

Criminal Justice Alliance

Sian Simpkins
Ministry of Justice
4.42, 102 Petty France
London
SW1H 9AJ

5 October 2009

Dear Sian

Consultation on 'Crown Court Means Testing: Draft Regulations'

I am writing to you on behalf of the Criminal Justice Alliance (CJA) in response to the current consultation on the draft regulations for the introduction of means testing for criminal legal aid in the Crown Court.

The CJA welcomes the opportunity to respond to this consultation. The CJA (formerly the Penal Affairs Consortium) is a coalition of organisations committed to improving the criminal justice system. It has 46 members - including campaigning organisations, voluntary sector service providers, umbrella groups, research institutions and trade unions - bringing together a wide range of organisations involved in policy and practice across the criminal justice system.¹

I am writing to express the CJA's strong opposition to the proposals contained in the consultation paper for the resources of the partner of a defendant to be considered as being the resources of the defendant (either pre or post conviction) for the purposes of calculating their income or capital resources (Paragraph 26(1)). These proposals would see partners of defendants, who are not themselves accused of any offence, forced to contribute to the legal costs of the defendant from their own income or capital resources, even if this is detrimental to their own living standards or those of their dependants.

This approach is unjust and arbitrary, with a defendant's partner eligible for legal costs for an offence even if they have played no part in it and have had no knowledge of it. It would have a wholly unacceptable and unjustified impact on the partner and family of the defendant, who are already likely to have suffered considerable distress as a result of the offending behaviour and to suffer financially if the defendant is convicted. This is particularly likely if the offender is subsequently imprisoned, with a review of the

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experiences of prisoners' families concluding that imprisonment has a "profoundly disruptive effect on both the immediate and extended family incomes, which results in increased financial risk".² The CJA's membership includes a number of organisations that provide support for prisoners' families, which would endorse this conclusion. This impact will be exacerbated if legal costs result in the loss of a partner's residence, which will have a particularly traumatic effect on them and on any dependent children.

It is not sufficient to state that the partner's assets will be excluded if they have a "contrary interest in the proceedings". While a partner may not be the victim or a prosecution witness, they may still have played no part in the offence and have known nothing about it. Targeting their assets is therefore arbitrary, unjust and implies guilt by association.

Consequently, the regulations should be amended to remove these proposals. Partners' resources should be seen as distinct from those of the defendant and should therefore not be eligible to be considered as part of the assessment made as to the defendant's income or capital. This would ensure that the partner or dependant of a defendant would not suffer from unjustifiable financial loss as a result of a suspected criminal offence in which they played no part. Further, legal costs should never force the sale of the primary residence of dependent children or vulnerable adult relatives of the defendant and/or their partner. This would not only be unjust, but it might also place a significant financial burden on the state in providing replacement housing, negating any savings in legal costs.

The Ministry of Justice should also consider whether the proposals are compliant, in their current form, with the European Convention on Human Rights, specifically Article 8 (the right to respect for private and family life), with regards to the possibility of individuals losing their homes, and Article 1 of Protocol 1 (the protection of property), given that the partners of defendants have not committed any criminal offence. The proposals would also disproportionately disadvantage women, as the vast majority of defendant's partners are female.

I am writing to you to express concern about this particular issue. This should not be taken as an endorsement or otherwise of the remainder of the contents of the draft regulations.

If you require any further information about this response, please do not hesitate to contact me at jon.collins@criminaljusticealliance.org or on 020 7840 1207.

Yours sincerely



Jon Collins
Campaign Director

¹ A full list of members is available at <http://criminaljusticealliance.org/organisations.htm>. Although the Criminal Justice Alliance works closely with its members, this response should not be seen to represent the views or policy positions of each individual member organisation.

² p.73: Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (May 2007) *Poverty and disadvantage among prisoners' families* York: Joseph Rowntree Foundation.