

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



## International Bar Association Consultation on Legal Aid Guidelines in Civil, Administrative and Family Justice Systems

### Table of Contents

INTRODUCTION.....	2
PART A – RESPONDING TO THE CONSULTATION.....	3
PART B – SHAPING LEGAL AID: AIMS & DEFINITIONS.....	4
Legal aid in civil, administrative & family justice systems .....	4
Defining legal aid.....	4
PART C – FUNDING, SCOPE & ELIGIBILITY .....	6
1. Funding legal aid (Proposition 1-3).....	6
2. The scope of legal aid (Propositions 4-6).....	19
3. Eligibility for legal aid (Propositions 7-11).....	25
PART D – THE ADMINISTRATION OF LEGAL AID .....	35
1. The administration of legal aid (Propositions 12-15).....	35
2. Avoiding corruption & favouritism in the legal aid system (Propositions 16-20) .....	42
PART E – THE PROVISION OF LEGAL AID (Propositions 21-27).....	47

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

## INTRODUCTION

The IBA Bar Issues Commission and the IBA Access to Justice and Legal Aid Committee are collaborating on developing guidance on what works in creating a good legal aid system, and as part of this are holding a consultation on access to legal aid in civil, administrative and family justice systems.

The first step of the process was a very successful Legal Aid Roundtable in conjunction with the Bar Leaders Conference in Belfast at which many bar leaders observed the high quality discussion of many of the world's leading legal aid experts. This consultation document was prepared taking into consideration the findings of the Legal Aid Roundtable and the responses to the consultation will be discussed at a session at the IBA Annual Conference in Sydney in October 2017. We hope the Council of the IBA will adopt the guidance that emerges from the consultation at the Rome Annual Conference in 2018.

**We are seeking responses from IBA members and non-members by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org).**

The aim is to produce a guidance document on the matters that governments could usefully consider when developing or reforming their legal aid systems, with particular reference to civil, administrative and family justice systems, and to offer examples of good practice from around the world. We are not including here criminal justice systems because in December 2012 the United Nations adopted the 'UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems', the first international instrument on the right to legal aid.<sup>1</sup>

This consultation document is intended as an issues paper, setting out some preliminary propositions and seeking a wide range of views so that the IBA can bring its experience to bear both organisationally and individually. We are consulting with members and non-members from across the globe so that the resulting guidance document is relevant across jurisdictions. We are particularly interested to receive practical examples from a range of countries.

At earlier stages of developing the consultation document, we found that some participants put in responses to earlier questions that would have better fit with later ones. **We therefore suggest that you read the whole document before starting to respond to it, so as to avoid this problem.**

---

<sup>1</sup> See <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

## PART A – RESPONDING TO THE CONSULTATION

This consultation document is intended as an issues paper, setting out some preliminary propositions and seeking a wide range of views so that the IBA can bring its experience to bear both organisationally and individually. We are consulting with members and non-members from across the globe so that the resulting guidance document is relevant across jurisdictions. We are particularly interested to receive practical examples from a range of countries.

**We are seeking responses from IBA members and non-members by 25 August 2017.**

**Please complete this document and send it, along with all further documents and information to [divisions@int-bar.org](mailto:divisions@int-bar.org).**

To start, please indicate:

1. Your name

Judith McGimpsey

2. Organisation

The Bar of Northern Ireland

3. Relevant jurisdiction

Northern Ireland

4. Whether you are responding on behalf of a professional body of lawyers.

The Bar of Northern Ireland

5. Whether you/your organisation would like to be named in the guidance document. While comments will not be attributed to particular individuals/organisations, you/your organisation might be identifiable from the substance of your comments. So please clearly indicate if you/your organisation wish to remain anonymous.

**Your data will not be shared with any persons or third party, and is not used for promotional purposes.**

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

**There is no requirement to address all of the propositions in the consultation document. Feel free to address only some of the propositions.**

## **PART B – SHAPING LEGAL AID: AIMS & DEFINITIONS**

### **Legal aid in civil, administrative & family justice systems**

In 2012, the UN General Assembly adopted Resolution 67/187 on the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ('UN Principles and Guidelines on Criminal Legal Aid'). That Resolution recognised that legal aid is "*an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law*".<sup>2</sup>

It is our position that legal aid is also an essential element in a fair, humane and efficient civil, administrative and family justice system that is based on the rule of law. This IBA consultation therefore focuses on access to legal aid in civil, administrative and family justice systems. It is in the spirit of UN Resolution 67/187 and the recognition therein that legal aid is "*an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process*".<sup>3</sup> The Resolution also recognises that the UN Principles and Guidelines on Criminal Legal Aid "*can be applied by Member States, taking into account the great variety of legal systems and socioeconomic conditions in the world*".<sup>4</sup>

We aim to produce a guidance document on principles that should be considered in creating, amending and running legal aid systems in civil, administrative and family law that is also relevant across jurisdictions.

### **Defining legal aid**

We are aware that in some jurisdictions '**legal aid**' includes pro bono activity, public legal education, and the provision of information to the public. While recognising the importance of these activities to the rule of law and access to justice, we are defining '**legal aid**', for the purposes of this document, as follows:

- Legal advice, assistance and representation;
- For people or groups who cannot afford to pay privately for legal help;
- Mainly provided by lawyers and paralegals;
- For specific legal problems;
- Funded, in whole or in part, by the state; and
- Including court fee waivers and other financial concessions.

<sup>2</sup> UN General Assembly Resolution 67/187 on the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012) at page 2, available at [http://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf)

<sup>3</sup> Principle 1 of the UN Principles and Guidelines on Criminal Legal Aid.

<sup>4</sup> UN General Assembly Resolution 67/187 at page 3.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



We are doing so because we consider these to be the core qualities of legal aid.

For the purposes of this document, legal aid refers to both primary and secondary legal aid. (Some jurisdictions distinguish between primary and secondary legal aid. Primary legal aid has been described, for example, as legal support provided by “non-certified” lawyers (for example, paralegals) and which does not include “representation before courts or other activities that may only be performed by certified lawyers”.<sup>5</sup>)

While for the purposes of this document we define legal aid as *mainly* provided by lawyers and paralegals, we use the broader term ‘**legal aid provider**’ throughout the document in recognition that a wider range of stakeholders can undertake legal aid work. For example, the UN Principles and Guidelines on Criminal Legal Aid provide:

*“The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia”.*<sup>6</sup>

We use the term ‘**body administering legal aid**’ throughout the document. The administration of legal aid includes holding the legal aid budget; making decisions on the grant of legal aid; and paying the legal aid providers who undertake the work. It may also include employing lawyers to provide legal aid services; and allocating cases to legal aid providers.

The term ‘**professional bodies of lawyers**’ is used here to refer to national and international law societies and bar associations.

---

<sup>5</sup> ‘International Study of Primary Legal Aid Systems with the Focus on the Countries of Central and Eastern Europe and CIS’ (2012) at page 14, available at [http://www.ua.undp.org/content/dam/ukraine/docs/seichasen\\_4708604\\_eng-international\\_study-legal\\_aid\\_systems.pdf](http://www.ua.undp.org/content/dam/ukraine/docs/seichasen_4708604_eng-international_study-legal_aid_systems.pdf)

<sup>6</sup> Para 9 of the UN Principles and Guidelines on Criminal Legal Aid.

London

São Paulo

Seoul

The Hague

Washington DC

## PART C – FUNDING, SCOPE & ELIGIBILITY

Part B is concerned with funding, scope and eligibility. The first section ‘Funding Legal Aid’ looks at the factors that should be considered in setting a legal aid budget (Propositions 1-3). The second section ‘The Scope of Legal Aid’ considers the factors that should be taken into consideration when deciding on the scope of legal aid (Propositions 4-6) – by ‘scope’ we mean whether the problem or the type of case, is one for which legal aid is available. Section 3 ‘Eligibility for Legal Aid’ considers the factors that should be considered when deciding on eligibility for legal aid (Propositions 7-11) – here we focus on the situation of the individual (including their financial means and vulnerability) and the merits of the individual’s case (including the interests of justice and likelihood of success). Some issues cut across both scope and eligibility for legal aid but have been separated into two sections for practical purposes in this consultation document.

### 1. Funding legal aid

#### The costs and benefits of legal aid service delivery

Just as the rule of law is seen as an essential ingredient for economic prosperity, access to justice, including legal aid, should be recognised as an economic benefit. For example, the UN’s 2030 Agenda for Sustainable Development states:

*“We envisage a world ... in which democracy, good governance and the rule of law as well as an enabling environment at national and international levels, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger”.*<sup>7</sup>

Crucially, the UN Sustainable Development Goals include access to justice and the rule of law. Target 16.3 specifically aims to “Promote the rule of law at the national and international levels and ensure equal access to justice for all”.<sup>8</sup> It is hoped that Goal 16 will have great relevance for policy-makers in the field of legal aid.

Contrary to the prevailing narrative that legal aid is a drain on limited resources, research shows that provision of access to justice and legal aid can prevent adverse consequences on the health, employment and well-being of individuals and their families.<sup>9</sup> It is for this reason that we suggest that legal aid should be seen as an important element in an integrated justice policy that also

<sup>7</sup> ‘Transforming our world: the 2030 Agenda for Sustainable Development’ (2015) at para 9, available at <https://sustainabledevelopment.un.org/post2015/transformingourworld>

<sup>8</sup> Ibid at Goal 16 ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’.

<sup>9</sup> See, for example, ‘Submission of the Law Society of England and Wales to the Labour Party Review of Legal Aid’ (2016) at para 3.1, available at <http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/submission-to-the-labour-party-review-of-legal-aid/> See also ‘Report of the Deputy Minister Advisory Panel on Criminal Legal Aid’ (Canada, 2014) at Annex 3, ‘Socio-Economic, Health and Legal Impact of Criminal Legal Aid’, available at <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/rr14/index.html>

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

includes, for example, preventative action, public legal education and the provision of information to the public. The reference here to preventative action, for example, seeks to recognise that “prevention is better than cure”. Over time the costs of the justice system could be reduced if health, education and social support for disadvantaged families were improved.

This link is being recognised in jurisdictions like Australia where there are ‘Health Justice Partnerships’, collaborations between health and legal organisations. Health Justice Australia explains that “*Adding a lawyer to the healthcare team means that healthcare professionals are more able to spot a legal problem and have someone nearby who can solve it. And because legal problems can affect health, it means patients get better, more holistic healthcare too*”.<sup>10</sup>

Working together, they can better identify and respond to the legal and social needs that make it harder to be healthy – and stop their existing problems from reaching crisis point.

There is also a related issue here of the additional costs posed by litigants in person. As Lord Neuberger, President of the UK Supreme Court recently stated:

*“These changes over the past 20 years in civil and family legal aid have resulted in many people being faced with the unedifying choice of being driven from the courts or having to represent themselves. The substantial increase in litigants in person represent[s] a serious problem for judges, for court staff and for other litigants and their lawyers. A trial or any other hearing involving a litigant in person is likely to last far longer (apparently reliable research suggests three times longer) and involve far more work for, and pressure on, the judge than a trial with legal representatives on both sides, and an inevitable result of longer hearings is delays to other cases. The effect on an undermanned and demoralised court staff of having to deal with more litigants in person can only be imagined”.*<sup>11</sup>

The difficulty lies in quantifying the costs and benefits of legal aid services (and in factoring counter-factual scenarios – failing to provide legal aid services – into the budgeting process).

The IBA is collaborating with the World Bank to identify a robust methodology for quantifying the benefits of legal aid to government and to society. There is existing research in this area. For example, PricewaterhouseCoopers (PwC) was engaged by National Legal Aid to estimate the economic benefit of legal aid assistance to the community in Australia.<sup>12</sup> The report concluded that “*Governments have a responsibility to provide access to justice, including access to legal assistance, as part of the provision of basic human rights. Beyond this responsibility there is a strong economic justification for the provision of legal aid on multiple levels*”.<sup>13</sup> It also concluded that “*there is a strong economic case for appropriately and adequately funded legal aid services,*

<sup>10</sup> See <http://www.healthjustice.org.au/hjp/what-is-a-health-justice-partnership/>

<sup>11</sup> Lord Neuberger, President of the Supreme Court, Welcome address to Australian Bar Association Biennial Conference (3 July 2017) at para 11, available at <https://www.supremecourt.uk/docs/speech-170703.pdf>

<sup>12</sup> PwC ‘Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law’ (2009) at page i, available at: <http://www.nationallegalaid.org/assets/General-Policies-and-Papers/Economic-Value-of-Legal-Aid-6-Nov-2009.pdf>

<sup>13</sup> Ibid at page ix.

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

*based on the magnitude of the quantitative and qualitative benefits that this funding can return to individuals, society and the government”<sup>14</sup>*

As part of the process of estimating the costs and benefits of legal aid services, it will be important to understand the impact of legislative and policy proposals on the justice system.

For example, in the UK, the ‘Justice Impact Test’ is a mandatory impact test, which considers the impact of policy and legislative proposals on the justice system.<sup>15</sup> It is described in guidance as a “*tool that helps policy-makers across government find the best way of achieving their policy aims whilst minimising the impact on the justice system*”.<sup>16</sup> It assesses policy proposals from government departments in order to “*identify, quantify and cost their impacts on the civil and criminal justice system and covers: Legal aid; Courts, tribunals and the judiciary; Prosecuting bodies; Prisons and probation services; [and] Youth justice services*”.<sup>17</sup>

**Proposition 1:** Legal aid service delivery generates significant social and economic benefits. In the budget formulation process governments should estimate the social and economic costs and benefits of legal aid service delivery, including by taking into account the social and economic costs of failure to deliver services.

**Consultation Questions:**

1. Do you agree with Proposition 1?

- Yes
- No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

<sup>14</sup> Ibid at pages ix-x.

<sup>15</sup> See <https://www.gov.uk/government/publications/justice-impact-test>

<sup>16</sup> Ministry of Justice, ‘Justice Impact Test: Guidance’ (2016) at page 3, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/564734/justice-impact-test-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564734/justice-impact-test-guidance.pdf)

<sup>17</sup> Ibid at page 3.

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)



Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

---

---

2. In response to this question, we would value views on:

a) Whether social and economic impact assessments of legal aid service delivery should be mandatory.

The Bar of Northern Ireland has no difficulty with this suggestion. The use of  
social and economic impact assessments of legal aid service delivery could assist  
in providing evidence that clearly demonstrates the significant benefits that legal  
aid brings to a range of communities and across the wider society.

b) Whether legal aid impact assessments of new legislative and policy proposals should be mandatory.

The Bar of Northern Ireland believes that legal aid impact assessments of new  
legislative and policy proposals should be mandatory. Government Departments  
should have a duty to conduct thorough regulatory impact assessments,  
considering the economic, rural and social consequences of policy proposals in  
this area. For example, we would point to a 2015 judgement in the Northern  
Ireland where the High Court held that the Department of Justice had acted  
unlawfully by failing to conduct a full impact assessment in relation to new legal  
aid regulations in NI's Crown Court (see *The General Council of the Bar of  
Northern Ireland and the Council of the Law Society of Northern Ireland* [2015]  
NIQB 99).

c) Whether such impact assessments should be fully funded.

The Bar of Northern Ireland agrees with this suggestion. In the Northern Ireland

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

context, the guidance from the Executive Office entitled 'A practical guide to  
policy making in Northern Ireland' might be of interest ([access here](#)). Northern  
Ireland's Department for the Economy has also produced Regulatory Impact  
Assessment Guidance ([access here](#)).

---

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):
- a) Programmes which demonstrate the social and economic benefits of legal aid (similar to Australia's Health Justice Partnerships).

The Bar of Northern Ireland can point to recent efforts in this jurisdiction for a  
more co-operative and joined-up approach between the courts and various  
Governmental and NGO multi-disciplinary bodies in the provision of support  
services, typically in legally aid family court cases, with the social and economic  
benefits which flow from this. Proposals in relation to this, including a Family Drug  
and Alcohol Court, are relatively recent & outcomes will likely only be seen in the  
years to come (see the [Gillen Review](#) of Family Justice from 2016).

---

- b) Research or measurement frameworks which consider the costs and benefits of legal aid services (similar to the PwC Australia report) or the *failure* to deliver such services.

There is little research emanating from this jurisdiction in relation to the costs and  
benefits of legal aid services. The Bar can only point to the Ulster University's  
recent work around litigants in person in the NI justice system which has become  
a significant issue in the civil and family courts given significant reductions to both  
the scope of work that comes within legal aid schemes and the remuneration  
available to cover it in recent years. The research work on this specific area is still

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

ongoing ([more information](#)). Our views on this matter can be found in our

---

[response](#) to the Department of Justice's Access to Justice 2 Review from 2015.

---

---

c) Legal aid impact assessments (similar to the UK's Justice Impact Test).

Here, we are interested in both the systemic effects of the availability of legal aid and the individual case effects.

See the response to 2(c)

---

---

---

---

### Setting the legal aid budget

Governments have a responsibility to provide access to justice. Policymakers should consider options and scenarios that are fully thought through and costed in order to make informed decisions. This proposition seeks to emphasise that policymakers setting the legal aid budget should be properly informed by evidence from a range of stakeholders, including professional bodies of lawyers and user organisations; and that the body administering legal aid has a central role to play in this process.

A recent World Bank report estimates the costs of providing primary and secondary free legal aid services in Serbia.<sup>18</sup> It explains:

*“A major element in the design of a legal aid system is its fiscal viability. This requires that important decisions be made regarding the scale and scope of public access to legal aid. That is, critical decisions include the definition of the population eligible for legal aid and the scope of legal services to which they will be entitled. Beyond this, consideration must be given to alternative vehicles for delivering such services... Effective legal aid systems often use a combination of these vehicles”.*<sup>19</sup>

---

<sup>18</sup> ‘Serbian Free Legal Aid Fiscal Impact Analysis: Volume, Costs and Alternatives’ (2013) at page 1, available at <http://documents.worldbank.org/curated/en/253271468304781154/World-Bank-Multi-Donor-Trust-Fund-for-justice-sector-support-Serbian-free-legal-aid-fiscal-impact-analysis-volume-costs-and-alternatives>

<sup>19</sup> Ibid at page 1.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

In concluding, the report noted that “*Following the passage of the Draft Law, many choices remain to be made for the implementation of the FLA system, via regulations and policy. This fiscal impact analysis provides information and analysis to inform those choices. This fiscal impact analysis can also be built on to advise at a more granular level the likely impacts of a range of those choices*”.<sup>20</sup>

**Proposition 2(a):** Setting the legal aid budget is a political decision. However it needs to be adequate to support the services the executive and legislature have agreed should be funded and needs to provide fair remuneration for those who do the work. **2(b):** It also needs to be informed by evidence from the academic, professional and policy communities. The body administering legal aid should be responsible for gathering this information.

**Consultation Questions:**

1. Do you agree with Proposition 2?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

---

<sup>20</sup> Ibid at page 53.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



2. In response to this question, we would value views on:

a) Whether the body administering legal aid should have this information-gathering role.

The Bar has no difficulty with this suggestion given that it would enhance

evidence based policy making by Government bodies. However, we would

suggest that they should be required to demonstrate their information gathering

processes.

b) Whether the body administering legal aid should have within it a distinct unit tasked with policy and evidence issues.

The Bar of Northern Ireland would be supportive of this proposal. We very much

promote and value the importance of evidence based policy making. In Northern

Ireland the Department of Justice & Minister is responsible for setting the policy

direction for legal aid whilst the Legal Services Agency is tasked with

administering it.

c) How situations where the body administering legal aid is part of government should be reflected here, particularly in respect of fair remuneration. For example, whether appropriate rates of pay should be independently evaluated.

The Bar welcomes the suggestion that levels of remuneration should be

independently evaluated. This work could subsequently be used to inform

Government decision making in this area to help ensure fair remuneration for

legal professionals.

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) Fiscal impact analysis frameworks (similar to the Serbia example).

The Bar has no examples to provide of this.

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

---

## Legal aid and pro bono legal services

This proposition addresses the relationship between legal aid and pro bono legal services.

In many jurisdictions, pro bono activities have a long and honoured place in the traditions and ethos of the legal profession, and are seen as essential to increasing access to justice for the poor and vulnerable. Furthermore, pro bono activities are compulsory in some jurisdictions. For example, since January 2015 applicants for admission to the New York State Bar must complete 50 hours of pro bono services.<sup>21</sup> In other countries, there are voluntary contributions towards pro bono work. For example, the Bar Council of England and Wales uses the opportunity of the practice certificate renewal process to ask for a £30 contribution towards the work of the Pro Bono Unit, an independent charity (and, in fact, it has set this fee to be added by default).<sup>22</sup>

However, governments should not regard pro bono activities as an adequate substitute for a properly funded legal aid system. In this regard, it is important to recognise that pro bono activities often include work that is not usually covered by legal aid – for example, transactional work for charities and NGOs, capacity building in developing countries etc. Moreover, pro bono activities can introduce an element of arbitrariness into access to justice – where lawyers choose which clients and cases to take forward. A lack of transparency may also result in discrimination against certain groups.

This proposition therefore seeks to recognise the important role played by pro bono activities whilst recalling and making clear the responsibility of governments to provide access to justice.

This is reflected in the IBA's 2008 Pro Bono Declaration, which urges governments to "*allocate sufficient resources to make legal aid available to meet the critical legal needs of the poor, underprivileged and marginalized and not to use pro bono legal service as an excuse for reducing publicly funded legal aid*".<sup>23</sup> The Declaration acknowledges however, that "*the delivery of pro bono service by the legal profession is of vital public and professional interest and helps to fulfil the unmet legal needs of the poor, underprivileged, and marginalized and restore public confidence in the efficacy of governmental and judicial institution*".<sup>24</sup>

For the purposes of this document, we adopt the definition of 'pro bono legal service' as set out in the IBA Declaration. The Declaration defines pro bono legal service as "*work by a lawyer of a quality equal to that afforded to paying clients, without remuneration or expectation of remuneration, and principally to benefit poor, underprivileged or marginalized persons or communities or the organizations that assist them*".<sup>25</sup>

---

<sup>21</sup> See <http://www.nycourts.gov/attorneys/probono/baradmissionreqs.shtml>

<sup>22</sup> See <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/practising-certificate/>

<sup>23</sup> IBA Pro Bono Declaration (2008), at para (g), available at <https://www.internationalprobono.com/declarations/>

<sup>24</sup> Ibid, at para (i).

<sup>25</sup> Ibid, at para 1.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

The Declaration considers that pro bono legal service may extend to:

- *Advice to or representation of persons, communities or organizations, who otherwise could not exercise or assert their rights or obtain access to justice;*
- *Activities supporting the administration of justice, institution building or strengthening;*
- *Assisting bar associations and civic, cultural, educational and other non-governmental institutions serving the public interest that otherwise cannot obtain effective advice or representation;*
- *Assisting with the drafting of legislation or participating in trial observations, election monitoring, and similar processes where public confidence in legislative, judicial and electoral systems may be at risk;*
- *Providing legal training and support through mentoring, project management and exchanging information resources; and also*
- *Other similar activities to preserve the Rule of Law.*<sup>26</sup>

**Proposition 3:** Professional bodies of lawyers should seek to maximise the ways in which their members can provide pro bono legal services in accordance with their culture and traditions, but governments cannot rely on this to cover services which should properly be funded by legal aid.

**Consultation Questions:**

1. Do you agree with Proposition 3?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

<sup>26</sup> Ibid, at para 1.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

---

2. In response to this question, we would value views on:

a) Whether pro bono legal services should be mandatory to address funding gaps and the need for free legal advice.

The Bar of Northern Ireland operates a dedicated Pro Bono Unit offering free legal advice and representation in deserving cases for those who cannot afford the legal help which they need and cannot obtain assistance from any other source. Pro bono legal work has always been an integral part of membership of the Bar of Northern Ireland as part of its work in providing access to justice and meeting otherwise unmet legal need. However, we do not believe that pro bono legal services should be mandatory as this work is always only an adjunct to, and not a substitute for, a proper system of publicly funded legal services.

b) Whether law students should be required to complete a certain number of pro bono hours before qualifying.

The Bar has no difficulty with this suggestion in principle. However, further would need to be given to how this might operate in practice within the wider context of legal education & entry to the profession.

c) Whether there should be a compulsory pro bono requirement for practising lawyers.

The Bar of Northern Ireland does not believe that there should be a compulsory pro bono requirement for practising lawyers. Instead our system already operates effectively by enabling barristers to volunteer to provide their advice and

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.



Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

representation services on a pro bono basis.

---

d) How situations where legal aid services are provided by mandatory pro bono activities should be reflected in this proposition.

The Bar has no comment to make on this.

---

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) Compulsory pro bono programmes in other jurisdictions (similar to the New York State Bar).

The Bar has no comment to make on this.

---

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

## 2. The scope of legal aid

### Criteria on the scope of legal aid

By ‘scope’ we mean whether the problem or the type of case, is one for which legal aid is available. Types of case for which legal aid may or may not be available in a civil, administrative and family law context include, for example, community care, debt, domestic abuse, discrimination, employment, housing, and welfare benefits. By way of illustration about how scope can be limited within types of case, a person may for example usually only get legal aid for advice about clinical negligence if their case relates to their child suffering a brain injury during pregnancy, birth or in the first 8 weeks of life. Similarly, legal aid may not usually be available for advice about personal injury, other than in exceptional cases.<sup>27</sup>

This proposition suggests that criteria should be drawn up to allow principled decisions on scope and eligibility for legal aid to be made in civil, administrative and family cases. It suggests this should be done by government in consultation with other stakeholders.

Examples of issues that might be covered by such criteria include the type of case/legal problem, the complexity of the case, whether the need for legal support is urgent, the consequences of failing to provide legal aid, and whether the claimant is a child etc. In the criminal justice sphere, Principle 3 (on legal aid for persons suspected of or charged with a criminal offence) of the UN Principles and Guidelines on Criminal Legal Aid attempts to capture some of these issues.

So, while the content of the criteria may vary and needs careful consideration, this proposition seeks to emphasise the need for certainty and principled guidance about scope and eligibility for legal aid in civil, administrative and family cases.

**Proposition 4:** There should be clear, transparent and published criteria on scope and eligibility for legal aid in civil, administrative and family law matters. These criteria should be drawn up by government in consultation with other stakeholders.

### Consultation Question:

1. Do you agree with Proposition 4?

- Yes
- No

<sup>27</sup> These examples reflect the position in England & Wales: <https://checklegalaid.service.gov.uk/> and see also e.g., <https://www.gov.uk/guidance/work-out-who-qualifies-for-civil-legal-aid>.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

If not, please explain and/or suggest alternatives.

---

---

---

### Court fee waivers

Court fee waivers should be considered a form of legal aid and should be available even when a case is not within the scope of legal aid if the client would have been financially eligible for legal aid had the case been within scope – otherwise it could effectively deny the individual their right to resolution of their dispute.

Some would go further. A recent report on court fee waivers in the Republic of Serbia, for example, concluded by noting some preconditions for reform of the system of court fees in Serbia which included assessing the impact of the new Law on Free Legal Aid.<sup>28</sup> This was because “it is necessary to harmonize the conditions for exercising the right to free legal aid with the conditions for exemption from payment of court fees”.<sup>29</sup> It explained that:

*“If a citizen realizes the right to free legal aid, it is necessary to include in this right the exemption from payment of court fees as well. ... At the same time, some citizens may not be eligible for free legal aid, due to a slightly better economic position, but they also could be covered by exemption from payment of court fees, if that would facilitate their easier access to the court system”.*<sup>30</sup>

**Proposition 5:** Court fee waivers should be seen as a form of legal aid. Where legal aid is granted, all court fees should be automatically waived without the need to complete an additional application process. Where a case is not within the scope of legal aid, but the client would have been financially eligible for legal aid had the case been within scope, court fees waivers should be available.

### Consultation Questions:

1. Do you agree with Proposition 5?

- Yes
- No

---

<sup>28</sup> ‘Analysis: Court Fee Waiver System in the Republic of Serbia’ (2016) at page 39, available at [http://www.mdtfjss.org.rs/en/mdtf\\_activities/2016/report-from-the-presentation-of-the-analysis-of-court-fee-waiver-system-in-serbia-september-6-2016#.WVDHauvyuCp](http://www.mdtfjss.org.rs/en/mdtf_activities/2016/report-from-the-presentation-of-the-analysis-of-court-fee-waiver-system-in-serbia-september-6-2016#.WVDHauvyuCp)

<sup>29</sup> Ibid at page 40.

<sup>30</sup> Ibid at page 40.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

2. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) Practice on this issue from a range of jurisdictions.

The Bar of Northern Ireland has always taken the view that court fees must be  
affordable, particularly given the reductions in the scope of legal aid proposed for  
implementation in the civil & family courts in recent years. However, a staged  
increase in court fees is already underway with yearly uplifts of 10%, 7.5% and 5%  
planned up until April 2019 in NI, representing a total of 22.5%. Consequently,  
given the current trend it seems unlikely that the use of court fees waivers will  
become more widespread in Northern Ireland as the courts seek to recoup more  
of the costs associated with administering cases.

b) Court fees being waived on grounds other than financial means.

In addition to the coverage offered by legal aid, the NI Courts  
& Tribunals Service has operated a Remissions Exemptions Policy  
since 2007. However, exemptions for court fees are

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

typically only available in Northern Ireland on financial grounds such as an

---

individual being in receipt of income support, income based jobseeker's

---

allowance and certain tax credits. Remissions are available on the grounds of

---

financial hardship or some other reasonable cause with some applicants making

---

a contribution towards the costs of the court fee and some others paying

---

nothing. This policy is now ten years old and likely to be reviewed in due course.

---

[More information](#) on the NI Courts & Tribunals website.

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.



the global voice of  
the legal profession®

### Mandatory legal representation

This proposition is aimed at situations where an individual requires legal representation in order to get access to legal services, courts and tribunals. It suggests that the state has a duty to ensure individuals are represented by competent lawyers in such situations, even where they lack the financial means to pay for such representation themselves.

For example, a recent report by The Hague Institute for Innovation of Law notes that “*For some legal services, and in some countries, assistance by a qualified lawyer is mandatory. In order to guarantee access to justice in such cases for people with limited means, it is often necessary that citizens have recourse to state funded legal aid in these areas*”.<sup>31</sup> It also highlights that “*Most countries allow people to bring cases before specialised tribunals (employment, social security) without being represented by a lawyer*” but that “*Many restrictions exist, however, in respect to procedures at courts*” and that “*Generally, access to higher courts (appeal, supreme courts) can only be obtained with the assistance of a lawyer*”.<sup>32</sup>

**Proposition 6:** Where legal representation is mandatory to access legal services, courts and tribunals, the state has a duty to ensure that individuals without the financial means to pay for a lawyer themselves are represented by competent lawyers.

### Consultation Questions:

1. Do you agree with Proposition 6?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

<sup>31</sup> Hiil, ‘Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?’ (2014) at page 26, available at <http://www.hiil.org/publication/legal-aid-europe-nine-different-ways-guarantee-access-to-justice>

<sup>32</sup> Ibid, at page 26.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

2. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) Legal services, courts and tribunals where legal representation is mandatory.

The Bar of Northern Ireland has no comment to offer on this – not relevant to this

jurisdiction.

b) Practice on this issue from a range of jurisdictions and how subsidised legal assistance from a lawyer is provided in these situations.

The Bar of Northern Ireland has no comment to offer on this – not relevant to this

jurisdiction.

c) Situations where ‘sufficient merit’, ‘likelihood of success’ or similar criteria are applied in such circumstances.

The Bar of Northern Ireland has no comment to offer on this – not relevant to this

jurisdiction.

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.





the global voice of  
the legal profession®

### 3. Eligibility for legal aid

This section considers eligibility for legal aid. Propositions 7-8 focus on the situation of the individual (including their financial means and vulnerability). Propositions 9-10 consider the merits of the individual's case (including the interests of justice and likelihood of success).

#### The principle of non-discrimination

UN Principles and Guidelines on Criminal Legal Aid, Principle 6 (on non-discrimination) provides “*States should ensure the provision of legal aid to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status*”. This proposition seeks to extend this principle to civil, administrative and family legal aid.

The reference in the proposition to adapting this to take account of ‘relevant scope and eligibility criteria’ is an acknowledgement that legal aid policy can prioritise certain areas of law and the needs of certain groups based on objective grounds – however, within the boundaries of scope and eligibility, all must be treated equally.

For example, in England & Wales, in the criminal justice sphere you have the right to free legal advice if you are questioned at a police station; and in the civil justice system, financial situation is not taken into account for cases about mental health tribunals, children in care, and child abduction for example.<sup>33</sup>

**Proposition 7:** Principle 6 of the UN Principles and Guidelines on Criminal Legal Aid should apply, adapted to take account of relevant scope and eligibility criteria.

#### Consultation Questions:

1. Do you agree with Proposition 7?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

<sup>33</sup> See <https://www.gov.uk/legal-aid/eligibility>

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

---

---

---

2. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) Areas of law and/or groups prioritised for legal aid on grounds other than financial means.

The Bar of Northern Ireland can provide an example of this in our jurisdiction in

relation to non-molestation orders – a civil court order aimed at protecting

victims of domestic violence and abuse. In 2011 the former Justice Minister

David Ford MLA amended legal aid regulations to remove the upper earnings

and capital limit (means testing) for those seeking legal aid for non-

molestation order proceedings in Northern Ireland. Consequently, victims can

automatically receive legal aid for these proceedings but may be required to

make a one-off contribution to the fees which will be calculated on the basis of

legal aid fees. [More information](#).

### **Financial means and vulnerability**

This proposition seeks to emphasise that while relevant, financial means should not be the only eligibility criterion for legal aid and that vulnerability is a particularly important factor.

We would highlight here that vulnerability can be personal (for example, learning disabilities, mental health issues or young age) or situational (for example, being homeless, being a survivor of domestic abuse or having recently left care).

In reality, the financial means threshold to qualify for legal aid is set so high in some jurisdictions that many people who do not qualify for legal aid on financial grounds, in practice cannot afford legal help or representation.

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

It is also worth highlighting here that other factors can also impact on affordability – for example the ability to afford (full) legal costs is significantly impacted by the duration of court proceedings.

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

**Proposition 8:** Financial means is a relevant criterion when assessing eligibility for legal aid. Vulnerability, including lack of knowledge or ability to enforce legal rights without expert help, is also a relevant factor.

**Consultation Questions:**

1. Do you agree with Proposition 8?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

2. In response to this question, we would value views on:

a) Whether this proposition should be revised to provide that eligibility tests should assess whether individuals would be unable to access legal services for financial or other reasons such as vulnerability.

The Bar of Northern Ireland has no difficulty with this suggestion. Legal aid

serves as an important social welfare safeguard for the most vulnerable in

Northern Ireland & recognition of this as a factor in accessing services could be a

useful indicator for any eligibility test. However, further consideration needs to

be given to how this might be assessed – should a definition of vulnerability be

---

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

developed? Are there individual risk factors that should be defined? And are

---

types of vulnerability that fluctuate over time? Further guidance would be useful

---

as these legal aid guidelines are developed.

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) The different vulnerabilities recognised in a range of jurisdictions.

---

Vulnerability as referenced in proposition 8, in terms of a lack of knowledge or

---

ability to enforce legal rights without expert help, has resulted in a range of

---

difficulties for the courts in Northern Ireland which have not been dealt with

---

adequately to date in this jurisdiction. For example, our practitioners highlights

---

that the civil & family courts have encountered an increasing number of personal

---

litigants in recent years. The Bar has commented on this in detail in response to

---

the Gillen Review of Civil Justice from 2016. [Read more.](#)

---

### **Merits – the interests of justice and the likelihood of success**

Proposition 9 provides that the interests of justice and the likelihood of success are also relevant to eligibility for legal aid. It considers the ‘interests of justice’ in some detail and notes that this will be affected by the importance of the matter to the individual – considered objectively – and the importance of the matter to others in society, particularly disadvantaged groups, as well as the complexity of the matter and the availability of satisfactory alternative methods of achieving justice, including alternative funding. The reference to ‘alternative funding’, for example, seeks to recognise that in some countries legal expenses insurance is a usual element of household policies and in many countries trade unions provide legal services to their members. Provided they are of sufficient quality, access to these services can justify the refusal of legal aid.

It is worth noting here that, in England and Wales in the criminal justice sphere, as part of the ‘interests of justice’ test, which determines whether an individual is entitled to legal aid based on merits, the ‘Widgery criteria’ must be considered.<sup>34</sup> These criteria include, among other things, whether it is likely the individual will lose their liberty; whether a substantial question of law may be involved; whether it is likely that the individual will lose their livelihood; and whether the proceedings may involve expert cross-examination of a prosecution witness.<sup>35</sup>

Proposition 9 also considers the ‘likelihood of success’. The key consideration here is whether public money should be spent on claims that, while not frivolous or vexatious, have a poor prospect of success. Proposition 9 emphasises that we have to balance the prospects of success

---

<sup>34</sup> See <https://www.gov.uk/guidance/work-out-who-qualifies-for-criminal-legal-aid>.

<sup>35</sup> Ibid.

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

with other relevant criteria including the importance of the matter to the individual and to the wider public. It is important to consider here that (incorrectly) pre-empting the result of litigation could deprive individuals of access to justice which others, who can afford to pay their own legal costs, could pursue. Equally, where resources for legal aid are limited, if the likelihood of success is not considered, meritorious cases may not get funding – and sometimes, for example, a relatively small claim can be very important to the individual because of their circumstances.

It is also important to note that in some jurisdictions the losing party, even where they are legally aided, may have to pay at least part of the winning side's costs, so the likelihood of success becomes a very significant factor for claimants.<sup>36</sup>

Proposition 10 suggests that the 'interests of justice' is more important than the 'likelihood of success' in civil, administrative and family legal aid. It also suggests that the prospects of success will often not be relevant in family law matters, where for example the best interests of the child are paramount.

**Proposition 9:** The following criteria are relevant to eligibility for legal aid: (a) The interests of justice (which, in turn will be affected by the importance of the matter to the individual – considered objectively – and the importance of the matter to others in society, particularly disadvantaged groups, as well as the complexity of the matter and the availability of satisfactory alternative methods of achieving justice, including alternative funding); and (b) The likelihood of success.

**Proposition 10:** The 'interests of justice' is a more important eligibility criterion than the 'likelihood of success' in civil, administrative and family legal aid. In family law matters, the prospects of success will often not be relevant.

### Consultation Questions:

1. Do you agree with Propositions 9-10?

- Yes
- No

If not, please explain and/or suggest alternatives.

The Bar of Northern Ireland agrees that the interests of justice is an important

consideration in considering eligibility for legal aid. However, we have some

<sup>36</sup> See more generally, for example, UK Supreme Court Practice Direction 13 on costs orders against legally aided parties, available at <https://www.supremecourt.uk/procedures/practice-direction-13.html#04>

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

reservations in relation to the idea of the 'likelihood of success' given the

---

potential implications for access to justice – there may be certain borderline

---

civil law cases, potentially involving complex or novel points of law, which could

---

be at risk of being denied funding under such a model. However, it is possible that

---

this proposition could be expanded on to deal with such a matter.

---

---

2. In response to this question, we would value views on:

a) Whether the principle of 'equality of arms' should be added here.

The Bar of Northern Ireland has no difficulty with this as it may help to promote

---

access to justice.

---

---

b) Whether strategic or public interest litigation (where the likelihood of success can be difficult to assess) should be funded by legal aid.

The Bar agrees with this suggestion.

---

---

---

c) Whether the 'availability of satisfactory alternative methods of achieving justice' should be included here. For example, whether there should be a requirement, where appropriate, for mediation to have been attempted before legal aid will granted for litigation.

The Bar disagrees with any requirement that mediation should be mandatory

---

before legal aid is granted for litigation. Mediation should instead remain optional

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.



Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

rather than parties being required to pursue this route. The Bar takes the view  
that the long term success of mediation agreements across various court tiers  
depends on the willingness of the parties to compromise, the intensity of the  
dispute, the parties motivation to settle and the conduct of mediators. This must  
be entered into voluntarily and at an appropriate point in the court process in  
order to increase the likelihood of agreement being reached.

---

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) How the ‘interests of justice’ and ‘likelihood of success’ criteria are applied in a range of jurisdictions.

---

The ‘interests of justice’ test referenced above is used in NI in a similar fashion to England and Wales with regard to criminal legal aid & the Widgery criteria. A range of proposals around ‘prospects of success’ for legal aid in the civil & family courts were included in the Department of Justice’s Access to Justice 2 Report from 2015 ([access here](#)). However, these have not been taken forward to date.

---

b) Practice on this issue from a range of jurisdictions including other eligibility criteria.

---

As a general point, it might be worth noting that in NI applications for civil legal services are governed by two pieces of legislation – the [Civil Legal Services \(General\) Regulations \(NI\) 2015](#) & [The Civil Legal Services \(Financial\) Regulations \(Northern Ireland\) 2015](#). Subject to specific exceptions contained in the Regulations, all applications must satisfy the relevant legal merits tests in the

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114006655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

General Regulations and the financial eligibility criteria set out in the Financial

---

Regulations. Notable exceptions are advice obtained at police stations under the

---

Police & Criminal Evidence Act (PACE) and parents involved in certain public law

---

proceedings & the child is the subject of an application for a care or supervision

---

order or an emergency protection order – neither is subject to merits or financial

---

eligibility tests.

---

### General eligibility for initial advice

**Proposition 11:** General eligibility for initial advice should be available when there are no other satisfactory sources for this advice.

### Consultation Question:

4. Do you agree with Proposition 11?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.



## PART D – THE ADMINISTRATION OF LEGAL AID

Part D is concerned with the administration of legal aid. The first section ‘The Administration of Legal Aid’ focuses on how legal aid should be administered and the role (if any) of other stakeholders, in particular professional bodies of lawyers (Propositions 12-15). The second section ‘Avoiding Corruption and Favouritism in the Legal Aid System’ looks in more detail at the procedure for the grant of legal aid and the allocation of cases (Propositions 16-20).

### 1. The administration of legal aid

#### Independence of the body administering legal aid

These two propositions are aimed at ensuring that the interests of the client and society are placed at the forefront in the administration of legal aid, rather than the interests of other stakeholders such as the government or the legal profession. Conscious or unconscious bias may influence decisions on the allocation of work, for example, if other stakeholders are responsible for these decisions. The central question here is whether bodies administering legal aid should consult with other stakeholders and to what extent – and whether, in the case of the legal profession, this should be done at the level of individual lawyers or with representatives of professional bodies of lawyers.

**Proposition 12:** The body administering legal aid must be operationally independent of government, subject to its accountability obligations.

**Proposition 13:** The body administering legal aid should consult with professional bodies of lawyers, to benefit from their relevant expertise. The risk of conflicts of interest will generally preclude professional bodies of lawyers controlling legal aid.

#### Consultation Questions:

1. Do you agree with Propositions 12-13?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

---

---

---

2. In response to this question, we would value views on:

- a) What role, if any, professional bodies of lawyers should have in the administration of legal aid.

The Bar of Northern Ireland is an independent referral bar with no form of direct public access. The lay client relationship is established, maintained and controlled by the instructing solicitor. As the professional regulator for barristers in NI, the Bar has a role in promoting the highest standards of practice and safeguarding clients. It would not be appropriate for us to be involved in the administration of legal aid in this jurisdiction in respect of individual cases.

However, there is an important role for the Bar to play in terms of contributing to policy making in this area through the public consultation process and review mechanisms.

- b) Whether professional bodies of lawyers should have any influence on individual decisions about the grant of legal aid or the allocation of work to specific providers; and whether they should have a role in identifying relevant criteria in this regard.

As outlined above, the Bar of Northern Ireland does not believe that professional bodies of lawyers should have a role to play in these scenarios. We do not believe that it would be feasible or appropriate in Northern Ireland. It is worth noting that NI's Department of Justice recently consulted on a [statutory registration scheme](#) for all providers of publicly funded legal services. View the Bar's [response](#).

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

- 
- 
- c) If lawyers are to have a role in any internal decision-making or appeal process, whether those lawyers should be nominated by the professional body of lawyers, or whether a different mechanism should apply (such as open competition using published and agreed criteria).

The Bar of Northern Ireland has no difficulty with this suggestion – a barrister

---

could be properly involved in internal decision making as a board member of a

---

legal aid body, potentially by nomination from a professional body of lawyers.

---

- d) Whether it is legitimate/good practice for bodies administering legal aid to rely on accreditation/quality assurance schemes produced by professional bodies of lawyers as an eligibility criterion for legal aid providers to get legal aid work.

See response to 2b

---

---

---

- e) Whether professional bodies of lawyers should have a greater role in the administration of legal aid in countries where much of the funding for legal aid comes from lawyers themselves.

The Bar of Northern Ireland has no comment to make on this – not relevant.

---

---

---

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



- a) How the relationship between the body administering legal aid and government operates in other jurisdictions and examples of different forms of independence; and the advantages and disadvantages of the approach taken.

Northern Ireland's Legal Services Agency is an agency of the Department of Justice & was

---

established in 2015 to replace the Legal Services Commission. It operates under a

---

framework document to help ensure good governance, financing and operational

---

matters. The Director of the Agency operates under Ministerial guidance and

---

Directions when determining whether applications for civil legal services should

---

be funded. The Director is independent from any Ministerial or Departmental

---

interference in relation to individual applications for civil legal services.

---

[More information.](#) However, there has been criticism from the Northern Ireland

---

Audit Office on the management of legal aid in recent years prior to the

---

establishment of the Agency. See NIAO report on [Managing Legal Aid](#) from 2016

---

- b) The role played by the legal profession in the administration of legal aid in other jurisdictions (including whether this is at the level of individual lawyers or representatives of professional bodies of lawyers); and the advantages and disadvantages of the approach taken.

The Bar of Northern Ireland has no comment to make on this – not relevant.

---

---

---

---

#### **Accountability of the body administering legal aid**

As discussed above, the body administering legal aid should be independent of government. However, it should be answerable to its sponsoring ministry for the quality of the service the ministry has funded (i.e., value for money) as the government is responsible for providing access

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

to justice. The body administering legal aid should also answer to parliament, which has a public audit function.

It is important to distinguish here between the individual legal aid provider and the body administering legal aid; and between the quality of individual service and the quality of the wider legal aid system.

This proposition is focused on the administration of legal aid and the quality of the legal aid system as a whole. Whereas Part E below will address in detail the provision of legal aid, including questions of professional standards and quality of individual service; and the issue of the accountability of the individual provider to the client. A principal-agent problem may arise if individual providers feel more answerable to the state, than to their clients, who often have limited options, are more vulnerable than the state, and have the most to lose from poor quality service.

**Proposition 14:** The body administering legal aid must be legally answerable for the quality of the service it administers. It must answer to the sponsoring ministry which provides its funding, but also to parliament, as the representatives of the people who pay for, and benefit from, legal aid.

**Consultation Questions:**

1. Do you agree with Proposition 14?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

2. We would be interested to receive examples of:

a) Practice on this issue from a range of jurisdictions.

---

London	São Paulo	Seoul	The Hague	Washington DC
--------	-----------	-------	-----------	---------------

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



See the Bar's response to question 3a above.

---

---

---

---

### Monitoring and evaluation role of the body administering legal aid

This proposition suggests that, given its independence, the body administering legal aid is well placed to provide information to government, parliament and the public about the operation of the justice system as a whole. As an integral stakeholder in the justice system, the body administering legal aid is well situated to play a key role in monitoring and evaluation, and to identify opportunities and challenges which may in turn impact on legal aid policy.

The focus here is on the justice system as a whole whereas Part E below will consider monitoring and evaluation in relation to individual case files. There is some overlap here with Proposition 1 on the costs and benefits of legal aid service delivery; impact assessments of legal aid service delivery; and legal aid impact assessments of new legislative and policy proposals. There is also some overlap with Proposition 2 on setting the legal aid budget; the need for policymakers to be properly informed by evidence from a range of stakeholders; and the role of the body administering legal aid in this process.

**Proposition 15:** The body administering legal aid – as with other groups and bodies involved in the justice system – has an important role to play in providing information to government, parliament and the public that will assist in ensuring the efficiency of the justice system as a whole. This includes information on where the system is failing to provide access to justice.

### Consultation Questions:

1. Do you agree with Proposition 15?

Yes

No

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)



Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

2. We would be interested to receive examples of (attach relevant documents with completed survey if necessary):

a) Practice on this issue from a range of jurisdictions.

The Northern Ireland Statistics and Research Agency provides a range of justice

information as part of its work with the NI Courts and Tribunals Service. More

[information](#). Statistics on legal aid are also kept by the Legal Services Agency in NI,

as referenced above. However, we believe it would be helpful for this information

to be made more widely available to Government, politicians and the public in NI

to give them a greater sense of issues surrounding access to justice.

b) Monitoring and evaluation frameworks or metrics for legal aid policy.

The Bar of Northern Ireland has no particular comment to make on this.

---

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



## 2. Avoiding corruption & favouritism in the legal aid system

This proposition seeks to extend UN Principles and Guidelines on Criminal Legal Aid, Principle 9 (on remedies and safeguards) and Principle 12 (on independence and protection of legal aid providers) to civil, administrative and family legal aid.

UN Principle 9 provides “*States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid*”.

UN Principle 12 provides:

*“States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.*

**Proposition 16:** Principles 9 and 12 of the UN Principles and Guidelines on Criminal Legal Aid should apply to all legal aid areas, including civil, administrative and family legal aid.

### Consultation Question:

1. Do you agree with Proposition 16?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



## Decisions on the grant of legal aid and the allocation of cases

These three propositions are focused on the criteria and procedure for the grant of legal aid and the allocation of cases, and on preventing interference in legal aid decisions. The role (if any) of professional bodies of lawyers in the administration of legal aid (including the grant of legal aid and the allocation of work) is discussed in more detail in Part D. There is also some overlap here with Part C, which considers the scope of legal aid and eligibility for legal aid.

In this context, we note that appearances can also be important to building trust – not only must justice be done; it must also be seen to be done. For example, in England and Wales, the Legal Aid Agency (which provides civil and criminal legal aid and advice) is an executive agency, sponsored by the Ministry of Justice.<sup>37</sup>

**Proposition 17:** The criteria and procedure for the grant of legal aid should be clear, transparent and published. Opponents in a case where someone has applied for legal aid have the right to make representations to the body administering legal aid. However, decisions must be made independently and in accordance with the published criteria and procedure.

**Proposition 18:** The criteria and procedure for the allocation of cases to legal aid providers must be clear, transparent, and published. The allocation of cases must be done independently of the courts and the opposing participants (for example, defending public bodies or individuals in civil cases) and in accordance with the published criteria and procedure. There must be published anonymised information on how cases have been allocated, a right of challenge, and regular audit.

**Proposition 19:** The body administering legal aid must be independent and must be protected from interference (or attempted interference) in its decisions on the grant of legal aid and the allocation of work by government, the media, the profession and others.

## Consultation Questions:

1. Do you agree with Propositions 17-19?

- Yes  
 No

If not, please explain and/or suggest alternatives.

---

---

<sup>37</sup> See <https://www.gov.uk/government/organisations/legal-aid-agency>

London

São Paulo

Seoul

The Hague

Washington DC

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

---

---

---

---

---

---

---

---

---

2. We would be interested to receive examples of :

- a) Practice on this issue from a range of jurisdictions – Which body decides on the grant of legal aid and the allocation of cases in other jurisdictions? Should the judiciary have a role to play in granting legal aid for example?

See comments above in relation to the Legal Services Agency in Northern Ireland.

Magistrates have the power to grant legal aid where it is in the interests of justice

by applying the Widgery criteria in criminal cases. Meanwhile under the

independent referral Bar model, solicitors identify suitable barristers for a case

who then have a duty to accept instruction under the 'cab rank' rule.

- b) The circumstances in which the grant of legal aid and the allocation of cases can be challenged in other jurisdictions and by whom.

The Bar has no particular comment to make on this.

- c) Whether individuals have the right to choose a civil legal aid provider in other jurisdictions.

The Bar has no particular comment to make on this.

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

---

---

d) The circumstances which constitute “interference” in this context in other jurisdictions.

The Bar has no particular comment to make on this.

---

---

---

e) How interference in the grant of legal aid and the allocation of work is prevented in other jurisdictions.

The Bar has no particular comment to make on this.

---

---

---

### Security of tenure

By proposing security of tenure for the Board, Chair and CEO of any body administering legal aid, this proposition seeks to minimise the risk that the need for a good relationship between the body administering legal aid and the funding ministry takes precedence over proper decision-making and advice giving.

**Proposition 20:** To ensure that the pursuit of a reasonable working relationship with the sponsoring ministry does not threaten institutional, operational or financial autonomy, Board, Chair and CEO of any body administering legal aid should have robust security of tenure.

### Consultation Question:

1. Do you agree with Proposition 20?

Yes

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

## PART E – THE PROVISION OF LEGAL AID

Part E looks in more detail at those who undertake legal aid work. It asks whether legal aid providers should be required to undergo special training and/or monitoring to assure quality and compliance (Propositions 21-26); whether legal aid should be provided by those in private practice or directly by those administering legal aid (Proposition 25); and what factors should govern rates of pay and the development of expertise (Proposition 27).

### Qualification for legal aid work

These two propositions are focused on qualification for legal aid work and the process for setting relevant standards. The role (if any) of professional bodies of lawyers in the administration of legal aid (including the use of accreditation/quality assurance schemes produced by professional bodies of lawyers) is discussed in more detail in Part D.

Areas covered by legal aid may not generally have attracted the involvement of lawyers, and those without previous experience of legal aid work may not understand the specific requirements of the system and the three-cornered nature of the relationship between legal aid provider, client and the body administering legal aid. It is particularly important that legal aid providers understand their specific obligations to clients, who are often vulnerable with limited resources.

Entry level requirements to qualify as a lawyer are increasingly not regarded as sufficient to ensure the ability to do legal aid work. Those administering legal aid often have higher expectations. Therefore, the aim of Proposition 21 is to make clear that bodies administering legal aid are entitled to require evidence of sufficient expertise and standards from the start.

A central question then becomes how providers can demonstrate sufficient expertise – what the correct level of qualification should be and who should play a role in setting the appropriate standards. Proposition 22 is aimed at ensuring that the interests of justice and the client are not inadvertently diluted by the interests of the government or the profession.

**Proposition 21:** A provider who wishes to undertake legal aid work should be qualified to deal with the relevant area of law, either by experience or training, and should understand and be familiar with the legal aid scheme and how it operates.

**Proposition 22:** The body administering legal aid should consult with professional bodies of lawyers, as well as the sponsoring ministry, to establish the correct level of qualification mentioned in Proposition 21, but must have the duty to set the standard independently and in accordance with the published criteria and procedure.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

**Consultation Questions:**

1. Do you agree with Propositions 21-22?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

2. In response to this question, we would value views on:

a) Whether professional bodies of lawyers should decide who is able to undertake legal aid work and whether it should be any lawyer in good standing.

The Bar of Northern Ireland's [Code of Conduct](#) is the principal governing

document for practice in Northern Ireland & our Professional Conduct Committee

has an important role to play in this area.

It is worth noting that NI's Department of Justice recently consulted on

a [statutory registration scheme](#) for all providers of publicly funded legal services.

This points to the need for minimum quality standards and an audit framework

under a Code of Practice as evidenced by self-certification, audit and compliance

visits, administrative desktop reviews, customer surveys and complaints reviews

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.



Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

However, these have not yet been advanced so as to allow us to provide further information. View the Bar's [response](#).

---

- b) We have provisionally decided not to include a reference in Proposition 21 to legal aid providers aligning themselves with the 'vision, mission and values' of the body administering legal aid – While the provider should understand and support the purposes of legal aid, we felt it more important to emphasise the interests of the client than the agenda of the body administering legal aid. In addition, in some jurisdictions, legal aid providers have a poor relationship with the body administering legal aid. Do you agree with this approach?

Yes the Bar of Northern Ireland has no difficulty with this approach.

---

---

---

---

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

- a) Qualification requirements and accreditation/quality assurance schemes for legal aid work from a range of jurisdictions.

See information provided above on Northern Ireland's proposed Statutory

---

Registration Scheme.

---

---

### Professional codes of conduct

Some vulnerable legal aid clients may lack the knowledge/confidence to complain about poor quality legal service. This proposition is therefore concerned with ensuring that legal aid providers understand their specific obligations to their clients in the context of vulnerability and limited resources. This proposition takes the view that professional codes of conduct will be sufficient to protect all clients, including vulnerable ones.

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

**Proposition 23:** Lawyers undertaking legal aid work are bound to carry out the work in accordance with their professional code of conduct.

**Consultation Questions:**

1. Do you agree with Proposition 23?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

2. In response to this question, we would value views on:

a) Where professional codes of conduct do not include a reference to the particular needs of vulnerable clients (or where legal aid providers are not members of a professional body with a code of conduct) how legal aid providers can demonstrate an understanding of these needs and how clients can be protected.

The Bar of Northern Ireland's [Code of Conduct](#) deals with this matter

appropriately – barristers have a fundamental obligation under section 4.2 to

“ensure that every aspect of the lay client’s interests is properly represented

and protected without fear or favour”. This is expanded on with section 4.4

highlighting the need for barristers to consider the litigation experience and

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

take steps to assist the client in a range of matters. In addition, many of our

---

members are involved in specialist Bar Associations where they will receive

---

further training, information and CPD events relating to the dealing with

---

vulnerable clients.

---

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) Practice on this issue from a range of jurisdictions.

The Bar has no comment to make on this.

---

---

---

---

b) A related issue here is that the legal aid budget must be used prudently and should not be allowed to fund unnecessary work at the behest of either client or the legal aid provider. Therefore, the principle of 'reasonableness' is a necessary check on legal aid work. We are interested to receive examples of how 'reasonableness' is understood and applied in this context in a range of jurisdictions.

The Bar has no particular comments to make on this.

---

---

---

---

### Model practice standards

This proposition envisages the development of model practice standards in order to help countries which are introducing or improving legal aid provision to devise proper qualification and quality criteria. These should take account of the wide variety of circumstances in which legal aid providers practice around the world in order to appeal to a range of jurisdictions.

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

**Proposition 24:** Model Practice Standards for legal aid cases in the areas of civil, administrative and family law should be developed by relevant IBA committees, following the example of the UN Principles and Guidelines on Criminal Legal Aid in regard to those undertaking criminal defence work.

**Consultation Questions:**

4. Do you agree with Proposition 24?

Yes

No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

**Identified quality and ethical standards**

This proposition is that satisfactory legal aid services can be provided in a number of ways, for example, through private practice or salaried service; and that the decision of how to deliver legal aid services should depend on local circumstances. Membership of a professional body of lawyers should not be a pre-condition for providing legal aid services. There are jurisdictions where employed lawyers are not eligible to belong to professional bodies of lawyers, and others where they are, such as England and Wales – so this is a local circumstance to be taken into account. Moreover, specialised civil society organisations often provide important legal aid services and may be better placed to represent clients in certain legal fields. The key here is that all legal aid providers should have professional autonomy and should adhere to identified quality and ethical standards. In addition, while client choice is unlikely to be possible in a salaried service, the client is entitled to expect expertise and professionalism.

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

**Proposition 25:** Legal aid services can be provided in a number of ways, for example by lawyers in private practice or lawyers employed directly by the body administering legal aid. Non-membership of a professional body of lawyers, for example based on the nature of employment, should not be used to prevent non-members from carrying out legal aid work that they are otherwise qualified to undertake. However, all legal aid providers must be held to identified quality and ethical standards, whether or not they are members of a professional body of lawyers.

**Consultation Questions:**

1. Do you agree with Proposition 25?

- Yes
- No

If not, please explain and/or suggest alternatives.

The Bar of Northern Ireland's [Code of Conduct](#) highlights that it is possible for

members to be granted exemption from membership but they will be required to

demonstrate a range of factors – including the necessary experience to practise

outside the Bar Library & a valid practising certificate. We have no difficulty with

the suggestion that all providers should be held to identified standards.

2. In response to this question, we would value views on:

- a) Whether there should be mechanisms to ensure that professional independence is not compromised where legal aid services are provided by a salaried service. For example, see the code of conduct of the Public Defender Service in England and Wales (PDS is a department of the Legal Aid Agency and was the first salaried criminal defence service in England and Wales).<sup>38</sup>

<sup>38</sup> See <http://publicdefenderservice.org.uk/solicitors/about-us/>

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

The Bar has no comment to make on this.

---

---

---

---

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

- a) Codes of conduct or other mechanisms used where legal aid services are provided by a salaried service (similar to the PDS code of conduct in England and Wales).

The Bar has no comment to make on this.

---

---

---

---

### Monitoring and evaluation of the quality of legal aid work

This proposition focuses on monitoring and evaluation in relation to individual case files. Evidence of relevant training or expertise is a proxy for measuring quality, and a good minimum requirement for undertaking legal aid work. However, monitoring and evaluation (for example by auditing or peer reviewing completed files) is necessary to ensure that a good standard is being maintained, particularly when success is not a relevant measure.

**Proposition 26:** The body administering legal aid should put in place an effective system to measure the quality of work. This should consider the merits of outputs (assessed, for example, by audit or peer review) rather than inputs (for example, years of qualification or specific training) as the best way of assuring quality.

### Consultation Questions:

1. Do you agree with Proposition 26?

Yes

No

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

2. In response to this question, we would value views on:

- a) Whether client feedback has a role to play here – for example surveys of clients to measure the courtesy, care and responsiveness of the legal aid provider.

The Bar has no difficulty with this suggestion.

---

---

---

---

- b) Whether the proposition should include a specific reference to the right of the client to raise concerns with the legal aid provider, the body administering legal aid and/or the professional body of lawyers.

The Bar has no difficulty with this suggestion – our Professional Conduct

Committee already considers and investigates any complaints made against

members.

---

---

- c) The outcome or consequence of monitoring and evaluation processes – For example, in cases of poor quality work, should payment be denied, even where work is done in good faith?

---

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



---

The Bar of Northern Ireland would take issue with the suggestion that providers could be denied payments where work has been done in good faith.

---

d) Whether quality assurance processes should take into consideration rates of pay. For example, fixed fee systems in some areas of legal aid work may make it difficult for legal aid providers to do all they would do for a privately paying client within the scope of legal aid, which may affect outcomes in some cases.

---

The Bar has no difficulty with this suggestion.

---

---

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

a) How quality in individual cases is monitored and evaluated in a range of jurisdictions; and which body is responsible for setting and enforcing quality standards.

---

The Bar of Northern Ireland, as the regulator of the profession, has an important role to play in ensuring high professional standards across the membership. See previous comments around the Code of Conduct and the role of the Professional Conduct Committee.

---

b) How client confidentiality is assured during any monitoring and evaluation process. For example, are clients asked to give consent on their legal aid application form?

The importance of this is highlighted in the Bar's Code of Conduct.

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.



Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

---

---

---

---

### Rates of pay and development of expertise

There is a link here to Proposition 2 which addresses remuneration for legal aid work in the context of setting a legal aid budget, and asks whether appropriate rates of pay should be independently evaluated.

**Proposition 27:** Those providing exclusively or mainly legal aid services should be paid according to industry norms so as to attract high quality providers and to allow for the development of expertise in the sector and therefore create value for money, whether in a salaried service or through private practice.

### Consultation Questions:

1. Do you agree with Proposition 27?

- Yes  
 No

If not, please explain and/or suggest alternatives.

---

---

---

---

---

---

---

---

---

---

2. In response to this question, we would value views on:

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

- a) The factors which should govern rates of pay and the development of expertise.

Northern Ireland's justice system has seen the development of standardised  
fees across the criminal courts in recent years & this work is currently being  
progressed in relation to the family courts. The complexity of cases & the level of  
work undertaken across each of the various court tiers must be properly  
considered to ensure appropriate and fair levels of remuneration are provided.

- b) Whether rates of pay should be set independently of government and whether, for example, there should be a pay review body.

The Bar would have no difficulty with this suggestion.

- c) Particular considerations that should be taken into account when advising on rates of pay for (a) salaried service and (b) outsourced service delivery.

The Bar of Northern Ireland has no particular comment to make on this.

3. We are interested to receive examples of (attach relevant documents with completed survey if necessary):

- a) Practice on this issue from a range of jurisdictions.

London

São Paulo

Seoul

The Hague

Washington DC

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.

Please send your response by 25 August 2017 to [divisions@int-bar.org](mailto:divisions@int-bar.org)



the global voice of  
the legal profession®

b) Practice in jurisdictions where legal aid is provided via a form of mandatory pro bono.

---

The Bar has no comment to make on this – not relevant.

---

---

---

London

São Paulo

Seoul

The Hague

Washington DC

---

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 [www.ibanet.org](http://www.ibanet.org)

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114000655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

The London office of International Bar Association is registered in England and Wales as a branch with registration number FC028342.