



Bar Council response to the Ministry of Justice “Interest on Lawyers’ Client Accounts Scheme” consultation

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Ministry of Justice (MoJ)’s consultation on the proposal to introduce an Interest on Lawyers’ Client Account Scheme (ILCA).¹ The response has been prepared by members of the Bar Council’s Remuneration Committee.

About the Bar Council

The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members’ expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers’ vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales

¹[Open consultation – Interest on Lawyers’ Client Accounts Scheme, Ministry of Justice](#)

- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association

As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction

There is no consultation question on whether to introduce the scheme, only on how to do so. The MoJ does not appear to be interested in receiving views on the fundamental question of whether a scheme such as that suggested by the consultation is a sensible proposal.

The Bar Council does not support the introduction of the scheme proposed. If, contrary to this, it is determined that such a scheme is introduced, we suggest that the scope of the scheme should not be universal. In particular, we suggest that legal aid firms (and/or other low margin legal firms), interest on compensatory damages awards and interest on moneys held for those who lack capacity and/or deputyship work should be out of scope. Further, the use of the funds generated should only be used to fund specific work and projects such as areas of legal aid and access to justice work. The consultation makes no suggestion as to what any such funds would be used for; that is a fundamental flaw in the proposals and something which the Bar Council cannot support.

Questions

1. Do you have any views on the proposed scope of the scheme?

Legal aid firms (and/or other low margin legal firms)

Even if it could be argued that firms making higher profits and charging hourly rates which are many multiples of legal aid rates should reasonably contribute towards the cost of legal aid and access to justice work (and we are not making that argument), the scope of this proposed scheme is to take funds from all solicitor firms, including legal aid firms that are making no profit. Significant numbers of

legal aid firms have already closed over recent years due to the difficulties in maintaining profitability on the current low legal aid fees. Any scheme such as this should not apply to firms that undertake legal aid work.

This impact is not just limited to legal aid work. The scope of legal aid work has been significantly reduced, for example in 2013 when the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force and considerably changed the structure of work and remuneration around publicly funded legal work, making a profound impact on the legal services sector.

There are other low margin (but not eligible for legal aid) legal needs which may well be impacted. These low margin cases have increased with the impacts of LASPO and range from private family law, general housing disputes, employment, small business cases and other small claim disputes. Unmet legal need remains a fundamental problem and could be made worse by these proposals. One in three citizens cannot resolve their legal problems effectively. This has risen slightly from 31% in 2019 to 32% in 2023.² See also below on use of the funds generated.

Interest on compensatory damages

The Bar Council also considers that it is wrong to include interest accruing on sums paid as clients' damages within the scope of the scheme.

Various scenarios arise in which a claimant's solicitor, rather than the claimant, will hold sums paid as damages in their client account. For instance, in the field of personal injury and clinical negligence, solicitors will routinely hold sums for a client as interim payments paid by a defendant on account of damages, or when acting as a quasi-trustee managing funds whilst waiting for the appointment of a deputy by the Court of Protection or the establishment of a personal injury trust.

Compensation for future loss is calculated using the Personal Injury Discount Rate under Section A1 of the Damages Act 1996 which assumes that the claimant will enjoy an investment return on damages. Forfeiture of interest that would otherwise provide that return because it undermines the basis upon which damages for future loss are calculated. Accordingly, the scheme risks undermining the principle of full compensation.

The scheme risks changing litigation behaviour if interest which would otherwise accrue on damages falls within the scheme. Whilst damages remain in the hands of

² [State of Legal Services 2025, five years on: progress, challenges, and next steps](#)

the defendant, interest would continue to accrue at either the full or half the Court Funds Office special account rate. When paid to the claimant's solicitor, the equivalent interest on the client account will be forfeited to the scheme. Forfeiture of interest on interim payments on account of damage may incentivise claimants to seek lower sums more frequently, thereby increasing the number of applications and, in turn, increasing costs. Similarly, the scheme may deter claimants from compromising claims at an early stage before arrangements for managing their fund are in place. Prolonging litigation increases costs. Including interest accruing on damages or settlement sums within the scope of the scheme risks having the unintended consequence of increasing costs for other statutory bodies.

Interest on moneys held for those who lack capacity and/or deputyship work

The Bar Council also considers that it is wrong to include interest where lawyers are managing funds for those who lack the capacity to manage their own property and affairs. This includes where funds have been generated from a personal injury award or for many other reasons (age, vulnerability or similar).

Use of funds generated

The consultation document is vague about how funds raised would be used. In other jurisdictions with similar schemes funds raised are used for defined purposes, which as civil access to justice projects. This proposal is drafted in the widest possible terms to fund only 'the justice system'. As a result, there can be no assumption that this scheme will inject new funding into the justice, or indeed that it will be used to fund legal aid or access to justice projects at all. It seems entirely possible that any funds raised could be subsumed in to the MoJ's general budget and used for the likes of paying salaries, prison costs, or frankly any other initiative. If a scheme is established, any funds that are collected must only be used to fund specific areas of the justice system, such as legal aid and access to justice work. Even then, those with low margin non-legal aid eligible legal aid problems would be impacted.

Furthermore, there cannot be a situation where the Treasury reduces its funding of the MoJ by using any funds raised through such a scheme. Any such funds should be for additional provision.

2. Aside from reserved legal activities, is there other work undertaken by legal service providers that includes holding client money? Should this be in or out of scope of the scheme?

The Bar Council does not have specific expertise in this area.

3. Are there other account types used for holding client money that should be in scope of the scheme?

The Bar Council does not have specific expertise in this area.

4. Are there any types of individual account used for holding client money that should not be included in scope of an ILCA scheme? And why?

Firms which undertake legal aid work should not be included in the scope of the scheme.

5. We propose that the scheme retains a higher proportion of interest generated on pooled client accounts (75–100 percent), and a lower rate of 50 percent of interest on individual client accounts. Do you have any comments on these rates?

The Bar Council does not have specific expertise in this area.

6. Do you foresee any difficulties with keeping in place the existing rules on client interest, for the interest not secured by the scheme?

The Bar Council does not have specific expertise in this area.

7. For legal work undertaken on your behalf as a client, have you received (or are you expecting to receive) interest on your funds?

The Bar Council does not have specific expertise in this area.

8. If yes to the previous question, how much interest have you received/are expecting to receive?

The Bar Council does not have specific expertise in this area.

9. Are there any impacts of the proposed scheme on clients that we have not considered?

The Bar Council has no further comment.

10. For legal service providers: how easy or difficult do you find it currently to open pooled or individual client accounts?

Not applicable

11. For client account providers (including Third Party Managed Account providers): are there any benefits or challenges foreseen with introducing banking products with the specified criteria proposed?

Not applicable

12. For client account providers: Would you be able to offer client accounts that could automatically transfer the appropriate amount of interest to the scheme? How would they work?

Not applicable

13. By what process should a “comparable rate” of interest on client accounts be determined?

The Bar Council does not have specific expertise in this area.

14. We propose that interest is credited to client accounts, and collected by the scheme, periodically (such as monthly or quarterly). What should that frequency be?

The Bar Council does not have specific expertise in this area.

15. Are there other account criteria for the accounts that would be recommended to make the scheme work as intended?

The Bar Council does not have specific expertise in this area.

16. Do you foresee any practical difficulties with the proposed process for legal service providers?

The Bar Council does not have specific expertise in this area.

17. Do you have any suggestions for changes that could improve how the model works for legal service providers?

The Bar Council does not have specific expertise in this area.

18. Do you have any other thoughts on the intended scheme process for legal service providers?

No.

19. At your firm, how much interest is typically generated on a single client’s funds including:

a. On one client’s funds in a pooled client account; and

b. On one client’s funds in an individual client account.

Not applicable

20. What proportion of your firm’s turnover is client account interest?

Not applicable

21. What does your firm currently do with client account interest?

Not applicable

22. How would the scheme, as proposed, affect your firm?

Not applicable

23. What indirect/administrative costs may the scheme place on your firm and how can we limit them?

Not applicable

24. Does your firm conduct legal aid work?

Not applicable

25. If yes to the previous question:

a. What proportion of your firm's turnover is derived from legal aid work?

b. Would the proposed scheme impact your provision of legal aid services, and to what extent?

25.a. Not applicable

25.b. As stated above, the scheme should not be levied on legal aid providers.

26. Do you envisage circumstances in which you would need the scheme administrator to assist you?

Not applicable

27. For client account providers: what are your views on the two proposed models for managing scheme interest: multiple administrator accounts across institutions versus a single central account?

The Bar Council does not have specific expertise in this area.

28. We propose that the Ministry of Justice initially administers the scheme. Do you think there is a more suitable organisation to take on this role in future, and why?

No.

29. Do you have any other comments on the proposed roles of the scheme administrator?

No.

30. What reporting activity do you already undertake on client accounts and client account interest?

Not applicable.

31. How might we ensure that an approach to monitoring and enforcement is proportional and effective?

The Bar Council does not have specific expertise in this area.

32. What do you consider to be the proposed ILCA scheme's equalities impacts on individuals with protected characteristics (if any)?

The Bar Council does not have specific expertise in this area.

33. Is there further evidence (including data, or case studies in other jurisdictions) you can share that could inform our equality analysis for the proposed scheme?

No.

34. Are there forms of mitigation in relation to equality impacts that we should consider?

The Bar Council does not have specific expertise in this area.

9 March 2026

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