The Family Law Bar Association (‘the FLBA’) has responded to the Ministry of Justice Consultation Paper ‘Transforming Legal Aid’. In a detailed 42 page document, the FLBA expresses concern that the proposals will have a detrimental effect upon the most vulnerable people in society, particularly women and children, and will deny them legal representation in cases that have a fundamental impact upon their future lives. To see the full response, click on (www.flba.co.uk/consultation/transforming-legal-aid-consultation-response).

The media focus to date has been on the proposed changes to the funding of criminal legal aid. It is important, however, not to lose sight of the significant changes also being proposed to the funding of family and civil legal aid in respect of advocacy, solicitors’ fees and experts. Significant cuts to the family justice budget were implemented on 1st April 2013 when public funding was withdrawn for most private law disputes involving children. Further cuts are now proposed before the impact of these reforms has been assessed. The Government seems set on introducing further short term ‘cost cutting’ which would have a negative impact both on access to justice and on the administration of justice in the family courts and would lead to additional cost. The proposals set out in the Consultation Paper, if implemented, would impact most significantly on the vulnerable and disadvantaged within society who would be deprived of legal representation from suitably experienced lawyers in cases involving their family life.

The proposals include:

* A new ‘residence test’: thousands of parents who cannot satisfy the test would find themselves ineligible for publicly funded representation in cases involving forced marriages, domestic violence, child abduction and the proposed removal of their children by a local authority.
* Applicants for judicial review of central and local government decision making would find it much harder to find publicly funded representation if the proposals to refuse funding (unless and until permission has been granted by the court to pursue the application) are implemented. So a parent whose child has been unlawfully removed from her care by way of administrative action may find it impossible to seek an urgent judicial review of that decision.
* Price Competitive Tendering: the Government has indicated that it may look to impose this on the family justice system once it has forced through its proposals in relation to criminal case funding. If implemented, the number of solicitors providing advice and representation to parents would be drastically reduced, contracts would be awarded on the basis of the lowest price, leading to deterioration in standards and parents would no longer be able to choose which solicitor would act for them in cases where their children had been removed by the State.
* Reducing fees paid to family law solicitors by 10%: fixed fees were introduced at levels set well below market rates in 2008, were reduced by 10% in 2010 and by 10% again in 2012. This third proposed cut would accelerate the move by solicitors’ firms away from this work and would impact on the quality of representation provided by the remaining firms. The timing of this proposed reduction, when family lawyers are being asked to implement the family justice modernisation programme introduced by the judiciary, could not be worse.
* Reducing fees paid to barristers in civil cases by, on average, 45%: this is likely to have a devastating impact on the standard of advice and representation available to litigants in complex civil claims.
* Reducing fees paid to experts in family cases by 20%: it is already becoming increasingly difficult to find experts to advise the courts when children are said to have suffered physical, sexual or emotional abuse. The fee levels now proposed would provide no incentive for experienced clinicians to give up their valuable time to assist the family justice system when other work is paid at a level more commensurate with their experience and expertise.