



Ministry of  
**JUSTICE**

**Information Requests:  
Section 57 of the Criminal  
Justice and Immigration Act  
2008  
Privacy Impact Assessment**

## **Background**

The specific purpose of this statutory gateway is to allow the sharing of relevant information in order to ensure the correct administration of the grant of legal aid in magistrates' courts.

Two sets of regulations were introduced. These are the Criminal Defence Service (Information Requests) Regulations 2009/SI No. 391 (which allows wider financial information to be sought) and the Criminal Defence Service (Information Request) (Prescribed Benefits) Regulations 2009/ SI No 212 (which details the list of benefits to be considered when assessing an individual's benefit status). The first set were subject to the affirmative resolution procedure and the second were subject to the negative resolution. Both sets came into force on 2 March 2009.

## **What is being addressed**

These new arrangements allow the Legal Services Commission (LSC), as the authority responsible for granting publicly funded representation in criminal cases, to request specific information from the Department for Work and Pensions (DWP) and/or Her Majesty's Revenue and Customs (HMRC) in order to confirm details submitted by an applicant in relation to their financial eligibility for criminal legal aid. Applicants are aware that such checks may be undertaken and that additional financial information may be sought.

## **Description of data being checked**

In practice court staff will continue to request confirmation where an applicant is claiming receipt of a 'passported' benefit (Income Support, Income-based Job Seeker's Allowance, Income-related Employment and Support Allowance, and Guaranteed State Pension Credit). This is provided through a web-based link which generates a 'yes' response if the data matches exactly the data held in the DWP database, but a 'no' response if there is any discrepancy.

In addition the gateway will enable LSC staff to request information about an individual's wider welfare benefit position, which benefits they receive, how much they receive, as well as details of an individual's benefits history over the previous two year period. The computation for legal aid is a rolling 12 months and therefore for many applicants in order to assess their eligibility for legal aid LSC look across two fiscal years. Some applicants declare that they have no earnings and do not claim benefits. In these cases a persuasive picture is needed to show that legal aid funding was appropriate. This is done by looking at the earnings and benefits histories over the previous 24 months. This

shows that during that time their income from any source was not sufficient to make them ineligible for legal aid funding or that the pattern of coming on and off benefit support a low risk categorisation of that applicant.

The gateway also enables requests to be submitted to HMRC for information about an individual's income and capital gains status, and whether or not they are a director or partner in a business. LSC staff will not be able to access any other personal data from DWP and/or HMRC.

### **Groups that have been consulted**

The draft statutory instruments were the subject of a consultation exercise in autumn 2008. This led to three responses from Crown Prosecution Service, the Law Society and the Justices Clerks' Society, all of which were broadly supportive. Also involved in the development of the statutory instruments were DWP, HMRC and the LSC.

### **Security**

Information is shared between Her Majesty's Courts Service (HMCS) and DWP through the Means Assessment and Appeals Tool (MAAT), a web based application used to record data about an individual's financial eligibility for criminal legal aid.

Users have to be authorised to use the system which is controlled by user names and passwords, the latter of which are changed regularly. Inactivity on the application is logged and an application is automatically closed out if there has been no activity for 30 minutes.

Welfare benefit information is verified by sending the applicant's surname, date of birth and national insurance number from the MAAT application server to DWP's Customer Information System (CIS) server (this is for identification purposes only). At the point that the check is done, there is an authentication process which confirms the authority to undertake the check. The information requested is only supplied if all three pieces of identification are matched with an applicant's record held on the DWP's CIS database. If the identification cannot be confirmed, DWP will simply return a response which confirms that no match has been found.

Information shared between the LSC and both DWP and Her Majesty's Revenue and Customs (HMRC) involves applicant details being entered into a spreadsheet which is then password protected. The spreadsheet is sent electronically to either HMRC or DWP using a secure email account and cannot be opened without the password. The password for the spreadsheet is agreed in advance and is not emailed. Both DWP

and HMRC use the applicant details to match them to their own databases and once matched will add the information requested to the spreadsheet before e-mailing it back through the secure e-mail account. If an applicant cannot be identified, no information is supplied.

Staff use is monitored and audited (eg. to stop a high profile defendant's details reaching the media). The LSC is required to ensure that users who no longer have a business need to access the information have their MAAT log-on and secure e-mail account deactivated. This is reviewed every month.

To access an individual's data fraudulently, court staff would have to know an applicant's correct surname, date of birth and national insurance number. Even then, all they would receive is confirmation that the individual did or did not receive one of the 'passported' benefits.

The spreadsheet is maintained in electronic format only and is saved on the LSC's server which is protected by appropriate firewalls. The National Audit Office (NAO) is expected to maintain the spreadsheet securely. NAO staff are also given access to this information so they can verify that legal aid has been properly granted.

This framework has been in place since late 2007 and during that time it has worked well. The secure e-mail system is used by other criminal justice agencies and is considered by all to be safe and secure.

### **Data Protection Act 1998**

All of the eight DPA principles have been considered in setting up these new arrangements:

- Fairly and lawfully processed – the regulations will provide a statutory basis for the sharing of personal data
- Processed for limited purposes – the specific of verification of an individual's financial eligibility for criminal legal aid
- Adequate, relevant and not excessive – only specific data will be sought necessary for verification
- Accurate and up to date – the means test application form completed by the applicant and the verification of data with DWP/HMRC will ensure data is accurate
- Not kept for longer than is necessary – data is scheduled to be archived after three years – LSC have mirrored the retention period that HMCS have for matters of public record. HMCS hold their files containing the funding decision for this period and LSC do the same with any information used to demonstrate confidence in that funding decision.

- Processed in line with the rights of the individual – an individual's rights under the DPA will be maintained
- Secure – Only LSC/NAO staff will have access to the information which is password protected to prevent unauthorised access
- Not transferred to other countries without adequate protection – personal data will not be transferred outside the European Economic Area.

© Crown copyright  
Produced by the Ministry of Justice

Alternative format versions of this report are available on request from  
[web@justice.gsi.gov.uk](mailto:web@justice.gsi.gov.uk)