

Respondent information

Name

Sarah Jack

Email

[redacted]

Are you responding as an individual or an organisation?

Organisation

Please enter your organisation's name

Drummond Miller LLP

SLAB would like your permission to publish your organisation's consultation response. Please indicate your preference.

Publish response with name

Are you content for SLAB to contact you again in relation to this consultation exercise?

Yes

Specific consultation questions

Q1: What are your views on how we assess reasonableness as part of the taxation test?

SLAB should include additional factors

Please provide further information of any changes proposed and the reason(s) for your answer:

When assessing reasonableness, you state that you will pay for work that was appropriate to do given the facts and circumstances of the case and where the amount of work carried out was appropriate to the facts and circumstances of the case. It is our practice to front load cases ie put a lot of work, in for example an immigration case, to taking a detailed statement and preparing detailed representations to the Home Office. The result is that we have a very high success rate in our cases. This then reduces the cost to the public purse of paying for appeals/judicial review. However, the fees that we charge for this front loading of cases are often abated, or for example in immigration cases, the work is charged at the lower framing rate. This underestimates the worth of our legal skills. Is there a way that the question of what work is reasonable can taken this approach into account? It is disheartening when we prepare a case in a professional way to then be abated in this way. It also makes the work unprofitable for us.

Q3: What are your views on how we could best keep up to date on what is 'usual' in any given practice area?

We note that you use "historical precedent, currently accepted practice or patterns of charging for particular areas of work" in making the above assessment. Where can practitioners access this information? There should be more transparency and ease of access to this information. SLAB should work closely with practitioners through representative bodies such as Immigration Law Practitioners Association or the Law Society of Scotland Immigration and Asylum Sub Committee, and the equivalent in other practice areas. It feels like a gamble in doing some work, not knowing if we will be paid or not.

Q4. Does the assessment process set out on page 11 of the consultation paper or appended policy statements raise any concerns in relation to treatment of care experienced young people, equality groups or other vulnerable people?

Yes

Please provide the reason(s) for your answer:

By its nature, legal aid is available to the poorest in society who are likely to be the least educated and marginalised. Many have also undergone trauma in their lives, eg victims of domestic abuse/victims of trafficking. To expect clients take in, understand and retain everything discussed at a meeting without advice being followed up in correspondence fails to take into account the particular needs of vulnerable groups. The work on which we give advice is often complex. We send detailed letters of advice to our clients after initial meetings so that clients can digest the advice given or perhaps look at it with a support worker/member of their community. The advice may set out various options and the

advantages/disadvantages of each option. The assessment fails to take into account the complexity of these issues/ vulnerability of clients/language barriers when such letters are paid at "formal" rates. As solicitors we have a duty of care to our clients, as well as having risk management responsibilities, and it is essential that our clients can understand our advice and take informed decisions.

Q5: To what extent is the purpose of the policy statements clear and understandable?

The purpose is clear

Q6: How useful is seeing the policy statements as an underpinning for future guidance? Please provide reasons for your response.

It is essential so that we can then determine whether or not it will be profitable for us to undertake the work, and assist us in tailoring our approach to each case matter.

Q7: What are your views on how the meetings and letters policy as stated are reflected in current practice?

We have already detailed our concerns above in relation to how letters of advice after a first meeting are paid for. In the context of immigration, letters of representation to the Home Office are also charged at the formal rate which undervalues the solicitor's work where their practice is to front load a case.

Q9. What are your views on the proposed changes to our policy on outlays related to travel and associated expenses?

The cap of £108.15 is, potentially, too low for those having to travel to cities within Scotland where it is not possible to get accommodation, breakfast and evening meal and subsistence for this amount. We agree that counsel and agents should be treated the same but the regulation vis-à-vis counsel's allowance may have to be amended to provide a more realistic figure (eg £150). Otherwise, agents and counsel will simply not undertake work that involves travel and those most at need in society will not have access to justice. Similarly, where there are no local solicitors with the appropriate knowledge or expertise, the allowance of counsel and/or solicitor to travel and not be placed out-of-pocket to do so is imperative.

Q12. What are your views on the proposed changes to our spoken language interpreting and translation policy?

This seems sensible

Q16. Please provide your views on any further aspect of accounts assessment that has not been covered by responses above.

When an application is made to the Home Office, a lengthy form needs to be completed. These forms require a detailed understanding of the client's immigration history. It is out practice to complete the forms without the client being present and then a list of questions provided to the client. We work in this way because we may need to access the client's immigration history from archived files or address details from supporting evidence from doctors/police. For us to be able to charge for completion of these forms at "attendance rates", the client needs to be present. However, this is a really inefficient way of completing a lengthy form. We are then penalised for trying to prepare the work in an efficient way by being paid a framing charge rather than an attendance charge. Is this something the board can reconsider?

The Home Office and courts are all moving forward with "digital" times. A lot of time is spent scanning, organising and preparing documents using digital platforms. This requires some legal knowledge and is not just administrative work. How can the board ensure that this work is not simply treated as administrative work and therefore not paid?

The Law Society of Scotland are consulting on an Accredited Paralegal Scheme for those who carry out immigration and asylum work. Has the board considered at what rate their work will be paid?