to 2009-10, prior to the devolution of Justice, funding was provided by the Northern Ireland Courts Service.

Financial Year	Total Funding (£m)
2005/06	62.3
2006/07	74.1
2007/08	79.9
2008/09	87.0
2009/10	103.0
2010/11	99.5

<sup>2</sup> AQW/49353/11/16 answered on 16 October 2015

<b>Financial Year</b>	<b>Total Funding (£m)</b>
2011/12	108.2
2012/13	101.5
2013/14	110.5
2014/15	113.8

This information is also available in the Annual Report and Accounts of the Northern Ireland Legal Services Commission.

- 2.3 Since 2014/15, the total spend on legal aid has decreased and since 2016/17 the total outturn has been under £90m and the legal aid payment outturn has been no higher than £84m, inclusive of VAT and disbursements for non-lawyers fees. However, this continues to represent a significant amount of public expenditure and there remains a keen interest in how this sum is expended.
- 2.4 The NILSC logged 10 requests for information between March 2006 and October 2008. These questions all revolved around the total payments made by the NILSC over different periods and sought information on the sums paid to the top 3, 20, 100 solicitors and barristers. Each of these requests were received from media sources with one further request from an academic source. Rather than answer individual questions, all of which sought variations of the same information, the NILSC developed a process which it could run each year and proactively put information into the public domain. The information published throughout the period has consistently reflected the total payments made to the 100 solicitor firms and barristers that received the largest annual payments.
- 2.5 During the period when this information was being published, Assembly Questions were tabled covering this issue. On 28 October 2013, the Minister answered AQW/27158/11-15 which asked, “How much was paid to law firms in the top ten claimants for Legal Aid in each of the last five years.” Again, on 31

March 2015, the Minister answered AQW/43793/11-15 which asked the Minister “list the law firms that have received (i) less than £250,000; (ii) £250,000 to £499,000; (iii) £500,000 to £999,999; and (iv) more than £1,000,000 in legal aid payments, in each of the last two years.”

2.6 Since the pause of publication following the judicial review challenge, the LSA has continued to receive periodic media requests for this information. More recently, with the return of the Assembly, there have been Assembly Questions<sup>3</sup> seeking details of the 25 solicitors and barristers who received the largest total payments from the legal aid fund, in each of the last five years. The Question and Answer are set out in Tables 3 and 4 as follows.

### **Table 3**

Question: To ask the Minister of Justice to publish a list of the 25 barristers who received the largest total payments from the legal aid fund, in each of the last five years.

Answer: The information requested is not available in the format requested as it constitutes personal data that can only be processed in accordance with the data processing principles set out in the General Data Protection Regulations. The Legal Services Agency last published details of personal earnings for the year 2014/15. This information is available on the Agency’s website. The Agency will be consulting in 2020/21 on the release of information from 2015-16 onwards under the General Data Protection Regulations.

The table below provides details of the total payments made to those 25 barristers who received the largest total payments from the legal aid fund between 2014/15 and 2017/18. The figures covering 2018/19 are not yet finalised, so cannot be included.

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<sup>3</sup> AQW/1724/17-22 and AQW/1725/17-22 both answered on 24 February 2020



**Legal aid payments to barristers - 2014/15 to 2017/18**

	<b>Total payments to <u>Top 25</u> Barristers (£)</b>	<b>Total payments to <u>all</u> Barristers (£)</b>	<b>Payments to Top 25 Barristers as % of all payments</b>
2014/15	9,063,056.01	34,767,010.90	26%
2015/16	7,095,637.22	28,076,686.57	25%
2016/17	6,844,335.79	28,021,025.47	24%
2017/18	6,913,318.88	26,186,016.67	26%

The figures set out above include VAT (where appropriate). The payments received in one financial year do not necessarily reflect work done in that financial year. Cases may have lasted more than one year and overall earnings may be increased by one exceptional case lasting a number of years for which payment was received during the financial year in question.

***Table 4***

Question: To ask the Minister of Justice to publish a list of the 25 solicitors who received the largest total payments from the legal aid fund, in each of the last five years.

Answer: The information requested is not available in the format requested as it constitutes personal data that can only be processed in accordance with the data processing principles set out in the General Data Protection Regulations. The Legal Services Agency last published details of personal earnings for the year 2014/15. This information is available on the Agency's website. The Agency will be consulting in 2020/21 on the release of information from 2015-16 onwards under the General Data Protection Regulations.

The table below provides details of the total payments made to those 25 firms of solicitors that received the largest total payments from the legal aid fund between 2014/15 and 2017/18. The figures covering 2018/19 are not yet finalised, so cannot be included.

**Legal aid payments to solicitors - 2014/15 to 2017/18**

	<b>Total payments to <u>Top 25</u> Solicitor Firms (£)</b>	<b>Total payments to <u>all</u> Solicitor Firms (£)</b>	<b>Payments to Top 25 Solicitor Firms as % of all payments</b>
2014/15	23,832,717.98	70,457,900.54	34%
2015/16	21,882,952.93	63,447,780.43	34%
2016/17	19,698,612.76	54,958,904.74	36%
2017/18	19,656,222.47	52,759,621.16	37%

The figures set out above include VAT (where appropriate) and disbursements, which are payments, made by solicitors on behalf of a client, for example fees for expert witnesses.

The payments received in one financial year do not necessarily reflect work done in that financial year. Cases may have lasted more than one year and overall earnings may be increased by one exceptional case lasting a number of years for which payment was received during the financial year in question.

2.7 Publication of the reply to these Assembly Questions attracted a Freedom of Information request<sup>4</sup>, which is set out in Table 5, as follows.

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<sup>4</sup> FoI Request answered on 31 March 2020

**Table 5**

Request: 'Please confirm the following:

1. How many legal practices received payments from the LSANI in 2018/2019, 2017/2018, 2016/2017, and 2015/2016?
2. If possible, can the above figures be broken down into payment bands e.g. £0-£50k; £50-£100k; £100-£200k etc.?'

Reply: 1. Table 1 details the number of Solicitor Firms that received payments from LSANI during the years 2015/16 to 2017/18. Equivalent figures covering 2018/19 are not yet finalised, so cannot be included.

**Table 1: The number of Solicitor Firms in receipt of legal aid payments by LSANI, 2015/16 to 2017/18**

	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
Number of Firms in receipt of legal aid payments	497	467	466

The information you have requested is considered and held by LSANI within bandings of solicitor firms, rather than bandings of incremental payments. Accordingly, Tables 2a to 2c present the total and average payments made to bandings of solicitor firm rankings for each individual year. These figures include VAT (where appropriate).

**Table 2: A breakdown of legal aid payments made to bandings of Solicitor Firms by LSANI, 2015/16 to 2017/18**

**2a. 2015/16**

<b>Solicitor Firm Ranking</b>	<b>Total Payments (£)</b>	<b>Band Average (£)</b>
1-100	44,872,600.02	448,726.00
101-200	12,227,512.03	122,275.12
201-300	4,616,947.11	46,169.47
301-400	1,551,393.93	15,513.94
401-497	179,327.34	1,848.74
<b>Total</b>	<b>63,447,780.43</b>	<b>127,661.53</b>

**2b. 2016/17**

<b>Solicitor Firm Ranking</b>	<b>Total Payments (£)</b>	<b>Band Average (£)</b>
1-100	40,078,884.60	400,788.85
101-200	9,949,578.18	99,495.78
201-300	3,814,476.04	38,144.76
301-400	1,074,009.67	10,740.10
401-467	41,956.25	626.21
<b>Total</b>	<b>54,958,904.74</b>	<b>117,685.02</b>

**2c. 2017/18**

<b>Solicitor Firm Ranking</b>	<b>Total Payments (£)</b>	<b>Band Average (£)</b>
1-100	38,121,508.72	381,215.09
101-200	10,118,502.58	101,185.03
201-300	3,602,942.55	36,029.43
301-400	904,721.05	9,047.21
401-466	11,946.26	181.00
<b>Total</b>	<b>52,759,621.16</b>	<b>113,218.07</b>

When interpreting these figures, it should be noted that payments received in any one financial year do not necessarily reflect work undertaken in that year. Cases may have lasted more than one year and earnings for some firms may be increased by one exceptional case lasting a number of years for which payment was received during the financial year in question.

- 2.8 When the NILSC first considered publishing this information it intended to do so in respect of different areas for which payments had been made, for example civil, family and criminal. This did not prove to be practical given the constraints of the management information systems available to the NILSC and the disproportionate costs of analysing the information. However, over the years in response to Assembly Questions (AQs) and Freedom of Information (FoI) requests, the LSA has provided information on the legal spend across different

types of business. In response to a recent Assembly Question<sup>5</sup>, the LSA provided information on the amount of civil legal aid paid per annum over the past 5 years; broken down by family, matrimonial and other. The Question and Answer are set out in Table 6 below.

**Table 6**

Question: To ask the Minister of Justice to detail the amount of civil legal aid paid per annum, over the past 5 years; broken down into (i) family; (ii) matrimonial; and (iii) other.

Answer: While the Legal Services Agency does not hold the information in the format requested, it has marshalled the information available under these categories. The amounts paid in each financial year are set out in the table below. In the table below, the figures for the years 2017/18 and 2018/19 represent Resource expenditure. All previous years reflect Cash expenditure. From 2010-11 to 2014-15, funding was provided by the Department of Justice. From 2005-06 to 2009-10, prior to the devolution of Justice, funding was provided by the Northern Ireland Courts Service.

**Civil legal aid payments, 2014/15 to 2018/19**

	<b>Family</b>	<b>Matrimonial</b>	<b>Other Civil</b>
2014/15	£26,289,486	£11,676,623	£19,178,004
2015/16	£25,404,984	£8,428,401	£17,447,763
2016/17	£18,447,438	£6,231,515	£16,577,251
2017/18	£20,057,514	£5,870,505	£15,900,746
2018/19	£19,540,155	£5,878,576	£22,326,351

In the table above the expenditure in Family, Matrimonial and Other Civil cases include the following types of proceedings.

<sup>5</sup> AQW/1800/17-22 answered on 19 March 2020

**Family**

All Children Order proceedings

Domestic Violence

Adoption/Affiliation

Wardship

Occupation orders

Non- Molestation orders

**Matrimonial**

Divorce/Maintenance

Other Matrimonial

Separation

Proceedings for arrears of maintenance

**Other Civil**

All other types of proceedings.

- 2.9 Given the request for information, at a much more granular level, the LSA has been considering how it can proactively provide more detailed information and incorporate this into the publication of payments to practitioners.
- 2.10 As such, given the principles of public accountability, informing public debate, and enabling information to proactively be put into the public domain, the LSA is seeking views on how information on the payments to practitioners should be published. This consultation will be used to inform the LSA's consideration of its short-term objective of making available open data sets and its medium-term objective of publishing Official Statistics.

### 3. Responding to the Consultation

- 3.1 The LSA invites views on any issues raised by this consultation document including the accompanying impact screenings.

Please submit your response to this consultation by one of the following methods:

- Online: [nidirect – Citizen Space](#)
- Email: [consultations@lsani.gov.uk](mailto:consultations@lsani.gov.uk)
- Post:

*LSANI Consultations,  
Business Support Unit,  
2<sup>nd</sup> Floor, Waterfront Plaza,  
8 Laganbank Road,  
Belfast,  
BT1 3BN*

If you have any questions in relation to the consultation, please use the above email address or please call us on:

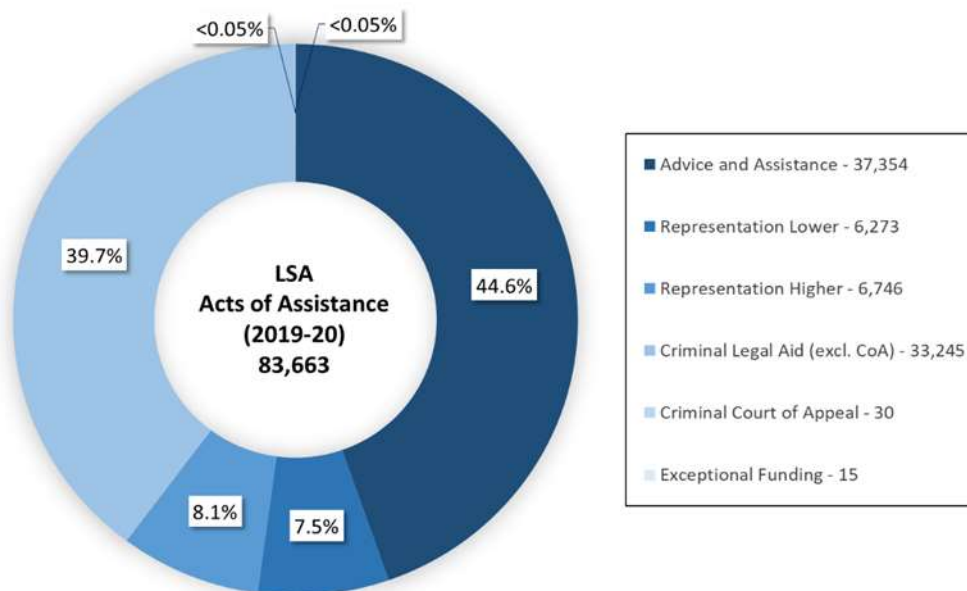
Tel: **028 9040 8989**

- 3.2 Responses must be received by **29 April 2021**.

## 4. Principle of Publication

- 4.1 The LSA considers that there is a legitimate public interest in knowing how the significant sums of public money, which are spent on legal aid, are dispersed. This interest was evident at a political level with debates on legal aid expenditure being a feature of the period following the devolution of policing and justice. Expenditure on legal aid has featured heavily in the two Reports of the Public Accounts Committee and formed the backdrop to discourse during a withdrawal of services in Crown Court cases in 2015. Recent Assembly Questions serve to emphasise the ongoing interest in this issue.
- 4.2 The LSA publishes limited information in its Annual Report and Accounts. This includes the acts of assistance provided through legal aid; Table 7 below is an extract from the 2019/20 Annual Report and Accounts.

**Table 7**





4.3 In addition, the LSA’s Annual Accounts provide segmental reporting on Civil Legal Services and Criminal Legal Aid utilisation. Table 8 below sets out this analysis that indicates the provisions created in respect of criminal and civil business, together with the costs of the organisation allocated against these two areas. As such, it is technical accounting treatment of expenditure in the context of provisions. It does not provide an accessible or meaningful insight into legal aid expenditure.

**Table 8**

**2019-20**

	<b>£000</b>		
	<b>Civil Legal Services</b>	<b>Criminal Legal Aid</b>	<b>Total</b>
Gross expenditure	58,977	50,568	<b>109,545</b>
Income	(1,839)	(13)	<b>(1,852)</b>
<b>Net expenditure</b>	<b>57,138</b>	<b>50,555</b>	<b>107,693</b>

4.4 Furthermore, the annual report indicates the total level of cash payments, which was £82.1m. This information is presented for accounting purposes and does not afford an accessible or comprehensive insight into legal aid expenditure. As such, the LSA proposes to publish on an annual basis a high-level statement that shows the broad areas of expenditure. Table 9 below sets out a proposal of what this statement could look like. In this version, the information is driven by the levels of services set out in the regulations. The level of information will have to be tightly prescribed, as it is purely management information.

**Table 9****LSA Payments by level of service, 2019/20<sup>6</sup>**

<b>Civil Legal Services</b>	<b>Value of Payment to Solicitors<sup>7</sup></b>	<b>Number of Payments to Solicitors<sup>8</sup></b>	<b>Payments to Counsel<sup>9</sup></b>	<b>Number of Payments to Counsel<sup>7</sup></b>	<b>Total Value of Payments<sup>10</sup></b>	<b>Total Number of Payments<sup>10</sup></b>
Advice and Assistance	£4,668,883	31,830	£0	0	£4,737,960	32,673
Representation Lower	£6,132,109	7,073	£81,000	47	£6,232,062	7,321
Representation Higher	£25,770,910	7,492	£4,352,065	2,526	£30,221,006	10,677
Exceptional Funding <sup>11</sup>	£604,758	35	£567,530	23	£1,172,288	58
<b>CLS Total</b>	<b>£37,176,660</b>	<b>46,430</b>	<b>£5,000,596</b>	<b>2,596</b>	<b>£42,363,316</b>	<b>50,729</b>
<b>Criminal Legal Aid</b>	<b>Value of Payments to Solicitors</b>	<b>Number of Payments to Solicitors</b>	<b>Value of Payments to Counsel</b>	<b>Number of Payments to Counsel</b>	<b>Total Value of Payments</b>	<b>Total Number of Payments</b>
Magistrates' Courts	£12,524,912	21,383	£4,980,138	7,782	£17,524,055	29,438
County Court of Appeal	£458,735	1,259	£250,143	1,168	£708,879	2,427
Crown Court	£9,856,531	2,523	£9,163,049	3,158	£19,079,431	5,834
Criminal Court of Appeal	£984,111	62	£1,326,180	71	£2,310,290	133
Extradition	£93,396	54	£80,439	37	£183,217	177
<b>Criminal Total</b>	<b>£23,917,685</b>	<b>25,281</b>	<b>£15,799,950</b>	<b>12,216</b>	<b>£39,805,872</b>	<b>38,009</b>
<b>Total</b>	<b>£61,094,345</b>	<b>71,711</b>	<b>£20,800,546</b>	<b>14,812</b>	<b>£82,169,189</b>	<b>88,738</b>

4.5 As an alternative, Table 10 on the next page presents a high-level picture of expenditure by case type. This approach has the benefit of indicating the volume and value by the area of law, leaving aside the court tier involved. Tables 9 and 10 could be further refined to indicate the value of payments attributable to VAT and disbursements, that is, non-legal fees payable in a case.

<sup>6</sup> Excludes adjustments made outside LAMS – footnotes 6 – 11 apply to civil and criminal expenditure as appropriate

<sup>7</sup> Includes solicitors' costs, disbursements and VAT

<sup>8</sup> Includes all payments above £0

<sup>9</sup> Includes barristers costs and VAT

<sup>10</sup> Totals include third party payments – typically interpreters fees not paid through the solicitor

<sup>11</sup> Does not include 2019/20 Exceptional Funding payments made before commencement of LAMS

**Table 10****LSA Payments by level of service, 2019/20**

(footnotes from Table 9 apply to Table 10)

<b>Civil Legal Services</b>	<b>Value of Payment to Solicitors</b>	<b>Number of Payments to Solicitors</b>	<b>Value of Payments to Counsel</b>	<b>Number of Payments to Counsel</b>	<b>Total Value of Payments</b>	<b>Total Number of Payments</b>
Advice and Assistance	£4,668,883	31,830	£0	0	£4,737,960	32,673
Family	£20,209,542	9,581	£3,971,915	1,515	£24,273,929	11,764
Matrimonial	£3,003,408	1,048	£24,910	10	£3,031,600	1,109
Other Civil	£8,690,069	3,936	£436,241	1,048	£9,147,539	5,125
Exceptional Funding	£604,758	35	£567,530	23	£1,172,288	58
<b>CLS Total</b>	<b>£37,176,660</b>	<b>46,430</b>	<b>£5,000,596</b>	<b>2,596</b>	<b>£42,363,316</b>	<b>50,729</b>
<b>Criminal Legal Aid</b>	<b>Value of Payments to Solicitors</b>	<b>Number of Payments to Solicitors</b>	<b>Value of Payments to Counsel</b>	<b>Number of Payments to Counsel</b>	<b>Total Value of Payments</b>	<b>Total Number of Payments</b>
Magistrates' Courts	£12,524,912	21,383	£4,980,138	7,782	£17,524,055	29,438
County Court of Appeal	£458,735	1,259	£250,143	1,168	£708,879	2,427
Crown Court	£9,856,531	2,523	£9,163,049	3,158	£19,079,431	5,834
Criminal Court of Appeal	£984,111	62	£1,326,180	71	£2,310,290	133
Extradition	£93,396	54	£80,439	37	£183,217	177
<b>Criminal Total</b>	<b>£23,917,685</b>	<b>25,281</b>	<b>£15,799,950</b>	<b>12,216</b>	<b>£39,805,872</b>	<b>38,009</b>
<b>Total</b>	<b>£61,094,345</b>	<b>71,711</b>	<b>£20,800,546</b>	<b>14,812</b>	<b>£82,169,189</b>	<b>88,738</b>

**Q1. Do you agree that there is a legitimate public interest in the provision of high-level information which indicates the areas in which legal aid is expended? If not please explain your objections.**

**Q2. Do you agree that the proposed approach to publication at Table 9 would be an appropriate starting point pending the development of Official Statistics? If not please explain your objections.**

**Q3. Do you agree that the proposed approach to publication at Table 10 would be an appropriate starting point pending the development of Official Statistics? If not please explain your objections.**

## 5. Publication of Personal Data

- 5.1 The proposal in Section 4 seeks to make high-level information available to the public. However, this would not extend to indicating the number of solicitors' practices and barristers who undertake legal aid work, the volume of cases that they are responsible for and the value of remuneration they receive.
- 5.2 It is the view of LSA that this level of information is also required to inform public debate. It is relevant to demonstrate whether there is an even distribution of work among providers or whether the greater majority of the work is delivered by a relatively small number of providers. This offers the potential to highlight the gender of the suppliers in receipt of funding and could be expanded in future iterations to show the geographical distribution of expenditure.
- 5.3 Indeed, when setting remuneration levels, the Department of Justice is required, among other things to have regard to "the number and general level of competence of persons providing those services"<sup>12</sup>.
- 5.4 To this end, and in keeping with the NILSC's original intention, the LSA proposes to supplement the high-level analysis set out in Section 4, with a breakdown of the uptake of work by solicitors and barristers.
- 5.5 The LSA would propose that the format of the publication should, over time, be developed to provide information on how individual suppliers, solicitors' practices and barristers, deliver publicly funded services.
- 5.6 While this could be reported in a variety of ways, the LSA considers the approach set out in Table 11, on the following page, may in the future provide an accessible format. However, the LSA seeks views on whether moving to expand the information in this way could make publication unwieldy and reduce the usefulness of the information.

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<sup>12</sup> Article 47(1)(b) of the Access to Justice (Northern Ireland) Order 2003

**Table 11**

This table has been populated with illustrative data

Supplier	A&A		Family		Matrimonial		Other Civil		Criminal		Total <sup>13</sup>		Average Payment
	Vol	£	Vol	£	Vol	£	Vol	£	Vol	£	Vol	£	£
123	10	1,500	20	5,000	100	10,000	10	7,500	50	37,500	280	61,500	219.64

5.7 The approach outlined above would serve to provide perspective as to whether the total payments reflected a diverse portfolio of cases or were driven by one or two areas. Likewise, this analysis would highlight if the average net payment to a supplier is heavily influenced by a high volume of low-value cases or if this was driven by one or two expensive cases. For example, in the published figures for 2014/15, there are clear examples of practitioners receiving very similar total payments but one practitioner did some 33 times as many cases as the other and there was a corresponding differential in their average gross payments. This suggests a very different profile of cases delivered by the two practitioners.

5.8 The central issue is how the supplier should be identified.

5.9 There are two core approaches which allow the supplier to be identified consistently year on year:

- (a) By use of the supplier's name; *or*
- (b) By use of a cypher which is used each year to identify the same supplier.

5.10 Historically, the NILSC used the supplier's name. This approach has the following advantages:

- (a) If continued, it allows year on year comparison across all publications;
- (b) It provides the maximum transparency;

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<sup>13</sup> All payments exclude Vat and disbursements

- (c) It informs the public of the identity of suppliers who do significant legal aid work by reference to types of legal practice;
- (d) It provides a reference point for policymakers and stakeholders to consider the cost and distribution of legal aid; *and*
- (e) It allows for an assessment of gender impact (if any) on remuneration reforms.

5.11 The practice of identifying the supplier by name directly engages the fact that this is personal data. This involves a range of considerations which may arise generally or in respect of individual suppliers:

- (a) Whether generically there is an risk assessment which would permit publications of the names of individual firms and barristers who undertake legal aid work;
- (b) Whether an individual firm of solicitors or barrister would be exposed to specific health and safety risks as a result of publication; *and*
- (c) Specific objections that can be raised outside health and safety considerations that have to be considered on their individual merits.

5.12 The alternative approach is to identify suppliers by a cypher that will be assigned to them in future years. This approach has the following advantages:

- (a) It allows year on year comparisons prospectively; *and*
- (b) It does not engage personal data considerations as no living individual is named.

5.13 However, this approach has the following disadvantages:

- (a) It does not permit end to end comparison as no link can be made with publications before 2015/16;
- (b) It provides sub-optimal transparency given the practice of publishing names;
- (c) It does not inform the public of the extent to which suppliers provide legal aid in specific areas as the identity of the supplier will be withheld; *and*

(d) It does not allow for an assessment of gender impact (if any) on remuneration reforms as adding a gender flag could result in jigsaw identification when taken with the area of service information.

- 5.14 Given the above analysis, the LSA has considered whether publishing the identity of the supplier is permissible.
- 5.15 The LSA acknowledges that under section 3(2) of the Data Protection Act 2018, the information it holds in respect of barristers is “personal data” as it relates to an identified or identifiable living individual.
- 5.16 The LSA also recognises that information it holds in respect of solicitors’ firms is not personal data. It is the data in respect of the firm, even if that firm is a sole practitioner, with no other fee earners, and as such, it does not relate to an individual.
- 5.17 Article 5 of the General Data Protection Regulations 2018, Principles relating to the processing of personal data, indicates:
1. Personal data shall be:
    - (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);
    - (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with [Article 89\(1\)](#), not be considered to be incompatible with the initial purposes (‘purpose limitation’);
    - (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);
    - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the

purposes for which they are processed, are erased or rectified without delay ('accuracy');

- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with [Article 89\(1\)](#) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
- (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

**5.18 Article 6 of the General Data Protection Regulations 2018, Lawfulness of Process, indicates:**

- 1. Processing shall be lawful only if and to the extent that at least one of the following applies:
  - (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
  - (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
  - (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
  - (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;



- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

5.19 The LSA's Privacy Notice v2<sup>14</sup>, published October 2019, establishes the basis for the **lawfulness of processing personal information** both in respect of applicants for legal aid and suppliers of legal aid when it says:

*“The Legal Services Agency Northern Ireland (LSANI) is an executive agency within the Department of Justice (DoJ). We assess applications for civil legal services and make payments to the legal profession for services provided to clients under both criminal & civil legal aid schemes in Northern Ireland. In addition, we receive information to enable us to consider applications for expert witnesses. We process information in both electronic and paper formats for the purposes of our work in administering those legal aid schemes. Article 6(1)(e) of the ‘General Data Protection Regulations’ (GDPR) gives LSANI a lawful basis for processing your personal information, where a task is being performed in the public interest or the exercise of official authority laid down by law which would include the recovery of overpayments and debt and fraud prevention. The legislation which provides the statutory basis for our work and our requirement to process personal information is the ‘Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014’ and ‘The Civil Legal Services (Disclosure of Information) Regulations (Northern Ireland) 2015’.*

*Most of the information we process is about:*

- *Individual people and their applications for legal aid*
- *Information about solicitors and barristers who carry out legal aid work*
- *Information about experts who provide reports on legal aid cases*

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<sup>14</sup> <https://www.justice-ni.gov.uk/publications/lsani-privacy-notice>

- *The fees claimed and paid to solicitors and barristers who carry out legal aid work*
- *How the legal aid system is working, what types of help people are receiving and how much that help costs*
- *How we run the legal aid system and how we and the DoJ are working to improve the service provided.”*

5.20 In addition, the LSA considers that article 6(1)(f) is engaged in respect of the publication of the total sums paid to solicitors’ practices and barristers. The LSA takes the view that “*processing is necessary for the purposes of the legitimate interests pursued by the controller*” to ensure there is transparency as to how significant sums of public money are spent and the typical costs of cases. This is of course subject to circumstances where the “*interests are overridden by the interests or fundamental rights and freedoms of the data subject.*”

5.21 In respect of the **fairness** of processing, the consultation seeks views on how the LSA proposes to consider and assess how the processing may affect the individuals concerned and determine whether any adverse impact can be justified. The LSA notes from previous publication exercises that anxiety was expressed about potential adverse impact. Any objection must be fully explained and will be considered on its own facts.

5.22 The LSA considers that the LSA’s Privacy Notice as set out at paragraph 5.19 above clearly indicates that this information is in respect of how payments to suppliers will be collected. It also considers the longstanding publication of information about those who receive the largest amounts from legal aid would mean that suppliers could reasonably expect their data to be processed. The outcome of this consultation will inform an updated Privacy Notice which will specifically deal with the future publication of payments to practitioners setting out the legitimate interest in the processing of this information. The extent of the information that may be published is also the subject of consultation in this document.

- 5.23 As to the **transparency** of processing, the consultation seeks views on how the right to be informed of the intention to publish and the content of any publication should take place.
- 5.24 As to the **necessity** for publication, the requests for information received already this calendar year as set out in paragraphs 2.6 - 2.8 above require a new approach to the publication that puts a range of information in the public domain. This is further reinforced by requests from local and national media outlets. Specific proposals have been set out in paragraphs 4.4, 4.5, and 5.6 of this consultation paper.
- 5.25 The LSA considers proceeding to publish the information in the formats suggested is necessary as:
- (a) There is no public resource currently available which provides the very basic level of information which has been requested (paragraph 2.8). Hence there is a need for publication in a format similar to that proposed at paragraphs 4.4 or 4.5;
  - (b) Recurring requests are received for information about which suppliers absorb the majority of legal aid spend, whether from the media (paragraph 2.4) or elected representatives (paragraphs 2.5 and 2.6). Without publication in terms proposed at paragraph 4.4 or paragraph 4.5 there is no other way of dealing proactively with such requests;
  - (c) This provides an effective means to provide information on the legal aid scheme which indicates the number of solicitors practices and barristers which undertake legal aid work, the volume of cases which they are responsible for, and the value of remuneration they receive (paragraphs 5.6 and 5.20);
  - (d) There is no other publicly available source which would provide the Department with the number of persons providing services, which is required for the purpose of setting fees, i.e. “the number and general level of competence of persons providing those services” (paragraph 5.3);

- (e) There is no other objective source of information available to the public to enable them to identify suppliers who undertake significant legal aid work in the broad category of law they are interested in – the only resources are lists of people willing to do legal aid work which does not address the extent to which they undertake work or the volume of cases delivered in any broad category of the case;
- (f) No other publicly available reference point is available to policymakers and stakeholders to consider the cost and distribution of legal aid;
- (g) There is no other mechanism publicly available which allows for an assessment of gender impact (if any) on remuneration reforms;
- (h) It provides suppliers with an indication of the scale of work delivered by other suppliers; *and*
- (i) There is no other historical trend available on the consumption of legal aid apart from the information published.

5.26 Subject to other considerations, the Agency takes the view that paragraph 5.25 establishes the necessity for publication of supplier lists, based on the proposals set out at paragraphs 4.4 and 4.5, and that to deliver these desired outcomes this requires the suppliers to be identified. The Agency has concluded that the most effective and transparent way of making this information available is by reference to the name of the supplier.

- Q4. Do you agree with the principle that accountability for legal aid expenditure extends to which indicating which suppliers received public funds for the provision of publicly funded legal services? If you do not agree, please explain your objections.**
- Q5. Leaving aside how the supplier is identified, do you agree that, when possible, Table 11 presents an appropriate mechanism to provide a transparent mechanism to show how public funds are expended across the supplier base? If you do not agree, please explain your objections.**
- Q6. Do you agree that the considerations set out at paragraph 5.25 represent relevant and appropriate factors which establish the necessity to process information in respect of solicitors' firms and barristers? If you do not agree, please explain your objections.**
- Q7. Do you agree that the factors set out at paragraph 5.25 require the identity of the supplier to be made public? If you do not agree, please explain your objections.**

## 6. Scope of Publication

- 6.1 Historically, the NILSC and LSA have published details of the 100 solicitors' firms and barristers who received the highest value of payments. The consultation paper seeks views on the scope of future publications.
- 6.2 While it cannot be stated definitely why the "top 100" was settled upon for publication, it can be inferred that this reflected the fact that the top 100 was the highest definitive number of practitioners which was the subject of a media enquiry, see paragraph 2.4. This also represented a significant threshold point below which there would have been a diminishing return on the significant time required to reconcile the analysis for each supplier.
- 6.3 When the figures were published in respect of 2011/12, the NILSC introduced details of the banding of payments made to all providers within the Notes for Editors<sup>15</sup>. This was a feature of publications from 2011/12 to 2014/15. The information is summarised in Tables 12 and 13 below using the high-level summary contained in the Notes for Editors.

**Table 12**

<b>Year</b>	<b>Number of Solicitor Firms</b>	<b>Total Payments to Solicitor Firms (£m)</b>	<b>Total Payments to Top 100 Solicitor Firms (£m)</b>	<b>Top 100 Solicitors Spend as % of Total Solicitors Spend</b>
2011/12	495	68.4	48.5	70.9
2012/13	495	61.8	44.5	72.0
2013/14	495	69.0	48.6	70.4
2014/15	492	70.5	49.3	69.9

<sup>15</sup> The Notes for Editors and published lists from 2008/09 to 2014/15 can be reviewed at <https://www.justice-ni.gov.uk/articles/freedom-information-lsani>

**Table 13**

<b>Year</b>	<b>Number of Barristers</b>	<b>Total Payments to Barristers (£m)</b>	<b>Total Payments to Top 100 Barristers (£m)</b>	<b>Top 100 Barristers Spend as % of Total Barristers Spend</b>
2011/12	609	33.3	21.0	63.0
2012/13	609	32.3	20.9	64.7
2013/14	644	35.3	22.1	62.6
2014/15	638	34.8	21.4	61.5

6.4 From Table 12, on the previous page, it is clear that the selection of the top 100, certainly in the years reported in this format, that publication of payments made to those firms covered 70% of the total spend for solicitors. In fact, from the information in Table 7 at paragraph 2.7, in the years 2015/16–2017/18 the top 100 firms continued to receive around 70% of the total spend on solicitors, indeed in one year the figure was 73%.

6.5 In respect of counsel, Table 13 above indicates greater changes in the barrister population, but across the years, the top 100 accounts for 63% of the total barrister spend.

6.6 As such, the selection of the top 100 has some inherent merit as it identifies the recipients of almost three-quarters of payments to solicitors and just under two-thirds of the payments to barristers.

6.7 This consultation paper seeks views on whether the LSA should continue to use the top 100 as its publication trigger or if other trigger points would be more appropriate.

6.8 While it is not possible to seek views on all options, the following potential scenarios have been selected for this consultation:

- (a) retain the top 100 trigger;
- (b) publish details of each supplier that received a payment;
- (c) publish details of each supplier that received payments over a defined monetary threshold; *and*

(d) publish details of each supplier that received payments that cover a defined percentage of payments to that provider type.

6.9 Each of these scenarios will be considered in turn.

**Option 1: Retain the Top 100**

6.10 This option would provide consistency of approach throughout the publication period and also serves to give visibility to a significant proportion of the total spend to solicitors and barristers.

6.11 However, the approach does produce arbitrary results for example in 2014/15 the barrister who appeared at number 100 received £100,400. Other counsel may also have received between £100,000 and £100,400 but were excluded by the arbitrary ceiling of 100 names. In theory, it is also possible, although unlikely, that the sum paid to the 100<sup>th</sup> supplier may be paid to more than one supplier.

6.12 As such, this approach does not allow for significant clusters of cases to be identified so in the same year for solicitors, the arbitrary cut off after 100 (£213,919) providers means that there is no information as to the number of suppliers who may be clustered between £200,000 and £213,919.

**Option 2: Publish All Suppliers**

6.13 To provide maximum transparency the starting point would be to publish details of all suppliers who receive payments from legal aid.

6.14 However, this approach would also serve to highlight the very long tail of ever reducing levels of payments to suppliers. For example, from Table 5 (page 10), in 2017/18 payments totalling £4,519,609.86 were made to 266 solicitors' firms or put another way 57.1% of the solicitors' firms which received payments in that year accounted for 8.57% of the total payments to solicitors.

6.15 Both in respect of solicitors' firms and barristers, this raises the issue of whether full disclosure actually adds value or perhaps is open to misinterpretation. For example, the list of solicitors who receive small sums of money may reflect the fact that legal aid work is a small part of their practice while in respect of barristers may indicate that individuals do very little legal aid work or perhaps



the barrister is newly qualified and has not developed an extensive practice at that point of time.

**Option 3: Publish Suppliers who receive more than a specified threshold**

- 6.16 If publishing a fixed number of suppliers results in a lack of transparency of significant clusters below that number and publishing all suppliers' results in a long tail of suppliers who receive very modest levels of funding, another alternative is to settle on a qualifying monetary amount and all suppliers who receive more than that amount will have their details published.
- 6.17 For example, the Scottish Legal Aid Board publishes (alphabetically) details of all solicitors firms, advocates, and solicitor advocates who received fees over £25,000 inclusive of VAT<sup>16</sup>.
- 6.18 This information is supplemented by:
- (a) details of the top 20 in each of the categories by the value of payments<sup>17</sup>;
  - and*
  - (b) details of the distribution of payment profile across each of the categories.<sup>18</sup>
- 6.19 There is an attraction in setting a trigger amount which will determine whether details will be published. If the LSA adopted a trigger amount it would wish to set this trigger amount at a level that would exclude those suppliers who received more modest levels of funding.

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<sup>16</sup> SLAB Annual Accounts 2018/19

<https://www.slab.org.uk/app/uploads/2019/09/Firm-Earnings-2018-19-Alphabetical-Order.pdf>  
<https://www.slab.org.uk/app/uploads/2019/09/Advocate-earnings-table-2018-19-Alphabetical-Order.pdf>  
<https://www.slab.org.uk/app/uploads/2019/09/Solicitor-Advocates-Earnings-Table-2018-2019-Alphabetical-Order.pdf>

<sup>17</sup> SLAB Annual Accounts 2018/19

<https://www.slab.org.uk/app/uploads/2019/09/Firm-Earnings-2018-19-Top-20.pdf>  
<https://www.slab.org.uk/app/uploads/2019/09/Advocate-earnings-table-2018-19-Top-20.pdf>  
<https://www.slab.org.uk/app/uploads/2019/09/Solicitor-Advocates-Earnings-Table-2018-2019-Top-20.pdf>

<sup>18</sup> SLAB Annual Accounts 2018/19

<https://www.slab.org.uk/app/uploads/2019/09/Firm-Earnings-distribution-charts.pdf>

6.20 Table 14 below provides an analysis of the information published in respect of the distribution of payments in Scotland for 2018/19.

**Table 14**

	> £25k	% of Total	< £25K	% of Total	Total Number
<b>Solicitor Firms</b>	486	64.97%	262	35.03%	748
<b>Advocates</b>	97	36.74%	167	63.26%	264
<b>Solicitor Advocates</b>	21	25.30%	62	74.70%	83

6.21 Depending on the financial threshold set, there could be a disproportionate number of firms of solicitors' identities published in contrast to barristers as can be seen from the Scottish example. The LSA does not consider that this is a significant issue as long as the financial triggers provide proportionate information reflecting a similar proportion of the spend by practitioner type.

6.22 The LSA has considered what an appropriate financial trigger would be based on the last published year's information. Table 15 below indicates the potential threshold and the corresponding number of suppliers who could attract publication.

**Table 15**

<b>Trigger (£ 000)</b>	<b>Number of Solicitors' Firms</b>	<b>% of Total Solicitor Payment</b>	<b>Number of Barristers</b>	<b>% of Total Barrister Payment</b>
>£25	277	97.3%	231	90.4%
>£50	215	93.1%	165	81.5%
>£75k	184	89.3%	121	71.1%
>100k	145	82.8%	85	59.2%
>125k	120	77.5%	64	50.2%

**Footnote: Table 15 has been derived using payments made in 2017/18, which represents the most complete, up-to-date picture currently available.**

6.22 Based on the analysis above the LSA would propose a financial trigger of £125k for solicitors and £75k for barristers. This approach would provide comparable publication in terms of the percentage of spend and the number of suppliers named.

6.23 As part of this review the LSA proposes to commence publishing details of the payments made to solicitor advocates (from 2020/21 onwards when all payments are made via the LSA's new digital Legal Aid Management System, "LAMS", which became operational in July 2019). While this is primarily a feature of criminal practice in this jurisdiction, the absence of publication of the volume and value of payments to solicitor advocates means that there is an incomplete picture of the costs paid for advocacy. The LSA proposes that the processes which are developed for barristers should be applied to solicitor advocates to give a complete picture. As the payments in respect of solicitor advocates are paid to the solicitors' firms, the LSA is seeking views on how payments to solicitor advocates should be presented.

**Option 4: Publish Suppliers whose combined payments represent a percentage of total spend**

6.22 The other major alternative is to set a percentage of total expenditure and publish the details of all suppliers whose total payments are part of that level of expenditure, once ranked from highest to lowest.

6.33 For the years 2011/12 to 2014/15 the top 200 solicitors' firms accounted for 90% of total payments to solicitors while over the same period the top 200 barristers account for 85% of the payments to barristers. For 2017/18 the top 200 solicitors firms accounted for 91% of total spend. In the same period, the top 200 barristers accounted for 87% of total spend on barristers.

6.34 Based on the 2017/18 profile, Table 16 on the following page indicates the total number of solicitors and barristers who would be identified depending on a range of % of spend options. From this, the LSA would propose adopting 75% of the total payments to solicitors/barristers as the trigger for publication and this minimises publication of those suppliers who receive modest sums of public money while seeking to secure the policy intentions outlined at paragraph 5.25.

**Table 16**

Trigger % of Total Spend	Number of Solicitors' Firms	% of Total Number of Firms	Lowest payment in Solicitor banding	Number of Barristers	% of Total Number of Barristers	Lowest payment in Barrister banding
> 90	188	40.3%	£73,470	227	39.4%	£26,268
> 85	157	33.7%	£93,000	187	32.5%	£37,747
> 80	131	28.1%	£112,686	157	27.3%	£53,951
> 75	110	23.6%	£138,769	135	23.4%	£64,605
> 70	92	19.7%	£166,524	117	20.3%	£79,319
> 65	77	16.5%	£195,049	101	17.5%	£89,291

**Conclusion**

6.35 Having regard to the broad objectives set out at paragraph 5.25 the LSA considers that publication should be based on either a trigger reflecting payments over £125k for solicitors and £75k for barristers, or all payments up to 75% of the value of all payments to solicitors and barristers. The simple financial trigger has the advantage of providing suppliers with clarity of the trigger point and they will be aware of whether they are likely to exceed that threshold. However, on balance, the LSA considers that the percentage approach is more proportionate as it acts as a tracker on the expenditure profile and avoids unnecessary publication to meet the LSA stated objectives.

**Q8. Do you have a strong preference for option 1, option 2, option 3 or option 4? If so, please indicate the option and explain your reasons for preferring it.**

**Q9 If you prefer a financial threshold being the trigger within option 3, please indicate the financial threshold you would favour and the reason for your choice.**

**Q10 If you have a preference for a percentage of expenditure being the trigger within option 4, please indicate the percentage you would favour and the reason for your choice.**

**Q.11 Do you agree that LSA should explore the possibility of publishing the details of solicitor advocates separately from their parent firm's details? If you do not agree, please explain your objections.**

## 7. Adverse Impact of Publication

- 7.1 Having concluded that publication is necessary in pursuit of a legitimate public interest, which in turn involves the publication of the suppliers' identities, the LSA recognises that this requires the Agency to consider and protect peoples' rights and interests. To this end, the LSA has had regard to the relevant considerations as set out by the Supreme Court in *South Lanarkshire Council - v – Scottish Information Commissioners (2013) UKSC 55*. The LSA also had regard to *ICO v Halpin [2019] UKUT 29*.
- 7.2 In this regard, the LSA has sought to identify the **legitimate interest** in publishing payment details to provide information on how the legal aid budget is spent and the major recipients of funding. In so doing that will facilitate informed public debate and enable policymakers and service providers to have a common understanding of the spend and inform the public of those practitioners who undertake significant work in the area of law they may be interested in. This "*Purpose Test*" was set out in Sections 2 and 5 of this document.
- 7.3 Also, the LSA has set out why publishing details of payments is **necessary to achieve this legitimate interest** and considered whether there would be a less intrusive way of meeting this legitimate interest. The "*Necessity Test*" is set out in Section 5 of this document.
- 7.3 This section considers and seeks views on how the LSA should **balance the legitimate interest against the individual practitioner's interests, rights, and freedoms**. As such, this section addresses the "*Balancing Test*."
- 7.4 The LSA considers that the sustained practice of publishing this information for the years 2004-05 to 2014-15 creates an expectation of publication. Again, the terms of the suspension of publication on foot of a Judicial Review involved consulting on publication of the information with a clear intention of continuing to publish information in some format.
- 7.5 The LSA further considers that this consultation paper indicates the intention to publish and seeks views on the terms of that publication. The relevant privacy notice will be updated to reflect the outcome of this consultation exercise.

- 7.6 The LSA considers that in respect of solicitors' firms, the information is not personal data in respect of an individual. While it is recognised that many firms that undertake legal aid work are sole practitioners, the information published is in respect of the firm not the personal information of the individual. This distinction will be included in future "Notes for Editors" which will accompany future publications.
- 7.7 However, the information in respect of barristers is their personal information although in a professional context rather than information relating to their personal or indeed private life. Furthermore, it relates to the public work of individual barristers including advocacy in open court.
- 7.8 The information provided relates solely to legal aid payments, it does not purport to represent all payments received by a supplier as suppliers can receive payments from multiple sources, including other public authorities.
- 7.9 The information which is proposed to be published is information in respect of suppliers of legal services which is funded by legal aid. The LSA accepts that historically while the majority of solicitors' firms and barristers did not object to publication, typically there were a small number of representations made each year that objected to publication.
- 7.10 The types of objections submitted could be characterized as falling into the following categories:
- (a) a simple assertion that the information is personal data which should not be published;
  - (b) an assertion of embarrassment that the publication of payment details brings, either socially or with clients;
  - (c) reference to general concerns about personal security, usually from practitioners who undertake criminal work, including family vulnerability to tiger kidnapping;
  - (d) specific concerns outlined in detail.

- 7.11 In applying the balancing test, given the LSA’s assertion of legitimate public interest in publishing the information, the Agency has given limited weight to objections which simply asserted that the information was personal data.
- 7.12 Likewise against the background of the legitimate interest outlined at paragraph 5.25 the LSA historically did not consider that embarrassment which individuals may have experienced following the publication of payments they (or their firm) received outweighed the legitimate interest. Indeed, in respect of comments from clients, the Agency takes the view that any assisted person can ask how much their legal representatives were paid for the conduct of their case, as this is also the assisted person’s personal data.
- 7.13 The LSA engaged seriously with assertions of perceived threats to individuals or their families. The LSA has considered that Section 38 (Health and Safety) of the Freedom of Information Act provided a framework for considering representations in this regard. This section provides:
- (1) Information is exempt information if its disclosure under this Act would, or would be likely to—*
- (a) endanger the physical or mental health of any individual, or*
- (b) endanger the safety of any individual.*
- (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).*
- 7.14 The relevant guidance on this section indicates that for the exemption to be engaged it must be at least likely that the endangerment identified would occur. Even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
- 7.15 In essence the nature of the endangerment and the likelihood of it occurring as a result of disclosure of the information in question would have to be “*real, actual and of substance*”, rather than trivial or insignificant and that there must

be some causal relationship between the potential disclosure and the stated endangerment.

7.16 While previous assertions which related to threat were of a very generalised nature, in principle the LSA accepts that it would have to consider whether the three key conditions are satisfied to enable this exemption to be engaged. Each case would have to be considered on its fact and in this context, the LSA would have to have regard to whether:

(1) the harm that is envisaged would, or would be likely to occur relates to the applicable interests described in the exemption;

(2) there is a causal relationship between the potential disclosure of the information and the prejudice that the exemption is designed to protect against; *and*

(3) there is a real risk of endangerment, arising through disclosure.

7.17 The LSA would have to consider whether the release of the information would create the endangerment envisaged in each case.

7.18 Historically, the LSA has had to consider the unevidenced, subjective perception of threat. In such circumstances, the LSA has historically relied on the PSNI risk assessment which is commissioned as part of the publication process. Accordingly, as the general risk assessment typically indicated that the risk was “*low*” which is defined as “*an attack is unlikely*” the LSA did not consider that these concerns should bear determinative weight in the balance test. The LSA is unaware of any event where the threat anticipated by the supplier actually arose following publication.

7.19 The LSA would propose to continue to adopt this approach when applying the balance test to determining in general terms whether the publication should take place. The LSA would also propose to then adopt a similar procedure when dealing with individual objections to publication<sup>19</sup>.

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<sup>19</sup> Article 21 GDPR – Right to Object



7.20 Accordingly, the LSA proposes to discharge its responsibilities to undertake the balance test in two ways, first by considering the general publication process and second to consider individual objections to publication. The approach the LSA will take is summarised below:

**(i) General Publication**

- (a) the LSA will satisfy itself of the accuracy of the information to be published;
- (b) the LSA will commission from PSNI a general assessment of the risk to legal practitioners involved in legal aid work; *and*
- (c) subject to an appropriate risk assessment, the LSA will provide advance notice of publication to the relevant professional bodies and the suppliers involved in the publication process – reflecting the outcome of this consultation.

**(ii) Individual Objections**

- (d) as the LSA does not require the consent of suppliers as it is publishing based on legitimate interest rather than consent, it will consider all objections to publication;
- (e) the LSA will reply to objections promptly and set out reasons for its conclusions;
- (f) the LSA will consider objections against the policy framework established through this consultation exercise;
- (g) the LSA will consider unevidenced threat concerns against the prism of the PSNI assessment; *and*
- (h) the LSA will seek individual risk assessments from PSNI if evidenced threats are identified and will consider the objection with the benefit of a supplier-specific assessment.

7.21 The LSA will also deal with any issues raised as to the accuracy of the information to be provided. Once the LSA is publishing payments made exclusively through LAMS, suppliers will be able to run reports which will reflect the information which the LSA proposes to publish.

7.22 If, following consideration of an individual objection, it would be inappropriate to publish an individual's name, it will for that year use a cypher. The LSA recognises that this could give rise to a jigsaw identification of the individual.

**Q12. Do you agree with the approach to applying the balance test in respect of general publication? If you do not agree, please explain your objections.**

**Q13. Do you agree with the approach to applying the balance test when considering individual objections? If you do not agree, please explain your objections.**

## 8. Transparency of Process

- 8.1 The LSA is committed to transparency of processing. The LSA seeks through this consultation process to arrive at a position that sets out the content of and process for publication.
- 8.2 The LSA intends the publication to be an iterative, proactive process with indicative timescales.
- 8.3 The LSA will work toward an objective of publishing details of payments that were made exclusively through LAMS, i.e. publication of the 2020/21 payments, in the first half of the next financial year. With the LAMS financial reporting tool, practitioners will be able to run their reports to set out all payments received in the financial year, and as such, the LSA and practitioners will be working from a common data source.
- 8.4 However, until publication is completed for the years 2015/16–2019/20 the timeline for publication is likely to be in the final four months of the next financial year to allow for the necessary extraction of information and lead-in timelines.
- 8.5 Following this consultation exercise, the LSA proposes to establish a timetable which will cover the publication of the information for the financial years 2015/16–2019/20 at the same time.
- 8.6 The LSA expects the timetable to include the time required to:
- (a) marshal all details in keeping with the outcome of this consultation;
  - (b) secure PSNI risk assessments;
  - (c) issue letters to the Law Society and Bar notifying them of the intention to publish and to seek input to the notes for editors which will accompany publication;
  - (d) write to individual suppliers involved in the proposed publication;
  - (e) facilitate notifications of objections from suppliers;
  - (f) consider objections;

(g) commission individual risk assessments and consider same, if necessary;  
*and*

(h) publish the information.

8.7 When the information is published, it will be accompanied by background notes for media consumption.

8.8 Historically, all publications were accompanied by a Press Notice which contained detailed Notes for Editors, the content of which had been developed over the years with input from the Law Society and Bar. The Notes for Editors were developed to place the information in its proper context. For example, the Notes for Editors:

(a) provided a breakdown of payments made in bands of 100 practitioners to show the total distribution of funds across all firms of solicitors and barristers who undertook legal aid work;

(b) indicated that payments received in one financial year do not necessarily reflect work done in that financial year. Cases may have lasted more than one year and overall earnings may be increased by one exceptional case lasting several years for which payment was received during the financial year in question; *and*

(c) noted that while these figures represent gross payments made to solicitors and barristers during a year (subject to tax liability), some of those monies have been (or may in the future be) repaid to the Legal Aid Fund. This will happen in cases where the legally aided party wins the case and recovers costs from the opponent. Once those costs are recovered, the legally aided party's solicitor refunds some or all of the money to the Legal Aid Fund. As a consequence, the figures may not reflect the net cost of the Solicitor's or Counsel's fees to the Fund.

- 8.9 In respect of solicitors, the Notes for Editors typically indicated that:
- (a) firms listed are of different sizes. Where offices are operated at several venues, the total shown is an aggregate of them all. The sums shown do not represent the personal earnings or income of anyone solicitor;
  - (b) figures included under “disbursements” are payments made by solicitors on behalf of a client, for example, fees for expert witnesses. These figures are also scrutinised to ensure they comply with the relevant guidelines;
  - (c) the amount an individual firm receives year on year can fluctuate widely;
  - (d) all the figures listed detail VAT payments authorised by the Agency if the firm is VAT registered and disbursements are incurred. Firms must pay that VAT to HM Revenue & Customs; *and*
  - (e) as small businesses, solicitors’ firms are required to make payments for business outgoings including wages, national insurance contributions, pension contributions as well as overheads such as rates, rent, heat, electricity, IT, and telecommunications.

8.10 Likewise, in respect of payments made to barristers, the Notes for Editors normally indicated:

- (a) payments to barristers made by the NILSC and LSA through a solicitor in any financial year may not necessarily be received by the barrister in the same financial year;
- (b) the amount an individual receives year on year can fluctuate widely;
- (c) all the figures listed detail VAT payments authorised by the Agency if the barrister is VAT registered and disbursements are incurred. Individual barristers must pay that VAT to HM Revenue & Customs;

(d) barristers pay a percentage of their fees towards professional overheads;  
*and*

(e) barristers face the same expenses as any other self-employed person,  
including Income Tax and National Insurance contributions.

8.11 The LSA would intend to continue to issue a Press Release and Notes for Editors to support future publications. The LSA invites comments on how the Notes for Editors could be enhanced.

**Q14 Do you agree that the steps set out at paragraph 8.6 are appropriate? If you do not agree, please explain why, including any other steps which you consider appropriate.**

**Q15 Do you agree that publication should be accompanied by detailed Notes for Editors? If so, please indicate what further additional information should be included. If you do not agree, please explain your objections.**

## **9. Impact Assessments**

- 9.1 The DoJ has completed screening exercises for the equality, rural needs, regulatory, human rights and privacy impact of the proposed scheme.
- 9.2 In respect of each impact, the policy has been screened out.
- 9.3 These decisions will be reviewed following the completion of the consultation exercise, taking account of any additional evidence received. The reports of the screening exercises are appended to the consultation document.

**Q16 Do you have any comment on the impact screening conducted by the Department?**

## **10. Next Steps**

- 10.1 Following the consultation exercise, the draft proposals will be finalised and a publication scheme for the information will be developed, including amendments to the current privacy notice.
- 10.2 The LSA will then work to delivering against the publication scheme.



## Annex A

### Reports of Impact Screening Exercises

#### Outcome of Screening Exercise

IMPACT ASSESSMENT / APPRAISAL	FULL ASSESSMENT / APPRAISAL REQUIRED		REASON
	Yes	No	
<b>SOCIAL IMPACTS</b>			
Crime		X	No Impact
Community Safety & Victims		X	No impact
Equality		X	No Impact
Health		X	No impact
Human Rights		X	No impact
Rural		X	No impact
Social Inclusion		X	No impact
<b>ECONOMIC IMPACTS</b>			
Economic Appraisal		X	No impact
Economic Assessment		X	No impact
Regulatory		X	No impact
Legal Aid		X	Business case assesses impact
State Aid		X	No impact
<b>ENVIRONMENTAL IMPACTS</b>			
Environmental		X	No impact
Strategic Environmental		X	No impact
<b>SUSTAINABLE DEVELOPMENT IMPACT</b>		X	No impact

Details of screening are available upon request.

## Annex B

### *Consultation Questions*

- Q1** Do you agree that there is a legitimate public interest in the provision of high-level information which indicates the areas in which legal aid is expended? If not please explain your objections.
- Q2** Do you agree that the proposed approach to publication in Table 9 would be an appropriate starting point pending the development of Official Statistics? If not please explain your objections.
- Q3** Do you agree that the proposed approach to publication in Table 10 would be an appropriate starting point pending the development of Official Statistics? If not please explain your objections.
- Q4** Do you agree with the principle that accountability for legal aid expenditure extends to which indicating which suppliers received public funds for the provision of publicly funded legal services? If you do not agree, please explain your objections.
- Q5** Leaving aside how the supplier is identified, do you agree that, when possible, Table 11 presents an appropriate mechanism to provide a transparent mechanism to show how public funds are expended across the supplier base? If you do not agree, please explain your objections.
- Q6** Do you agree that the considerations set out at paragraph 5.25 represent relevant and appropriate factors, which establish the necessity to process information in respect of solicitors' firms and barristers? If you do not agree, please explain your objections.
- Q7** Do you agree that the factors set out at paragraph 5.25 require the identity of the supplier to be made public? If you do not agree, please explain your objections.
- Q8** Do you have a strong preference for option 1, option 2, option 3, or option 4? If so, please indicate the option and explain your reasons for preferring it.

- Q9** If you have a preference for a financial threshold being the trigger within option 3, please indicate the financial threshold you would favour and the reason for your choice.
- Q10** If you have a preference for a percentage of expenditure being the trigger within option 4, please indicate the percentage you would favour and the reason for your choice.
- Q11** Do you agree that LSA should explore the possibility of publishing the details of solicitor advocates separately from their parent firm's details? If you do not agree, please explain your objections.
- Q12** Do you agree with the approach to applying the balance test in respect of general publication? If you do not agree, please explain your objections.
- Q13** Do you agree with the approach to applying the balance test when considering individual objections? If you do not agree, please explain your objections.
- Q14** Do you agree that the steps set out at paragraph 8.6 are appropriate? If you do not agree, please explain why, including any other steps which you consider appropriate.
- Q15** Do you agree that publication should be accompanied by detailed Notes for Editors? If so, please indicate what further additional information should be included. If you do not agree, please explain your objections.
- Q16** Do you have any comment on the impact screening conducted by the Department?