

Ministry of Justice: Crown Court means testing - the decision of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Response from Thompsons Solicitors

December 2012

About Thompsons

Thompsons Solicitors is the UK's most experienced trade union law firm. It operates a specialist criminal law unit from seven regional centres providing national coverage for union members accused of work-related crimes.

The Thompsons criminal law unit achieves enormous success, with 95% of referrals either dealt with as "no further action" (NFA) or our clients are acquitted.

Introduction

We are opposed to means testing in the Crown Court. While we accept that some wealthy defendants who are convicted should contribute towards the costs of their defence in the Crown Court, in our experience it is ordinary working people who are often innocent and who are asked to make substantial and unaffordable contributions.

In our view the income and capital thresholds are set far too low and have resulted in extreme hardship for innocent working people who find themselves caught up in the criminal justice system.

In responding to this consultation we address only those questions which impact directly on our clients.

Question 1: Do you agree that the IES should operate as set out above?

The proposals are aimed at defendants who may be seeking to mislead by not producing evidence to corroborate the information contained on a legal aid application form submitted. It does not recognise the very real difficulties that can be experienced by those attempting to gather the extremely detailed information required in order to calculate the contribution.

We have experience of individuals simply not being able to access the required information from their bank or employer. This is most common in work related matters where the defendant has been suspended from their employment and is prohibited under the terms of his suspension from making contact with their employer.

We accept that some teeth are required in order to prevent attempts to mislead. However the power and sanctions proposed will mean that those who are using best endeavours to provide the information required for the IEC are penalised. In our view, each application should be considered on a case by case basis with discretion exercised by the LSC to allow and encourage defendants to comply, without a draconian sanction being automatically applied without any consideration of the individual circumstances.

Question 2: Where a defendant fails to comply with a request for further information or evidence in relation to capital assets, do you agree with our proposal to apply a sanction which allows the LSC to deem that the defendant has sufficient capital resources to pay all their outstanding defence costs?

We welcome the provision that allows the defendant to show reasonable excuse for not providing the necessary information. We suggest that some examples of what would amount to a reasonable excuse are provided together with the provision for the exercise of discretion to avoid a too prescriptive test.

In our experience, if a defendant is sentenced to a period in custody following conviction it is extremely difficult to obtain documentary evidence requested. To assume that the absence of necessary documentation means that a defendant can afford all their defence costs will, in our view, lead to great unfairness and a denial of justice.

Question 3: Do you agree that the above approach provides sufficient flexibility in light of the situations where a defendant's liability under or to an ICO may change?

Question 4: Where a defendant's financial circumstances change, is one month a reasonable period of time in which to expect the defendant to submit the relevant application form supported by evidence in order for any potential revision of liability to take effect from the date of the change, rather than the date of notification of the change?

Question 5: In what sort of special circumstances should the LSC extend the proposed one month rule regarding the deadline for submission of an application in respect of a change in financial circumstances in order for any potential revision of liability to take effect from the date of the change, rather than the date of notification of the change?

We consider that the LSC needs to take a more flexible approach to this situation. The length of time which would be reasonable is totally dependant on the individual defendant's circumstances. Each case should be considered on a case by case basis with provision for the assessor to exercise discretion. To have a list of 'special circumstances' is too prescriptive.

Question 6: In this situation, do you agree with our proposal to refuse pro rata refunds?

We believe this will act as a disincentive to any defendant to make a lump sum settlement in respect of contributions and simply cannot be justified. If an individual's circumstances change and they are entitled to a refund on the basis of the re-assessed contributions then the pro rata balance must be refunded at that stage.

Question 7: Do you agree with our proposal to require a defendant to make an additional single payment under an ICO in order to cover any shortfall between the amount a defendant has paid or was liable to pay under an ICO and the amount they should properly have been asked to pay from the outset?

Question 8: Do you agree with our proposal to require a defendant to make an additional single payment under an ICO where that additional liability is established following a re-assessment arising from an administrative error or mistake in undertaking

In our view the changes proposed to the implementation of the scheme seek only to make it easier for the LSC to operate and has no regard for the circumstances of the individual. Calculations of individual liability should be made in each case.

Operating a blanket approach to recovery simply to allow the scheme to operate in a more effective manner, regardless of the consequences to individuals, is unjust and inappropriate.

Question 9: What are your views on retaining the option to collect further income contributions from a defendant's income earned following their conviction?

The current liability to pay contributions on the calculated basis is extremely onerous. To suggest that such contributions should continue following conviction will result in extreme hardship.

Question 10: Do you agree with our proposals for the operation of the change in a defendant's financial circumstances in relation to liability under a CCO?

We have no comments

Question 11: Do you agree with our proposed approach to the operation of the MVO scheme?

We do not agree. Extensive methods of enforcement exist. It is unnecessary to utilise still more draconian methods.

Question 12: In what situations should we consider safeguards for dependant family members and how could this be evidenced?

We have no comments

Question 13: Do you have any additional or alternative proposals to improve collection and enforcement rates more generally:

Our experience indicates there is a serious communication problem between Rossendales staff and the LSC. This is frustrating for us and distressing for our clients.

Communication between the LSC and Rossendales staff needs to be improved and sped up. Rossendales staff should be trained sufficiently to understand the process and have some 'ownership' of files to prevent individuals feeling they are being ignored.

Question 14: Do you agree that any impact on legal aid providers to our proposals is negligible?

We have no comments

Further information:

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