

Transforming Legal Aid: Delivering a more credible and efficient system
Response from the Low Incomes Tax Reform Group ('LITRG')

1 About Us

- 1.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 1.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 1.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

2 Our comments

- 2.1 We welcome this opportunity to comment on the latest proposals by the Ministry of Justice for reform of the legal aid system.

- 2.2 Although we are primarily a tax body with limited involvement in legal aid issues, we have extensive knowledge of the problems that low income people face when trying to navigate the complexity of the tax credits and benefit systems. We have a particular expertise in tax credits law and practice.
- 2.3 When we replied to your initial consultation which set out plans for the first stage of legal aid reforms in 2011, we noted a number of reasons why the timing of the proposed changes was unfortunate¹. Since we wrote that response in 2011, there have been a number of changes in the tax credits and benefits systems that mean legal aid is more important than ever in ensuring low income people are not disadvantaged in their dealings with Government departments.
- 2.4 In particular we would like to draw attention to the following which are relevant to any further legal aid cuts.
- The general cuts programme continues to have a damaging effect on the capacity of advice agencies and welfare rights departments of local authorities despite a small amount of additional funding being made available.
 - Universal Credit has started in the pathfinder areas and will be rolled out nationally from October 2013. This will bring unprecedented change to the benefits system.
 - Government departments dealing with benefits and credits have started to reduce their face-to-face² and hard copy support. Universal Credit is being set-up to be dealt with online.
 - HMRC have significantly increased their tax credits compliance activity and, following a recent Public Accounts Committee report³, are likely to continue to increase the numbers of investigations. In turn this has led to a huge increase in the numbers of appeals, disputes, complaints and penalties which will only continue to grow. We are particularly concerned about the conflation of fraud and error (in reality, the two being altogether different with correspondingly different causes, effects and solutions) and the fact that official error in tax credits is not being recognised. Often this means that claimants who make innocent mistakes are treated harshly in a one-size-fits-all approach. This makes it even more important for claimants to have access to the courts to ensure statutory safeguards are enforced.

¹ See

[http://www.litrg.org.uk/Resources/LITRG/Documents/2011/03/Legal_aid_consultation_LITRG_response\(14Feb11\).pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2011/03/Legal_aid_consultation_LITRG_response(14Feb11).pdf)

² One example of this is HMRC's plan to close Enquiry Centres, starting from June 2013 with a pilot in the North East of England. See <https://www.gov.uk/government/consultations/supporting-customers-who-need-extra-help-a-new-approach>

³ <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/135/13502.htm>

- In preparation for the transition of 6 million tax credits claimants to Universal Credit, various changes are being made to the tax credits system which in turn are likely to create more appeals and disputes.
- After an initial, limited pilot in 2012/13, HMRC have just rolled out to the majority of employers their Real Time Information (RTI) system, the data from which will also be used by Department of Work and Pensions (DWP) to calculate and alter Universal Credit awards. There is the potential for claims to be wrong and claimants left trapped in a never-ending circle between their employer, HMRC and DWP without any means of adequate or joined-up support.

- 2.5 The first stages of reform to legal aid – to remove most welfare benefit support from the scope of legal aid – was a devastating blow for low income people at a time when their need for help is rising due to the changes to the systems outlined in the preceding paragraph. The additional funding given has not gone even a small way to ensuring claimants are properly represented.
- 2.6 Any further changes, such as those outlined in the consultation document, will have similar damaging consequences.
- 2.7 For example, the proposals set out in Paragraph 3.61 onwards seek to limit payment for permission work in judicial review cases. We believe this would have a negative impact on welfare and tax credits claimants, especially as more and more decisions are being left to official discretion and the only legal remedy against bad decision making is via judicial review. The restrictions proposed are likely to cause providers to be overly cautious in making applications for judicial review which would mean decisions of DWP and HMRC going unchecked.
- 2.8 In conclusion, we strongly recommend that a time in which large-scale welfare reforms are being brought into force and generating more and greater need for legal advice among vulnerable people is not the right time to be proposing yet more restrictions in the availability of legal aid. The changes proposed should be shelved indefinitely, or at the very least until the changes in prospect have thoroughly bedded down and the quality of official decision making has reached a more acceptable level.

LITRG
4 June 2013