

Summary of key responses in respect of the development of the Northern Ireland Funding Code consultation paper

| Consultee                               | Summary consultation response  | Proposed action/justification  |
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| General comments                        |  |  |
| Advice NI                               | Welcomed ongoing communications between NILSC and Advice NI. Welcomed opportunity to input into consultation and are keen to be kept informed of developments. | Noted. Northern Ireland Legal Services Commission (NILSC) believes that stakeholders and providers must be kept well-informed of proposed changes. In addition to formal consultative processes, a range of stakeholder fora, many of which have been operating for some time, have been set up. |
| Advice NI                               | Noted that it is perhaps disappointing that reference to a mixed model of service delivery in the Funding Code is not made.                                    | The Code Criteria only contains the decision-making criteria as to whether Civil Legal Services will be granted and or continued. The Funding Code Procedures will however make provision for the mixed model, which is likely to be developed through Community Legal Services.                 |
| Advice NI                               | Urges NILSC to expedite introduction of a mixed economy model of NILSC supported legal services.   | NILSC is committed to introducing in line with the provisions of Access to Justice Order (AJO 2003) a mixed model of service delivery and has been building the foundations for same pending implementation of AJO 2003.   |
| Advice NI                               | Believes more could be done regarding consultation with a wider range of stakeholders and most importantly the general public.                                 | The public consultations on the Funding Code proposals and Equality Impact Assessment (EQIA) were widely circulated and all views and comments welcomed. The NILSC remain committed to engaging further with stakeholders and is developing a communications strategy in respect of this.        |
| Action against Medical Accidents (AvMA) | Hopes that its observations/comments will be seen as useful. Would welcome engagement with NILSC.  | Noted. The NILSC is committed to regular and open communication with as many stakeholders as possible.   |
| Housing Rights Service                  | Welcomes opportunity to input into consultation and is keen to be kept informed of developments. Agrees with a lot of proposals.                               | Noted.   |
| Mencap                                  | Welcomed opportunity to respond.   | Noted.   |
| Belfast                                 | Submit that whilst there is a need to achieve a  | Agree that access to justice is of the utmost significance but submit that   |

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| Solicitors Association (BSA) | balance between the proper resourcing of legal services and the need to maintain access to justice, access to justice must be the paramount concern where any conflict exists and that this should guide any revision of legal services in NI.   | this must be viewed along-side the need to target and prioritise the most deserving of cases in circumstances where there are limited resources available for legal aid in line with requirements of AJO 2003.   |
| BSA                          | Submit that proposals not only fail to provide for the laudable aims of the Lord Chancellor or the goals that NILSC set itself but also will significantly reduce the ability of the most needed in society to have access to the courts.  | NILSC is committed to ensuring that Civil Legal Services are accessible and to the full and effective implementation of AJO 2003 and, through NIALAS, (NI Additional Legal Aid Scheme) aim to increase access to justice in money damages cases.   |
| BSA                          | Noted that the paper is devoid of supporting empirical evidence or of statistical information.   | NILSC is committed to moving forward on the basis of appropriate research and data to include specially commissioned research such as the NI Legal Needs Survey, relevant Government policy and current patterns of coverage. The Funding Code proposals have also been the subject of an EQIA.  |
| BSA                          | Suggest that NILSC's administration costs are already 3 times the total budget for the benefit of the public.  | NILSC is committed to ensuring that costs are appropriately and necessarily incurred. Its administration costs are necessarily higher as a result of a number of factors to include the rigorous governance arrangements required of a Non Departmental Public Body (NDPB) and are also due to the challenging reform agenda which has been dictated by AJO 2003 |
| The Law Society              | Concerned that the Funding Code will lead to substantially increased bureaucracy and associated administration costs.  | As above. NILSC is keen to keep administration of the Funding Code to a proportionate level that will allow for increased control over the Fund, targeted spending on priority cases and the adjustment of funding rules to meet changing pressures.   |
| BSA                          | Believes NILSC is failing to meet its obligations under AJO 2003. That it is absorbing unsustainable amounts of the limited resources available to administer the Fund and yet proposes to reduce the accessibility of the neediest to the courts. Believes that the proposals for the Funding Code are ill-judged and in their present format fail to meet the statutory tests required by AJO 2003 whilst their net effect implemented, will be to reduce excess to the courts for some of the most vulnerable and poorest members of society. | NILSC is committed to fully and effectively meeting its obligations under AJO 2003. It will look closely at concerns that its proposals to date have fallen short. See generally above comments also.  |

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| The Bar Council                           | Believes that the effect of the Funding Code will be to restrict, and in some areas substantially restrict, the availability of public funds where such funds have been hitherto available.   | NILSC intends through the operation of the Funding Code to target spending on the most deserving of cases. This is likely to increase availability of public funds in these priority areas. In relation to money damages cases falling under the General Funding Code, the Funding Code will impose more rigorous tests than currently exist under the existing merits test in order to assist with decision-making in these cases. An alternative funding scheme such as NIALAS may also increase access to justice beyond those financially eligible for legal aid under current arrangements. |
| BSA                                       | Believes that the consultation period provided was wholly inadequate and looks forward to meeting the Commission in person to discuss these matters in more detail.   | A 12 week consultation period was given. 12 weeks is the period recommended by the Cabinet Office. A 10 day extension was also subsequently given to all those who requested an extension. In addition, advance copies of the consultation paper were circulated to members of the NILSC's Civil Legal Services stakeholder group.   |
| The Law Centre                            | Welcomes opportunity to comment on the proposed NI Funding Code.  | Noted.   |
| The Law Centre                            | Strongly urge that mechanisms for periodic review and evaluation of the operation of the new system are built-in to the system at the outset.   | Noted. NILSC agrees that this is imperative.   |
| Northern Ireland Housing Executive (NIHE) | Broadly welcomes the various criteria which are proposed to decide on whether to fund or to continue to fund cases.   | Noted.   |
| The Law Society                           | Wishes to record its fundamental reservations about the introduction of the Funding Code in NI.   | Noted. However, the Funding Code is a statutory requirement of AJO 2003.   |
| The Law Society                           | Wishes to continue to be involved with the development of the Funding Code and in particular with its practical implementation. Considers that the Funding Code should not be commenced without a lead-in period sufficient to permit an opportunity for extensive awareness raising amongst legal aid practitioners. | Noted. NILSC agrees that there is a need for communication and training aimed at preparing legal aid practitioners to understand the Funding Code.   |

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| The Bar Council  | Indicates that it's clear that the NILSC has in the main been guided by the criteria set out in Article 15 (2) of the AJO 2003 and develops the NILSC's earlier thinking as set out in its initial paper of April 2006.  | Noted.  |
| Cost-Benefit (application of cost benefit ratios to quantifiable cases coming under the General Funding Code criteria) |  |   |
| Advice NI  | Understands the rationale behind the proposal but comments that a strict cost benefit ratios approach could lead to an overly rigid and inflexible approach. NILSC itself accepts that it's not an exact science as very often evidence may become available which may significantly alter the outcome of a case. Believes that NILSC should build in a degree of flexibility and contingency planning so that there can be decision-making on a case by case basis which may allow NILSC to support cases which might not otherwise be supported.   | The cost-benefit ratios relate to cases coming under the General Funding Code and primarily involve money damages cases. Less strict tests are applicable in priority orders, thereby building in the appropriate level of flexibility into the Code.   |
| The Law Society  | Concerned that the application of strict cost benefit ratios will lead to a very bureaucratic, rigid and inflexible system for cases falling under the General Funding Code. Notes that no empirical evidence has been produced to show, that under existing arrangements, a significant number of weak cases proceed at considerable public expense. Any such problem could be addressed by improving training for practitioners and for NILSC staff. Suggests the position has been complicated by Northern Ireland Court Service's (NICtS) recent consultation on court fee changes which if implemented will see varying degrees of court fee increases. | As above.<br><br>NILSC does not accept that the public expense incurred is not significant. The Commission's current information system does not distinguish between weak cases and strong cases. The application of the cost benefit ratios will provide the Commission with a tool within the Funding Code that will ensure a degree of control and predictability to the Legal Aid Fund. Such tools are required to work within the context of a controlled budget. There will be associated guidance and training for practitioners to help with the implementation of cost benefit ratios. NILSC will consult with NICtS on this latter point. |
| The Bar Council  | Suggest that whilst an increasing damages/costs ratio appears consistent with Article 15(2) AJO, there is no rationale set out for the choice of specific ratios. Indicate that in practice many damages claims will at least initially fall into the category of moderate prospects of success (50%-60%), that a 4:1 ratio of   | Noted. However, the ratios reflect the initial position that applies in England and Wales.  |

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|  | damages to costs will have the effect of removing the availability of public funds from a large number of cases and in particular those claims where damages will be less than £20,000. It is considered that the 4:1 ratio has been chosen to achieve precisely this effect and that such an approach is to be entirely deprecated. It is submitted that ratios of 1:1, 1:5:1 and 2:1 would preserve greater access to justice.   |  |
| Cost-Benefit and clinical negligence cases           |  |  |
| AvMA   | Does not agree with this proposal. It does not take into account the extra expense involved in pursuing clinical negligence cases. Monitoring actual case outcomes as part of the NILSC's audit and compliance function may also not be appropriate in a clinical negligence context. Many cases start out with a view of damages that may either fall below or above the cost benefit threshold but involve substantial revision following causation evidence. The latter may expand or contract the claim value depending on how far the injuries can be related back to the incident. It is most unusual for clinical negligence claims (other than 'barn door' ones) to be rated as having 80% chance of success. Suggests that the threshold is too high and that any case of 60% or greater ought to have a 1:1 ratio applied. | NILSC is undecided as to whether a special case exists for a different cost benefit test other than that under the General Funding Code, to be applied to clinical negligence cases. (It is noted that LSC E/W applies the General Funding Code cost benefit ratios to clinical negligence cases.) NILSC will look at this further before reaching a final view. |
| The Law Society                                      | Believes that a more relaxed cost benefit ratio should be applied.   | As above.  |
| Patrick Mullarkey of Campbell Fitzpatrick Solicitors | Notes that clinical negligence cases should have to satisfy the same prospects of success as is found in the General Funding Code. Clinical negligence cases are complex and generally have higher costs than most other categories of cases. Suggests that it's therefore appropriate to adopt a different approach to the cost benefit ratio in these cases. It is not reasonable to apply the minimum cost benefit ratios in the General Funding Code; rather a more relaxed ratio should be applied.   | As above.<br>As above.   |
| The Bar Council                                      | Suggests that an increasing damages/costs ratio is consistent with Article 15(2) AJO 2003 and submits that a more 'relaxed' cost benefit ratio is essential to take account of this.   | As above.  |
| BSA  | Argues that the strict application of the cost benefit rule as proposed reduces the test to one of simple economics. Clearly, the merits of proceeding for a prudent private paying client would include some element of a cost benefit analysis but this should not be 'separated out' to provide an additional hurdle for the applicant. Rather there should be no arithmetical rule and it should simply remain as a factor for consideration.  | NILSC is in favour of introducing cost benefit ratios for quantifiable cases. Non-quantifiable cases including those in priority areas have less strict tests.   |

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| Cost benefit and public interest                |  |  |
| The Law Centre                                  | The criteria for assessing cost benefit need to be interpreted with flexibility and with recognition that benefit may be direct or indirect.   | Noted.   |
| Citizens Advice Bureau (CAB)                    | Considers that it is difficult to always determine the prospects of success in public interest cases and that there should therefore be a degree of flexibility. Public interest cases may be direct or indirect.  | Noted. NILSC agrees that public interest cases have a different character to much other litigation and that this should be recognised.   |
| Defining prospects of success, cost and benefit |  |  |
| Advice NI                                       | Suggests that the degree of subjectivity involved should prompt NILSC to build in risk analysis and contingency planning e.g. there could be an independent third party analysis of borderline cases which is independent of the client/their solicitor and NILSC.   | Borderline cases and all other cases that have been refused funding may be appealed to the NILSC's appeals panel.  |
| BSA   | Suggests that the definition of success proposed is unclear. Surely the test has historically been that of whether a case would enjoy a good prospect of success if it proceeded to hearing – no need to alter that test.  | NILSC considers that the test should not be measured by the prospect of a successful settlement. It agrees that it should be measured by the prospects of success if it went to hearing. |
| The Law Society                                 | Considers, in the absence of evidence to the contrary, that the existing system appears to provide as good an ability to predict success as the proposed new tests and at lower cost.  | As above.  |
| NIHE  | Overall, endorses the proposed approach to defining prospects of success, cost and benefit in housing, judicial review and claims against public authorities cases.  | Noted.   |
| The Law Society                                 | Considers that the definition of 'likely benefit' should be amended to recognise the role of the litigation process in those cases involving personal injury where in the event of a successful claim and receipt of an award by a claimant, the government recoups state benefits paid to the injured party and recovers hospital and health charges from the defendant's insurers. | NILSC recognises that this is a wider benefit to the public purse as a whole but considers that it not necessary to consider this as a matter of course in individual cases.             |
| The Bar Council                                 | The NILSC's approach has been predicated by Article 15 (2) (a) of the Order and is not therefore a matter for substantive consultation.  | Noted.   |

| Defining prospects of success, cost and benefit in clinical negligence cases |  |  |
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| AvMA   | Does not agree with the proposals. In a clinical negligence context, less than 1% of cases go to trial. It is therefore unrealistic to define prospects of success with no cognisance of the likelihood of a successful settlement. There are many reasons why a case will have a successful outcome which might not stack up if the case was tested at trial e.g. the defence might have made an offer of settlement. Notable that this test contrasts with the test in respect of 'likely cost' where it is defined as costs to disposal of a case. The same test ought to be applied to the prospects of success. | NILSC consider that prospects of success if the case went to hearing, is a more objective measure than measurement by the prospects of settlement.   |
| Patrick Mullarkey  | Suggests that after full investigation of a clinical negligence case has taken place, generally an experienced practitioner should be able to rate the prospects of success in accordance with the categories of evaluation suggested by the Code.   | Noted.   |
| Priority areas of funding  |  |  |
| Advice NI  | Asks NILSC to demonstrate a greater commitment to delivering a mixed model of service delivery. Whilst highlighting that 'help with social welfare issues that will enable people to avoid or climb out of social exclusion, including help with housing proceedings and advice relating to debt, employment rights and entitlement to social security benefits' are generally given higher priority than other categories, it is disappointed that the Funding Code itself does not refer to these areas nor to how they will receive prioritisation and how they will be operationalised.                          | NILSC is committed to introducing a mixed delivery model of service delivery. NILSC supported legal advice services in the areas indicated, are likely to be funded under Community Legal Services rather than on a case by case basis under the Funding Code. In the event that provision is by way of a contract, grant or loan, the contract, grant or loan will contain detailed information as to terms/conditions. |
| Mencap   | Suggests that a new priority is identified, which takes account of the conclusions and recommendations of the Bamford Review of Mental Health and Learning Disability (NI).  | NILSC accepts that this area is a significant legal issue and is one which NILSC will want to examine in more detail in the near future. Ultimately, provision may be provided through Community Legal Services rather than under the Funding Code. In particular, NILSC will be reviewing the Bamford recommendations in terms of the implications for publicly funded legal services.                                  |
| The Children's Law Centre  | Welcomes the priority to be given to the funding of judicial review cases.   | Noted.   |

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| <p>The Children's Law Centre</p> | <p>Suggests that the priority area of cases concerning the upbringing or welfare of children should be reworded as cases concerning the rights and best interests of children.<br/> Argues that the educational rights of children and young people should be afforded priority status and that the Funding Code should allow for Legal Help, Investigative Help and/or Full Representation for children, young people, and carers in Exclusion Appeal Tribunals and Special Educational Needs Tribunals in exceptional cases which fulfil the necessary criteria.</p>   | <p>NILSC considers that cases involving the upbringing or welfare of children should remain the top priority. Cases concerning the rights and best interests of children can, where appropriate, be considered under the judicial review or claims against public authorities' categories of the Code also. Exceptional funding is also available for relevant cases outside the scope of Civil Legal Services, e.g. cases involving tribunals other than the Asylum and Immigration Tribunal.</p>   |
| <p>The Law Centre</p>            | <p>Regrets that public funding for tribunal representation does not form part of the new arrangements. Suggests that funding could be diverted through Community Legal Services rather than through the extension of funding on a case by case basis.<br/> Welcomes the high priority attached to social welfare cases and wider public interest cases.<br/> Supports prioritising actions against public authorities alleging a 'breach of human rights'.<br/> Argues that the mere breach of human rights is of itself 'significant' and strongly caution against a requirement of a significant breach.<br/> Urges that specific recognition be given in the Annex to the Code to proceedings aimed, not only at averting the threat of loss of liberty, but also those which challenge existing detention, such as mental health detention cases.<br/> Recommends that specific priority should be given to mental health and community care cases.<br/> Suggest that there is also a strong case for prioritising matters relating to the rights of older people who may be particularly vulnerable due to age, health or disability.</p> | <p>Exceptional funding can be applied for in cases such as tribunal representation which are outside the scope of Civil Legal Services.</p> <p>Noted.</p> <p>Noted.</p> <p>NILSC will give further consideration to this.</p> <p>Noted. NILSC will give consideration to this.</p> <p>Noted.</p> <p>The Funding Code seeks to identify priority areas rather than priority groups. It is believed that cases relating to the rights of older people who may be particularly vulnerable due to age, health or disability can be addressed within the proposed priorities, subject of course to financial eligibility.</p> |

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| CAB   | <p>Welcomes priority for social welfare cases and public interest cases. Also welcomes emphasis on prioritising actions against public authorities alleging breach of human rights.</p> <p>Are concerned about the lack of priority afforded to people with mental health problems and older people.</p>   | <p>Noted.</p> <p>The Funding Code has sought to identify priority areas for funding of Civil Legal Services rather than priority groups. It is felt that the priority areas identified should be generic rather than seeking to identify specific groups of people as priorities. It is believed that the needs of people with a learning disability as well as other equality groupings can be addressed within the proposed priorities.</p>            |
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| Priority areas of funding and money damages cases       |  |  |
| Association of Personal Injury Lawyers (APIL)           | <p>Disappointed that money damages cases have not been included among the priorities for funding. Argues that the abolition of legal aid for money damages cases may substantially reduce access to justice in NI. Argues that money damages cases make up only a very small part of NI's legal aid expenditure and unlike other areas of public funding, are often cost neutral. In addition, where damages are awarded, other government departments will be able to recover the cost of welfare benefits and medical treatment required as a result of the victim's injury. Further feels that the abolition of legal aid for money damages runs counter to other objectives set out in the consultation paper.</p> | <p>Money damages cases are not a priority area under the Code. NILSC is considering, however, alternative methods to funding money damages cases which it is hoped will actually increase access to justice in these cases. Should an alternative scheme not be established prior to or in time for introduction of the Code, the relevant decision-making criteria are contained within the General Funding Code.</p>                                   |
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| Priority areas of funding and clinical negligence cases |  |  |
| AvMA  | <p>Welcomes that clinical negligence remains within scope for the time-being but are concerned about the possibility of this not remaining so in the medium to long term.</p>  | <p>Noted. NILSC recognises the special character of clinical negligence cases and recognises also the particular importance of ensuring access to justice in this area whether through public funding or an alternative funding scheme. In the event of the development of an alternative scheme for funding money damages cases, consideration is likely to be given at some point to the suitability of this scheme for clinical negligence cases.</p> |

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|   | Notes that top priority is given to, amongst other areas, proceedings against public authorities in cases involving serious wrongdoing. Submits that there is considerable overlap between this and clinical negligence.  | Noted. NILSC agrees with this.  |
| Use of the Funding Code to control the budget   |   |   |
| Advice NI   | Believes that an opportunity has been missed in terms of advocating the mixed economy approach to service delivery. Not only will the mixed model approach provide targeting but it will contribute towards NILSC's ability to operate within budget.   | NILSC is committed to the mixed model. See previous responses above also.   |
| BSA   | Believes that control of the budget might first be achieved by identifying cost savings internal to NILSC. Suggests that recent years have seen an increase in the operating budget of the administrative structures of NILSC.  | Only those costs that are appropriate and necessary will be incurred. See reasons above as to why operating costs have increased.   |
| The Law Society   | Concerned that the proposed arrangements to provide for the administration and allocation of the Civil Legal Services budget are disproportionate in scale.   | The proposed arrangements are aimed at increasing control over the Fund, enabling the targeting of spending and the adjustment of funding rules to meet changing pressures.   |
| The Bar Council   | Note that the imposition of budget limitations is demand led under current arrangements. Agree that it is to the good of the NILSC that the success of the various mechanisms used to control the budget will be closely monitored. Submit that stakeholders should be involved in a review of the budgetary arrangements after one year of the Code's operation. | Noted. NILSC will give serious consideration as to how stakeholders may be involved in review arrangements.   |
| Funding for mitigation in relation to mortgage repossession cases where no legal defence exists |   |   |
| Advice NI   | Supports 'Help at Court'. Asks NILSC to reconsider its intention not to apply Help at Court as a general level of service.  | Noted. See response below also.   |
| Housing Rights Service  | Concerned about the uncertainty around funding Help at Court for housing repossession cases. Strongly supports the need to seek the Lord Chancellor's Direction to enable provision. Welcomes an opportunity to assist NILSC in reaching a decision and with any pilot scheme.  | NILSC is considering asking the Lord Chancellor for a Direction to enable it to introduce Help at Court on a pilot basis in respect of repossession cases only (including mortgage repossession cases) where no legal defence exists, for the purposes of mitigation. It seems unlikely that it will at this time request that it be administered as a level of service under the Funding Code. It will however keep under review possible extension to a general level of service in the |

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|   |  | future.   |
| The Bar Council                                   | Considers that such a Direction should be sought. Suggest that most mortgagee cases involve clients who are in genuine financial difficulty and who, if a repossession order is made, will have to seek public housing for their accommodation.  | As above.   |
| BSA   | Don't believe that funding in (essentially undefended) repossession cases is a priority and do not believe that funding in this area should take priority over other areas. However, do believe that persons in this position should have access to some other legal advice and assistance and that limited funding should be put in place to allow mitigation to be prepared. | As above.   |
| The Law Society                                   | Has some sympathy with the proposed approach to this type of case. Are mindful of the possible financial and resource implications in extending scope to this area and wonder if it is possible to estimate the likely cost of same.   | As above. Under the proposal, initial costs would be limited to those involved in the operation and evaluation of the pilot. Work is presently ongoing on the quantification of those initial costs.  |
| Mencap  | Suggests that a case should be made for this service for people with a learning disability who, because of their disability, can find it difficult to understand new, complex information or situations.   | NILSC does not consider that a specific level of service is needed to cover these situations. Circumstances such as those mentioned will continue to be considered on a case by case basis in the context of the case concerned.  |
| Minimum damages thresholds for Investigative Help |  |   |
| APIL  | Argue that a threshold of £5000 will effectively exclude 85% of all county court claims from funding.  | NILSC is not persuaded that the proposed threshold should be lowered. It should be noted that the threshold only relates to applications for Investigative Help and not Full Representation. It should be borne in mind also that NILSC is actively considering introducing an alternative scheme to fund money damages cases. An alternative scheme such as NIALAS may require a minimum threshold also. |

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| The Bar Council   | Argue that this appears to be a cost cutting measure simpliciter. The effect of its adoption will be to substantially restrict the availability of public funding for people of limited means in the lower reaches of the County court jurisdiction and the entirety of the District Judge's jurisdiction.<br>Indicate that these observations also apply to the proposed £1000 threshold in respect of housing cases. Submits that housing cases of all kinds tend to fall within the category of social need and that this exclusion does not therefore appear justified.   | As above.   |
| Patrick Mullarkey | Submits that the level of damages may be extremely difficult to assess at the commencement of any given action and does not agree that a minimum damages threshold should apply in relation to applications for investigative help in clinical negligence cases. If NILSC is intent in imposing a threshold, £5000 is too high.   | As above. NILSC will give consideration though as to whether the particular character of clinical negligence cases requires a different approach. |
| BSA               | Doesn't accept that funding should be restricted in cases with a value of less than £5000. As the majority of civil cases are of modest value, this would operate to exclude many from legal aid eligibility.<br>Do not believe either that a threshold of £1000 in housing cases is necessary; it further restricts the general test and prevents sensible exercise of discretion – the test should remain that of the 'prudent private payer'.  | As above.<br><br>NILSC is not persuaded that the proposed threshold is unnecessary.   |
| The Law Society   | Concerned about this proposal, particularly regarding the impact on money damages claims. The effect of a threshold of £5000 will be to deny access to the vast majority of claimants who bring actions for recovery in the County Court. Asks NILSC to re-consider its position on this matter and to set the threshold at £1000.<br>Given ongoing involvement with NILSC on mechanisms for the funding of money damages cases, doesn't intend to deal in this response with the issue of the longer term funding of these cases.<br>In the absence of data as to the number of housing cases in NI where damages are claimed and the amount of any award, the Society has no comment to make at this time about a threshold of £1000 for investigative help in housing cases. | As above.<br><br>Noted.<br><br>Noted.   |
| AvMA              | Agree provided that the monitoring of case outcomes takes into account the issues that relate to clinical negligence where the impact of causation evidence can revise quantum assessments radically (downward).  | Noted.  |
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| Establishment of General Family Help/ Family Mediation/ Help with Mediation as a level of service |   |  |
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| Mencap  | Suggests that NILSC must ensure that any support provided to families in the form of General Family Help/Family Mediation is accessible to all families including those with a disabled child or parent.  | NILSC accepts this point subject to those groups meeting the means and/or merits tests for funding where applicable.   |
| BSA   | Don't believe that there is any proven need for a General Family Help certificate in cases concerning children. Believes that the test would not be different pre-court or at the court-level.<br>Believes that there is merit in assistance for persons who wish to try to resolve ancillary relief matters without recourse to proceedings.   | See below.<br><br>Noted.   |
| The Law Society   | Welcomes General Family Help as a level of service. Believes this will fill a long-standing gap with the existing legal aid system with regard to the type of case referred to in para 9.10 of the consultation paper. Its introduction should certainly encourage the earlier resolution thereof.  | Noted.   |
| The Bar Council   | Query the NILSC's view that the introduction of a GFH certificate 'would encourage the early resolution of cases' is based on. Submits that in practice, in most cases a GFH certificate will in most cases turn out to be a preliminary certificate prior to an application for Full Representation and that such a level of service is probably unlikely to have a beneficial effect. | The intention behind the proposed introduction of General Family Help is the encouragement of earlier resolution of cases to include a greater use of negotiation prior to the issue of proceedings.                   |
| BSA   | As mediation services are limited in NI, does not see Family Mediation as a priority but urges that this is kept under review as the sector develops.<br><br>Believes that related conveyancing work under General Family Help and Help with Mediation should be funded.  | NILSC is keen to promote effective alternatives to the court process in family and children cases in partnership with others. NILSC recognises that mediation must be an effective and real alternative.<br><br>Noted. |
| The Law Society   | Believes that related conveyancing work under General Family Help and Help with Mediation (if introduced) should be funded in appropriate cases.  | Noted.   |
| The Bar Council   | Believes that a Direction as proposed appears to make sense. Queries whether thought has been given to the other aspects of implementation of an agreement in an ancillary relief matter such as the transfer of insurance policies or other investments  | Noted. NILSC will give consideration as to the appropriateness of providing public funding for the matters identified.   |

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| The Law Society        | <p>Surprised that NILSC proposes to offer Family Mediation by way of 2 separate levels of service in circumstances where it is accepted that there are very few trained family mediators, whilst deciding not to adopt this approach for non-family mediation in circumstances where there are indeed a considerable number of trained and accredited mediators.</p> <p>As a payment mechanism for these services, has reservations as to whether the culture of mediation has developed to such an extent that it justifies the need for a separate level of service.</p> <p>Adds that separately from mediation, Collaborative Law seeks to resolve family disputes without the need for litigation and would welcome some clarification as to how this service might be provided for within the provisions of the Funding Code.</p> | <p>Cases concerning the upbringing and welfare of children are of top priority under the Code. The benefits of less adversarial approaches to court based approaches in these cases are well recognised. NILSC wishes to encourage the development of mediation as an alternative to litigation through the provision of funding for Family Mediation. NILSC is giving further consideration to whether this can only be done through the provision of 2 separate levels of service.</p> <p>NILSC is currently evaluating the recent collaborative law pre-pilot and will be considering its place within the Funding Code/Community Legal Services.</p> |
| The Bar Council        | Believes that in principle, mediation in family disputes is to be welcomed. Notes that substantial difficulties have however arisen in many previous schemes.  | Noted. NILSC will be considering what lessons can be learnt from these previous exercises.   |
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| Public Interest        |  |  |
| AvMA                   | Agree that it's not appropriate to set strict thresholds as to the number of people who could potentially benefit before wider public interest is established.   | NILSC will not set strict thresholds though it will consider introducing indicative guidelines for decision-makers.  |
| Housing Rights Service | Agree that it is not appropriate to set strict thresholds.   | As above.  |
| Mencap                 | Agree that it is not appropriate to set strict thresholds.   | As above.  |
| The Law Society        | Agree that it is not appropriate. Accepts that wider public interest is a difficult matter to define but believe a common sense approach should be followed – 'you'll know it when you see it'.  | As above.  |
| CAB                    | Agree that is inappropriate to set strict thresholds. Recommends that responsibility for developing the test should be given to an independent advisory panel.   | As above.  |
| Housing Rights Service | Agree it's not appropriate to set strict thresholds. Submit that it would be difficult for advisers to quantify the numbers who could benefit from a public  | As above.  |

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|   | interest case and that stating that many should be sufficient.  |  |
| The Bar Council                         | Agree that it is not appropriate to set strict thresholds as to the number of people who could potentially benefit before wider public interest is established.   | As above.  |
| Public interest and cost benefit        |   |  |
| BSA                                     | Agree that it would be wrong to set strict thresholds however note the proposal to apply cost benefit considerations. Argue that it is unrealistic and disingenuous to suggest that applicants would be in a position to quantify benefit in anything other than vague terms. Believe that cost benefit should be a factor but one of very limited application in these cases. Only if costs are utterly out of proportion to the matter in hand should there be a bar to proceeding.   | NILSC would submit that the cost benefit test envisaged is set at the right level and that it is also not excessive.   |
| The Law Society                         | Agrees that cost benefit should be a consideration in respect of 'public interest' cases.   | Noted.   |
| The Bar Council                         | Notes that by virtue of Article 15(2) AJO 2003 some degree of cost benefit must be a consideration. Submits however that cost benefit criteria should only play a modest part in the decision as to whether or not to grant funding given the public element of public interest. Suggests that the approach of quantification involves substantial and logical barriers to a grant of public funding where there will otherwise be a recognisable public interest. This matter should be driven by common sense and a sensitive appreciation of the realities in NI life.   | Noted. See above also.   |
| Public interest and alternative funding |   |  |
| The Children's Law Centre               | Note that it's proposed that Legal Representation may be refused if there are other persons or bodies that can be reasonably expected to bring or fund the case instead and that this should also apply in relation to public interest cases. Submit that NILSC should recognise that charitable NGOs in NI do not generally have a legal budget for litigation at all as funding is usually ring-fenced for particular projects, salaries and running costs. With regard to NDPBs, the funding budgets of these organisations is usually limited and linked to their own strategic priorities and again this should be recognised. | NILSC accept that alternative sources must be actually available and that consideration and discussion with relevant bodies will be required to reach an appropriate position. |
| BSA                                     | Accepts that the availability of alternative funding in public interest cases should be a factor. Don't believe that it should be a bar to assistance.  | As above.  |

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| The Law Centre                          | Suggests that distinction should be drawn between alternative sources of public funding for public interest cases (e.g. ECNI, NIHRC) and other sources of alternative funding. Charitable organisations and voluntary pressure groups may have an important role to play in third party interventions in public interest, but availability of resources within this sector should not substitute for public legal funding for public interest cases. The availability of a possible contribution by a charitable or voluntary organisation should not preclude public funding of public interest cases. | As above.   |
| Housing Rights Service                  | Submit that NILSC would need to take into account the funding position of the charity e.g. certain funds are restricted for provision of particular services.   | As above.   |
| The Law Society                         | Considers this issue is usefully addressed in the decision-making guidance of the England/Wales Funding Code.   | Noted.  |
| The Bar Council                         | Agree that in principle the proposal that it might be appropriate for relevant pressure groups, charity or other public bodies to fund all of the litigation in a public interest case or that in certain circumstances it may be reasonable to require at least a contribution to funding from such a body is sensible and appropriate. Suggest however that much thought will be required to make the proposal practical and fair.  | Noted.  |
| A Public Interest Advisory Panel (PIAP) |   |   |
| The Law Society                         | Supports the creation of a PIAP. Consider that the panel should comprise within its membership a solicitor nominated by the Law Society.  | NILSC proposes to introduce a PIAP but in an effort to reduce the number of administrative panels proposes to combine the membership of the PIAP with another suitable panel. |
| CAB                                     | Recommend establishment of a PIAP.  | See above.  |
| AvMA                                    | No specific comments other than to agree that a PIAP, modelled like the one for England and Wales would assist.   | See above.  |
| The Bar Council                         | Submits that such a panel is an essential part of determining whether a wider public interest exists in any particular case. Suggests that the existence of such a panel ought to substantially reduce any perceived necessity by NILSC to rely upon quantification in assessing costs benefit.   | See above.  |
| The Children's Law Centre               | Supports creation of an advisory panel to consider the new public interest test and that a member of this panel should have knowledge of the domestic law, policy and research relating to children in NI and of international children's rights.   | NILSC will seek to ensure that any panel established is representative of a range of interests, experience and backgrounds.   |

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| Housing Rights Service                      | Welcomes proposal to set up a PIAP and suggests that it should comprise core members and a pool of experts specialising in relevant areas whose advice can be sought depending on the case's nature.  | As above.  |
| Mencap                                      | Suggest that a PIAP, if established, should include representatives who have a lifelong disability or who live with a person who has a disability.  | As above.  |
| BSA   | Submit that in the context of the RPA; don't believe that there is any need for the establishment of such a body.   | NILSC does not agree. See above.   |
| The Law Centre                              | Strongly supports the establishment of a PIAP, similar to that in England and Wales. The panel should consist of lay and expert members, practitioners (including those working in the advice sector generally); academics as well as those with experience or knowledge of public interest policy and/or litigation. | As above.  |
| <b>Alternative Dispute Resolution (ADR)</b> |   |  |
| The Law Centre                              | Generally welcomes ADR as an alternative to litigation provided this is not the exclusion of an applicant's ability to pursue litigation in appropriate circumstances.  | NILSC is keen to ensure that ADR is only funded and pursued in circumstances where it will be effective and genuine. It agrees that ADR should not be compulsory but that it should be used where appropriate. It believes that ADR as a general principle is a good idea and would want to encourage the development of it, in partnership with others. |
| CAB   | Supports extension of ADR as a means of an alternative to going to court subject to ability to pursue litigation in appropriate circumstances failing an unsatisfactory outcome from ADR.   | As above.  |
| Housing Rights Service                      | Welcomes ADR in principle as another option. However, it is not always suitable in every type of dispute. It is therefore important that ADR does not become compulsory in every case as this could have the effect of restricting rather than promoting access to justice.   | As above.  |
| AvMA  | Advocates ADR where appropriate.  | As above.  |
| Law Society                                 | See no reason why there should be any restriction on the form of ADR made available under the Funding Code and consider that ADR should be dealt with by way of disbursement rather than by creation of a new broad level of service.   | ADR other than Family Mediation will, where within scope, be payable as a disbursement under the Funding Code.   |
| BSA   | Don't believe that the ADR sector in NI insufficiently developed at this time to enable response to the question, 'what forms of ADR would you like to see available under the Code'.   | Noted.   |

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| Advice NI                           | Previously expressed some level of concern regarding ADR. Believes this issue will require further attention before definitive decisions can be made by NILSC.   | Noted.   |
| The Bar Council                     | Submit that ADR services in NI are best described as being in their infancy. While in principle ADR processes can be efficiently funded as disbursements and whether such an approach may assist in promoting the creation of ADR services it is submitted that great care will have to be taken in refusing legal representation on this ground given the limited availability of such services. Submits that the creation of ADR services is outside the aegis of NILSC. | Noted. See above.  |
| Use of complaint/ombudsman schemes? |  |  |
| AvMA                                | Believe that it would be premature to amend the Code to force claimants to go through a complaints procedure in clinical negligence cases first.   | NILSC recognises that these mechanisms should only be pursued where they are effective. This is notwithstanding that NILSC, as a general principle, will require alternative remedies to be pursued wherever and as far as possible. |
| Patrick Mullarkey                   | Whilst generally in favour of a patient exercising the right to raise a complaint through a local scheme in clinical negligence cases, do not believe that funding should be made dependent on this. There are occasions when it will not be appropriate to raise a complaint and NILSC should retain discretion to consider applications for legal assistance in the absence of a prior complaint.  | As above.  |
| Housing Rights Service              | Agree internal complaints system should be exhausted prior to submitting an application for funding but not the Ombudsman Scheme. It would not be appropriate to require all applicants to exhaust complaints/ombudsman schemes on every occasion.   | As above.  |
| BSA                                 | Believes that a reasonableness test should be applied. In cases where there is urgency, the requirement should be lower.   | As above.  |
| The Law Society                     | Do not believe that a client should be forced to use these procedures if they will not provide the client with the desired result. A case by case assessment of their appropriateness is the right approach.   | As above.  |
| The Law Centre                      | Would have concerns about an automatic requirement to utilise such mechanisms prior to receipt of applications for public funding or before Legal Representation can be granted.   | As above.  |

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| The Bar Council      | <p>Submits that complaint systems and Ombudsman schemes rarely produce sufficient outcomes to essentially legal problems. These schemes are primarily designed to deal with administrative and procedural conduct. Suggests that public funding for a legal case ought not to be connected to such administrative systems.</p> <p>Suggests that this is particularly so in clinical negligence cases where such schemes will not produce a payment akin to a damages award.</p> <p>Submits also that mediation (as opposed to ADR) is highly unlikely to be relevant in non-family disputes. To require a party to attempt non-family mediation as a prerequisite for funding would constitute an unwarranted hurdle to a potential litigant.</p> | As above.   |
| Very Expensive Cases |   |   |
| AvMA                 | <p>Don't accept that funding should be refused/deferred in light of resources available to the Fund and likely future demand on resources. Find it iniquitous that largely because of the huge cost of funding other cases, potential claimants in clinical negligence cases should find access to justice even harder to achieve.</p>  | NILSC considers that it would only be in the most exceptional circumstances that this provision would be invoked. |
| BSA                  | <p>Believes that the criteria remain vague and requires to be more tightly defined before comment can be made.</p>  | Noted.  |
| The Law Centre       | <p>Recognises the importance of protecting the integrity of the Fund from serious depletion by a limited number of cases. Supports the exclusion of the affordability criterion to judicial review cases and to proceedings in which the life or liberty of the client is at risk.</p>  | Noted.  |
| The Law Society      | <p>Believes that if the affordability criterion is to be applied, they should be limited to the most expensive cases.</p>   | Noted.  |

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| The Bar Council                          | <p>Suggests that NILSC's proposals appear to stem directly from the provisions of Article 15(2) of AJO 2003. The central difficulty is that expensive cases by their very nature will be complex in fact and law and will normally be of great significance in financial terms to a plaintiff. Taking this into account it is submitted that provision ought to be included in the Code for NILSC to seek an additional sum or sums over its previous allocated budget for the year in which the application is made. Further, consideration ought to be given to preparing criteria by which it would be determined whether an application would be refused or deterred.</p> <p>Submits that the figures suggested (£25000 to disposal and £75000 to trial) can appropriately be described as very expensive and suggest that provision ought to be made for revision of these figures on a regular basis.</p> | <p>NILSC consider that the likelihood of being able to seek additional sum(s) in excess of its allocated budget would be highly unlikely. It will have to work instead within the parameters of the allocation.</p> <p>NILSC agrees with this suggestion.</p> |
| Special Cases Unit?                      |   |   |
| The Law Society                          | Agrees that special arrangements should be put in place for very expensive cases as set out in para. 12.2 of the consultation paper.  | NILSC is in the process of considering all of the options surrounding the handling of very expensive cases, to include a Special Cases Unit.  |
| The Bar Council                          | Submits that while very expensive cases may not occur with great frequency they will regularly appear. A Special Unit or alternatively a cadre of NILSC staff (either trained or with experience of such cases) would probably be useful for all concerned.   | Noted. The proposed Special Cases Unit is likely to be made up of NILSC staff.  |
| AvMA                                     | Agree that there may be a role for a Special Cases Unit however the experience for solicitors in England as been of the LSC applying a very heavy hand as well as an overly interventionist role that results in top-heavy administration.  | NILSC is committed to ensuring that Civil Legal Services are accessible. It is keen to ensure that administration levels are not excessive.   |
| BSA                                      | Don't believe that any case has been made out for such a unit. This unit will lead to unnecessary and increased administration costs. Suggest that the cost benefit system may be justified in very expensive cases.  | Noted.  |
| The Law Centre                           | Supports the establishment of a Special Cases Unit.   | Noted.  |
| Cost threshold for very expensive cases? |   |   |
| The Law Society                          | Does not object to the proposed cost thresholds for these cases in NI being the same as those already used by LSC in England and Wales.   | Noted.  |

| Judicial review cases                               |  |   |
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| Law Society   | Believe that no distinction should be made between judicial review cases that have the potential to benefit a significant number of people from those that have no wider public interest in that sense.  | Noted. However, NILSC considers that in order to effectively target public funding in judicial review cases, it is necessary to define a 'public interest' case as one that demonstrates the potential to produce real benefits for a significant number of people. |
| Mencap  | Agrees that the Code should make a distinction between judicial review cases that may benefit a significant number of people from those that may not display a wider public interest factor.   | Noted.  |
| BSA   | Believes that this approach suggests a lack of interest and significance being attached to the rights of the individual.   | Noted.  |
| The Law Centre                                      | Argue that it is difficult to draw a distinction between those cases that may benefit 'a significant number of people' from those that may not in terms of assessment for funding.   | Noted.  |
| The Bar Council                                     | Submits that public interest is readily recognisable without any quantitative approach.  | Noted.  |
| Definition of overwhelming importance to the client |  |   |
| The Law Centre                                      | Believe that if a distinction is to be drawn between those cases that benefit a 'significant number of people' from those that may not in terms of assessment that the test of 'overwhelming importance to the client is too high and should instead be drafted to encompass cases where the decision at issue is of 'considerable importance for the client'. | NILSC recognises that there will be a subjective element in the test. This will be taken into account. The matter will however, in the main, be looked at objectively.  |
| Mencap  | Suggest that it should also reflect as a factor the extent of disadvantage and discrimination experienced by the individual.   | NILSC recognises that this will form part of the subjective element referred to above.  |
| BSA   | Believes that the approach should always be on the merits of the case individually and that it is impossible to operate the test suggested in the paper.   | Noted.  |
| Housing Rights Service                              | Agrees with this definition, but are concerned that as it would only be applied in extreme cases vulnerable people could be denied access to justice.  | Noted. NILSC do not agree with the suggestion here. The definition, will by its very nature take into account vulnerabilities.  |
| Advice NI   | Believes that it should retain an aspect linked to monetary value/income.  | NILSC will give consideration to this.  |

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| The Bar Council   | Considers that an objective test, as proposed, is appropriate. The proposed definition does not however include any reference to matters of justice or injustice. Submits that a sense of injustice is beyond monetary value and can be a matter of just as great importance to a client. Submitted also that a substantial sense of injustice is capable of being assessed on an objective basis and therefore ought to be included within the definition of 'overwhelming importance'.   | NILSC will give consideration to this.   |
| Should prospects of success be determined by reference to the prospects of obtaining the substantive order? |  |  |
| BSA   | Believes that judicial review cases have a very different character to much other litigation and that the proposed test needs to be more relaxed.  | NILSC recognises that as judicial review remedies are discretionary that the prospects of obtaining the substantive order would not be the only consideration. |
| The Law Society   | Considers that the prospects of obtaining the substantive order sought should not be the only consideration for determining prospects of success. Believes those considerations referred to in paras 13.18-13.20 of the consultation paper may also be of relevance.   | Noted.   |
| The Bar Council   | Considers that the prospect of success is a relevant factor to be determined by reference to the prospect of obtaining the substantive order sought.   | Noted.   |
| Judicial review and cost benefit  |  |  |
| BSA   | Do not believe that an economic rule should apply as these cases tend not to be considered in economic terms.  | NILSC proposes to consider these cases in the round with all other factors.  |
| The Law Society   | Believes that considering cost benefit in the round with all other factors strikes the appropriate balance.  | Noted.   |
| The Children's Law Centre   | Agree that cost benefit should be considered in light of all other factors which would allow for any wider public interest, overwhelming importance to the client or human rights issues.  | Noted.   |
| The Bar Council   | In the light of Article 15(2) AJO it is right that the cost benefit criterion should be taken into account in judicial review cases and it is right that the cost benefit criterion is not applied in the manner proposed in respect of damages claims. Considering cost benefit in the round with all factors on the face of it strikes the appropriate balance although it is suggested that some guidance or definition of 'all other circumstances' will be necessary. Indicates that the proposals proposed in the code criteria at section 7 for judicial review cases appear uncontroversial. | Noted.   |

| Judicial review and a presumption of funding where leave has been granted |   |  |
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| The Law Centre  | Agree that there should be a presumption.   | Noted.   |
| The Law Society   | Agrees, subject to the caveats contained in s7.5.2 of the proposed Code.  | Noted.   |
| Mencap  | Believe there should be a presumption where leave has been granted.   | Noted.   |
| BSA   | Agree.  | Noted.   |
| The Bar Council   | This is a sensible proposal.  | Noted.   |
| Claims against Public Authorities   |   |  |
| APIL  | Welcomes proposals to make claims against public authorities a priority. Surprised at the proposals to exclude funding of claims against police, prison service and armed forces from this principle. Recommends this be re-considered.     | Noted.<br>NILSC accepts this point.  |
| BSA   | Sees no justification for claims against police, MOD and Prison Service being dealt with under the General Funding Code as it involves litigation against agencies of the state.  | As above.  |
| The Law Society   | Surprised at the proposal that these types of case (PSNI, MOD and NIPS) should be dealt with under the General Funding Code and rather should be included as a priority area within the category of proceedings against public authorities. | As above.  |
| The Bar Council   | Submits that proposal to deal with these cases under the general Funding Code is sensible and appropriate.  | As above.  |
| Clinical Negligence cases   |   |  |
| APIL  | Strongly opposes plans not to restrict clinical negligence work to specialist practitioners. Argues that it is a highly specialist area in which non-specialist practitioners will often not be able to conduct cases satisfactorily.       | Noted. See below.  |
| Patrick Mullarkey   | Suggests that if restriction of the clinical negligence panel is not on the agenda at the present time then is something that should be looked at in early course.  | NILSC will be reviewing current arrangements for the provision of publicly funded legal services in respect of clinical negligence cases. This will include a consideration of whether to restrict publicly funded legal services in this area to specialist practitioners only. |

| Definition of clinical negligence proceedings?  |  |   |
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| Patrick Mullarkey   | Considers the definition somewhat limited and suggests an alternative.   | This is under consideration by NILSC.   |
| BSA   | Accepts the definition.  | Noted.  |
| Bar Council   | Submits that the definition is adequate and appropriate.   | Noted.  |
| A minimum damages threshold of £5000 for Investigative Help in clinical negligence proceedings? |  |   |
| Patrick Mullarkey   | Agrees Investigative Help should be available. Submits that the level of damages may be extremely difficult to assess at the commencement of any given action and does not agree that a minimum damages threshold should apply in relation to applications for investigative help in clinical negligence cases. If NILSC is intent in imposing a threshold, £5000 is too high. | The rationale behind a threshold is to try to ensure that public funds are not used to investigate cases where the likely damages are modest in size compared to the costs involved. Given the increased costs in clinical negligence cases, it is submitted that a threshold of at least £5000 is appropriate. |
| BSA   | Don't accept that there should be a strict threshold preferring the approach that the value of the claim should simply be a factor.  | As above.   |
| Law Society   | Supports a minimum damages threshold of £1000 applying in relation to applications for Investigative Help in clinical negligence proceedings. Does not agree that it should be set at £5000.   | As above.   |
| Bar Council   | Submits that whilst NILSC's proposal reflects the provisions of the Funding Code in England and Wales it appears that this proposal is made as a cost cutting measure simpliciter and will have the effect of reducing access to justice in modest claims.   | Noted.  |
| Housing   |  |   |
| BSA   | Accept the proposed definition of housing.   | Noted.  |
| Bar Council   | Suggests that the proposed definition appears sensible and appropriate.  | Noted.  |
| Housing Rights Service  | Agree with the definition but strongly recommend that proceedings which concern the client's legal status in the home should also be covered (as is the case in England and Wales).  | NILSC will give consideration to the suggestion made.   |

| Family cases               |  |  |
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| Law Society                | Has read the response by NICCY to the draft guidance in respect of public law children order proceedings and is broadly supportive of the of the comments made therein and in particular with regard to the criteria which are to apply to 'other public law children cases'.  | Noted.   |
| BSA                        | Believe that there should be no merits test applied in public law cases.   | The majority of public law children order cases are already non means, non merits.   |
| Bar Council                | Submits that the Code objectives in relation to 'other public law children cases' are sensible and the provisions in the main appropriate. However, the provisions of 11.9.3 of the Code ought to be more specific with reference made to some objective criteria in assessing 'the importance of the case to the client'. | Noted.   |
| Immigration cases          |  |  |
| Law Centre                 | Believes that Investigative Help should be available for these cases for the purposes of obtaining Counsel's opinion.  | Noted. NILSC agrees that public funding for counsel's opinion should be available in suitable cases.   |
| Law Society                | Supports availability of Investigative Help.   | Noted.   |
| Bar Council                | Submits that the availability of Counsel's opinion is maintained in the earliest possible stage in these cases.  | Noted.   |
| Quasi-criminal proceedings |  |  |
| BSA                        | Believes that the power to grant legal aid in bail cases should be transferred to the court granting or refusing bail.   | This is not a matter within NILSC's 'gift'.  |
| Law Society                | Doesn't agree that applications for public funding for bail applications should be dealt with under the Code criteria for quasi-criminal proceedings.  | Criminal Defence Services will not be in place at the same time as Civil Legal Services is introduced. Therefore, provision for public funding for bail applications must be made within the Code for this interim period. |
| Bar Council                | Bail applications arise in the course of criminal proceedings and must fall to be dealt with under the Criminal Legal Aid Scheme.  | As above.  |