



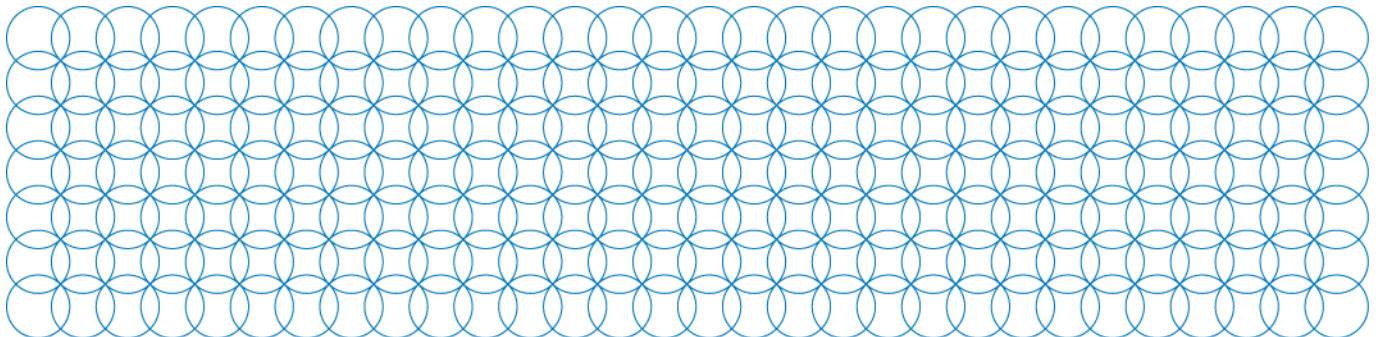
Ministry of
JUSTICE

Legal Aid: Funding Reforms

Consultation Paper CP 18/09

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Ministry of
JUSTICE

Legal Aid: Funding Reforms

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**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

About this consultation

- To:** This consultation is aimed at providers of publicly funded legal services and others with an interest in the justice system.
- Duration:** From 20 August 2009 to 12 November 2009
- Enquiries (including requests for the paper in an alternative format) to:** Annette Cowell
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 4217
Fax: 020 3334 4295
Email: annette.cowell@justice.gsi.gov.uk
- How to respond:** Please send your response by 12 November 2009 to:
Annette Cowell
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 4217
Fax: 020 3334 4295
Email: annette.cowell@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published by December 2009 at:
www.justice.gov.uk

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Foreword

Legal aid is vital for many people in the UK, particularly during the current economic downturn. Sustaining the provision of social welfare law advice is crucially important at this time. More people who are homeowners, consumers, employees and those facing financial hardship, are vulnerable in ways that require them to use the civil law system at this time.

Legal advice, in the fields of housing, debt, and welfare benefits, can solve people's legal problems, with the result that their lives and lives of their families are improved. It can literally change people's lives; as well as keeping families together and, on occasions, preventing a decline into criminal behaviour. I am proud that we have increased the level of legal aid spend in this field over the last few years. In resource terms, spending on civil legal aid (excluding immigration) has increased by 30% since 2004/05 (from £608m to £791m in 08/09). Earlier this year I increased the eligibility levels by 5% in the civil field potentially bringing access to justice to ¾ million more of our citizens.

We are determined to ensure that legal aid is prioritised effectively and particularly that we enable more people to resolve their civil legal problems. I want to continue, as a priority, to increase access to civil legal aid and I am aiming for an increase to 1.03 million acts of assistance this year.

During the economic downturn it is necessary for efficiencies to be found across all areas of public spending. That has to include the legal aid system which remains, and will remain, the best system of legal aid in the world regardless of any consequences of this consultation. The Ministry of Justice has to contribute to those efficiency savings and needs to make £1 billion of efficiency savings in the period to March 2011. Efficiencies need to be made across all the business areas of the Ministry.

One way that we can make efficiency savings is through maintaining our focus on reforming the legal aid funding regime, where possible to remove any duplication or inefficiency and, of course, secure value for money. Doing so should also allow us to maintain the scope of our funding, sustain our existing eligibility criteria so that we can ensure that as many people as possible continue to benefit from legal aid at this time. Recent reforms to legal aid have helped us gain better control over the budget, but long term sustainability still needs to be achieved.

These proposals will help to sustain the legal aid budget over the next spending review period, ensure that we focus criminal legal aid spending effectively and will protect the civil fund as far as possible from any rise in criminal spend in the short to medium term. I want to ensure that we rebalance the legal aid budget as far as possible in favour of civil help for those who need it most.

The propositions set out in this consultation are intended to reform and rationalise some of our criminal legal aid payment structures. They represent policy changes which, I believe, are necessary, irrespective of economic circumstances. We also propose to reduce the increasing expenditure on experts' fees by introducing fixed fee ranges for most cases. Many of those involved in the law have stressed how important this aspect is.

Finally, we are also mindful of the need to look internally, as well as externally, for efficiencies. That is why we will also be looking at how we can better run the processes that drive the administrative costs of legal aid and reduce inefficiencies still further.

A handwritten signature in black ink that reads "Willy Bach". The signature is written in a cursive style and is underlined with a single horizontal line.

Willy Bach
Legal Aid Minister

Executive summary

This consultation paper sets out proposals intended to further rebalance legal aid spending. The proposed changes will generate savings which will help to sustain the legal aid budget over the next spending review period¹, ensure that we focus criminal legal aid spending effectively and protect the civil fund as far as possible from any rise in criminal spend in the short to medium term. They will do this by prioritising what we spend on criminal legal aid, to reform and rationalise some of our payment structures and remove some of the anomalies that have developed in the way that defence costs are remunerated and which encourage inefficiencies.

We want to manage proactively the criminal legal aid budget in order to ensure that we can provide access to civil legal aid. We want to prioritise access to Social Welfare Law advice during the economic downturn and the LSC has increased investment in these categories of law over the last year. The LSC made up to £13 million available to advice providers to fund extra debt, housing and employment cases in response to the current economic downturn in 2008/09. The proposals set out above will help us set civil funding at a level which will allow for a continuing increase in legal help volumes. However, we will expect the LSC to manage Legal Help carefully within this fixed budget.

The proposals in the paper intend to close some of the gaps in the different remuneration rates we pay through:

- Bringing the rates paid to advocates for defence work more in line with the rates paid by the CPS. On average, barristers acting for the prosecution receive 23% less by way of remuneration than if they were acting for the defence. This disparity in rates means that defence advocates are more highly rewarded which in turn could be creating an incentive for barristers to favour defence over prosecution work.
- Police station fees are inconsistent and have not evolved in a rational way across England and Wales. Current rates have led to oversubscription on these duty schemes, mostly in areas with too many firms competing for business. We do not believe we should pay widely disparate prices for what is essentially the same work.
- Simplification of the current duplication of fees which remunerates litigators for preparation for committal hearings separately from payment for the same work under the Litigators Graduated Fees Scheme (LGFS). The proposal is to combine all work on committals into one fixed fee which will be paid out of the LGFS. Replacing the standard fee regime with a Fixed Fee may also mitigate the trend of increasing guilty pleas in the Crown Court by removing the financial incentive to elect.
- Ending the anomaly by which practitioners in criminal cases receive a fee for file reviews which does not apply in civil cases. The proposal is to end payment of criminal file reviews.

In addition, we propose to make changes to payments made to experts in both criminal and civil cases. Currently, the LSC are paying different amounts for the same work by different experts and across categories of law, which means that we

¹ Spending Reviews are the government's main tool for deciding how much money will be spent on public services.

cannot demonstrate that we obtain best value for money. We believe that these payments ought to be standardised and this consultation sets out some suggested maximum rates.

We are conscious of the need to identify efficiencies across the department, and so have also asked the LSC to find an additional 5% savings from their administrative budget in this financial year, and 10% next year.

No changes to the scope of legal aid or eligibility are proposed at this stage. We do not wish to affect access to justice, particularly as demand for some legal services, such as debt and housing advice, rise in recession. There is potential in a recession for more people to become eligible for civil legal aid.

Introduction

This paper sets out for consultation a number of funding reform proposals to ensure that criminal legal aid expenditure is effectively prioritised. The consultation is aimed at providers of publicly funded legal services in England and Wales, expert witnesses and others with an interest in the justice system.

The consultation paper is arranged into four parts. The first sets out the proposals which will impact on the work we fund under what we term Crime Lower and which consists of defence work undertaken in the police station and the magistrates' courts. The second part consists of proposals which will impact on the work we fund under Crime Higher, which consists of defence work undertaken in the Crown Court. Finally, part three focuses on proposals concerning the remuneration rates for experts in civil and criminal cases. Part four deals with other related issues.

This consultation will last until 12 November which provides 12 weeks for those wishing to respond.

Impact Assessments and an Equality Impact Assessment have been completed and indicate that practitioners are likely to be particularly affected. The Impact Assessments are available on the Ministry of Justice website at: www.justice.gov.uk/consultations/consultations.htm

Comments on the Impact Assessments are particularly welcome.

Copies of the consultation paper are being sent to:

Advice Service Alliance
Armed Forces Criminal Legal Aid Authority
Association of Chief Police Officers
Association of Forensic Physicians
Association of Muslim Lawyers
AvMA – Action against Medical Accidents
BCS – British Computer Society
Black Solicitors Network
BMA – British Medical Association
Bond Solon
British Association in Forensic Medicine
British Orthopaedic Association
CACDP – Council for the Advancement of Communication with Deaf People
Council of Her Majesty’s Circuit Judges
Criminal Bar Association
Criminal Law Solicitors’ Association
Equalities Commission
Euro Expert
General Council of the Bar
GMC – General Medical Council
Group for Solicitors with Disabilities
Institute of Chartered Accountants
Institute of Legal Executives
International Underwriting Association
ISWA Ltd – Independent Social Work Associates
Judicial Communications Office
Justices’ Clerks Society
Law Centres Federation
Legal Action Group
Legal Aid Practitioners’ Group
Local Government Association
Magistrates’ Association
MDU – Medical Defence Union
Medical Foundation for the care of victims of torture
National Bench Chair Forum
Parole Board
RICS – Royal Institution of Chartered Surveyors
RNID – Royal National Institute for Deaf People

Royal College of General Practitioners
Royal College of Obstetricians and Gynaecologists
Royal College of Paediatrics and Child Health
Royal College of Physicians
Royal College of Psychiatrists
Society of Asian Lawyers
Society of Expert Witnesses
The Academy of Experts
The Association of District Judges
The Forensic Institute
The Institute of Traffic Accident Investigators
The Judges' Council
The Law Society
The Lord Chief Justice
The Senior Presiding Judge
UK Register of Expert Witnesses

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

The proposals set out here are intended to better prioritise what we spend on criminal legal aid, to reform and rationalise some of our payment structures and remove some of the anomalies that have developed in the way that defence costs are remunerated and which encourage inefficiencies. We believe that these proposals will be sustainable.

The proposals are set out in four parts.

Part One: Crime Lower

Police Station Fees

The LSC currently spends £180m on police station advice and this spend is distributed across a network of police station duty schemes all of which have separate fees. We are aware that there is inconsistency in the LSC's current police station fees model and that this should be tackled. It had been hoped that any inefficiencies in these fees would be resolved through best value tendering, but the implementation depends on the pilot evaluation in 2012 and full roll-out would not occur until 2013 at the earliest. We therefore believe that the current high levels of disparity in fees between areas should be narrowed now in order to reduce these in-built inconsistencies. We propose to focus on the most oversubscribed schemes, where supplier numbers far exceed the levels required to provide duty and own solicitor coverage for that scheme area. These are clearly attractive to providers in terms of the fee available and the access provided, through this police station work, to work in the magistrates' courts and the Crown Court. We therefore believe that such an approach will be sustainable and will not affect supply.

The current police station fixed fees were calculated on the basis of historic costs in each scheme. The fixed fees therefore build in the historic inconsistencies and inefficiencies that existed under a system of hourly rates that did not reward efficiency or innovation, and paid for inputs rather than outcomes. Under hourly rates, firms that wished to maximise their market share of duty work had an incentive to join as many schemes as possible, reducing their efficiency and driving up costs such as travel. As a consequence of this and other local factors, the fixed fee levels now in place vary widely across different schemes (between £140 and £340 per matter, excluding VAT), including those that are geographically close to each other or have similar characteristics. For example, fixed fees (excluding VAT) in London range from £249 in Bexley to £340 in Heathrow. In the Humberside criminal justice area fees range from £163 in Scunthorpe to £226 in Goole.

Areas that are oversubscribed also make it more expensive for firms to provide the service, as solicitors must split their time between different duty rotas and police stations in order to gain access to a reasonable volume of work. This means that they have to undertake more unproductive activity such as travel and waiting, and reduces the amount of time they can devote to fee earning work. In order to cover the total cost of providing the service these firms therefore billed more on average to the LSC in the past, and the average case cost has indeed tended to be higher in busy areas than in less busy ones. These higher average costs are reflected in the police station fixed fees, which therefore tend to be higher in busy areas.

Proposal

Our intention is to rationalise the cost of police station duty schemes which combine the highest cost with the most oversubscription, excluding those areas that are Best Value Tendering pilot areas. Applying this approach, we have identified a total of 88 police duty schemes which are oversubscribed by over 400 per cent. These schemes also have fees which are above the national median national fee of £200 (excluding VAT). We are proposing that these fees are reduced by around 11 per cent, which we think is sustainable in these higher costs schemes. Three options are set out in the Impact Assessment. Our preferred option (2b) is to reduce fees in areas that are both over-subscribed and have above median fees, 50% of which are located in London.

Although we are proposing to reduce fixed fee levels in some areas, we are not proposing to reduce exceptional case thresholds. This is because the underlying rates that are payable on exceptional cases are not being reduced under these proposals, which means no additional savings are being taken from exceptional cases. In recognition of this, we do not wish to increase the number of exceptional cases from current levels, or this would necessitate making further savings elsewhere in the scheme.

The options for revised fees for these schemes are set out at Annex A.

Question 1: Do you agree that reductions should be made only against areas that are both over-subscribed with above median fees?

Question 2: Do you have any other suggestions that would tackle the fee inequalities and deliver the required savings?

Magistrates' Courts

Unlike police station work, we do not believe that there are significant inconsistencies in the fees paid in the magistrates' courts across England and Wales. We believe, therefore, that it is reasonable to continue to pay for magistrates' courts work at the current rates at the present time.

Part Two: Crime Higher

Litigators Graduated Fees / Committals for Trial

The Litigators Graduated Fees Scheme (LGFS) was introduced in 2008 following Lord Carter's Review of Legal Aid procurement. The LGFS is expected to produce full year savings of £11m – equivalent to 5.5% savings against 2006/7 spend in these cases - in order to achieve Lord Carter's 2010/11 budget target of £255m. We do not believe it is appropriate to adjust LGFS rates so soon after their introduction, prior to a full post-implementation review of the scheme.

However, we believe there is scope to reduce costs and to eliminate an element of duplication of funding within the current arrangements. Our proposal is to replace the existing mechanism for the payment of committals for trial with a single Fixed Fee of £318 (excluding VAT). We propose to pay the new fee as part of the LGFS. The total cost of remunerating cases that are committed for trial was £33m in 2008/09.

Current Arrangements

Crown Court cases are either 'sent' (indictable only cases) or committed (either-way cases) for trial by the magistrates' court. Cases that are committed for trial arise where a defendant elects for jury trial or when magistrates direct cases to the Crown Court because the offence is sufficiently serious that the defendant should be tried in a Crown Court.

Currently we remunerate cases that are committed for trial by means of a standard fee regime, with this work being billed when the matter is disposed of by the magistrates' court. The current rates are shown below:

Table 1 - Standard Fees (excluding VAT)

Committal Fees	National - can claim Travel & Waiting (T&W)	National (can't claim T & W)	London (can claim T & W)	London (can't claim T & W)
Lower fee	£276.50	£357.87	£349.75	£406.47
Higher fee	£626.50	£734.56	£735.30	£888.85

Table 2 - Percentage of standard fee claims

Lower Standard Fee	80%
Higher Standard Fee	16%
Non Standard Fee	4%

The current scheme recognises the need for litigators to prepare for Committal hearings in the magistrates' court – this includes consideration of the committal bundle and conferences with the client. We believe that the current arrangements are suitable where a case is discharged at the committal hearing.

The Litigator Graduated Fee Scheme (LGFS) was introduced by the LSC in January 2008. Where a case is committed to the Crown Court, the litigator is then entitled to make a claim under the LGFS. The LGFS scheme remunerates litigators for preparation required in Crown Court cases by means of a Graduated Fee. One of the proxies for the LGFS is Pages of Prosecution Evidence (PPE). In calculating the PPE proxy, the LGFS includes all of the pages that have been served as part of the committal bundle. We believe that this allows for an element of duplication of funding within the current arrangements as some of the work done for the committal hearing is also work that is paid for under the graduated fee scheme.

There has been an increase in cases committed to the Crown Court since January 2008 as the table below demonstrates.

Table 3 – Cases Committed to the Crown Court for Trial

	Volume				Volume Difference			Movement		
	2005	2006	2007	2008	2006	2007	2008	2006	2007	2008
Committal: election	8,947	9,250	9,974	11,553	303	724	1,579	3%	8%	16%
Committal/transfer: direction	39,587	40,229	40,694	46,462	642	465	5,768	2%	1%	14%
Total to Crown Court	48,534	49,479	50,668	58,015	945	1,189	7,347	2%	2%	15%
Committal: discharged	4,861	4,538	4,217	4,405	-323	-321	188	(7%)	(7%)	4%
Total	53,395	54,017	54,885	62,420	622	868	7,535	1%	2%	14%

The table below also shows the average timeframes from committal for trial to Plea and Case Management Hearing (PCMH) to be 9.3 weeks. This indicates that a duplication of fees is not justified as there would be no reason to reconsider the committal bundle afresh after such a short passage of time.

Table 4 - Average timeframes period (based on 2006 and 2007)

Committal to PCMH	9.3 weeks
PCMH to trial	11.28 weeks
PCMH to trial for cases that came to trial in under 12 weeks	7.35 weeks

Proposal

We propose to remove the duplication of payment in these cases by replacing the current arrangements with a single fixed fee of £318 (excluding VAT) and to pay this fee as part of the Litigator Graduated Fee Scheme.

Remuneration for discharged cases or where defendants consent to summary trial or plead in the magistrates' court would remain unchanged.

The revised fee reflects the trend that majority of claims for this type of work are for Lower Standard Fees (LSF) and is higher than the average of the four LSF's that are currently paid.

The revised fee also reflects a higher level of remuneration than most Fixed Fees within the LGFS (with the exception of an appeal against conviction from a magistrates' court).

For the 4% of cases that fall within Non Standard Fees (NSF), the swings and roundabouts principle would apply that is now well established within the LGFS.

Question 3: Do you agree with the proposal to replace the current standard fee with a Committal for trial fixed fee?

Advocates Graduated Fees Scheme (AGFS)

As a result of Lord Carter's review of legal aid in 2007 advocates' fees in the Crown Court under the AGFS were recalibrated by redistributing a proportion of the value from the longer more complex cases to the shorter, simpler cases handled by the Junior Bar. Prior to that time the Crown Prosecution Service (CPS) and the Legal Services Commission had broadly paid similar fees for advocacy services from the self-employed bar. The CPS did not mirror the Carter fee increases or the recalibration, creating a disparity between the payment mechanisms for prosecuting and defending advocates. As a result of the 2007 changes CPS fees for prosecution counsel are on average 23 % less than the fees for their defence counterparts, although because the CPS scheme was not recalibrated, the difference in fees varies from case to case. The CPS has not reported any difficulty in obtaining advocates of sufficient quality as a result of the fee differential over the last two years. It is, therefore, difficult to justify spending more on defence advocates when the CPS is able to secure the services of advocates at lower rates. In evidence submitted to the Justice Select Committee, in October 2008, the Criminal Bar Association acknowledged that it was "concerned at the marked discrepancy between the fees paid to Prosecution advocates and Defence advocates in the Crown Court". We believe that it is justified to consider a better alignment between prosecution and defence fees paid to independent advocates for similar work to secure better value for the taxpayer.

Proposal

Our starting point is that it is not acceptable to have vastly differing rates between prosecution and defence rates, though exact parity in the rates is not appropriate. For example, the CPS, as instructing solicitor, has more control over the work done by advocates and the CPS also uses employed advocates (Crown Advocates) for some advocacy work. In cases with multiple defendants, who are separately represented, there may be a greater burden on prosecuting advocates. In some cases the CPS use in-house advocates for preliminary hearings and only instruct

an independent advocate for the trial, whereas the instructed advocate for the defence will usually be expected to do all pre-trial advocacy as well as trial. However, where prosecution and defence advocates are doing broadly similar work the rates should be similar in our view. We believe that there is no reason to believe that advocates would not accept instructions for the defence at rates closer to those paid by the CPS.

The CPS is proposing to move to a graduated fees schemes that mirrors more closely the architecture of the defence scheme, though there will need to be differences, eg the CPS are unlikely to roll up pre-trial appearances into a base fee, like the defence scheme, as employed advocates will undertake a proportion of pre-trial work. The CPS plans to redistribute money within its current budget. Once the CPS has moved to a new scheme structure we intend to move towards harmonisation with those rates over a period of time for defence advocacy. Our intention would be to apply across the board percentage reductions in one or more stages, over no more than two years.

Question 4: Is it reasonable in most cases for prosecuting and defending counsel to expect the same level of reward?

Question 5: Should harmonisation be achieved in more than one stage?

Question 6: How quickly should we aim to move towards harmonised fees?

Very High Cost Criminal Cases

The Very High Costs Cases (VHCC) scheme that was introduced in January 2008 aimed to reduce expenditure on this category of work by 5%. Since May 2008 the Ministry has been working with other members of a joint VHCC Working Group to formulate options for a replacement VHCC scheme. We have made it clear that the new scheme will need to deliver savings of 5%. We aim to present options for a new scheme in a consultation paper due to be published later this year.

Part Three: Experts' Fees

The experts market is a complex one, with a number of bodies and practitioners, with different objectives, all commissioning and using expert services. In legal aid cases, selection of the right expert is said by many providers to be critical to the outcome that they can achieve for their clients. Quality expert evidence is also accepted to be essential to the effective running of the civil and criminal justice systems.

Experts themselves are a disparate group, with a range of motivations for providing services. Although some are offered by experts who operate on that basis exclusively and some will form part of a public service contract, more often these services are delivered as an adjunct to professional day-jobs, provided in private time and expected to be remunerated at rates that would be more normal for private patients/clients. In the last consultation that the LSC ran², the majority (56% of the respondents who answered this question) said that they did not view their services for legal aid as public services akin to those provided by the NHS.

The fact that many good quality experts have extensive existing demands on their time and can choose whether or not to provide their services has for a long time made supply the key issue for expert service provision. More recent public criticism of leading experts, arising out of cross-examinations in court, has only added to this pressure. In this environment, steps to control costs have not been prioritised over the more pressing concerns about the quality and volume of supply.

Nevertheless, with a fixed budget and concerns elsewhere about the rising cost of legal aid, cost control of experts must be addressed. As difficult as it appears to be, control in this area must begin to mirror the efforts that have been made to achieve value for money in all other areas of legal aid spend.

In 2007/08, the LSC spent £192 million on disbursements, of which payments to solicitors for work carried out by expert's accounts for about two-thirds. £21.4 million of this has been recovered from opponents.

Gross spend on disbursements went up by a further £13.4 m in 2008-9. Significant increases in disbursement spend are public law family which went up 46.6% between 2005-6 and 2008-9. These costs increases are unsustainable within a limited legal aid budget.

Currently we are paying different amounts for the same work by different experts and across categories, which means we cannot demonstrate that we obtain best value for money.

MoJ and the LSC have already taken several steps to bring experts' costs under control:

- The removal of residential assessments from the scope of funding in October 2006
- The removal of contact centre activities from the scope of funding in April 2009

² ²The Use of Experts – Quality, price and procedures in publicly funded cases, July 2005

- The removal of non-expert domestic abuse risk assessments from scope in April 2009.

The Civil Bid Rounds for 2010 Contracts - A Consultation Response which was published on 30 June 2009 and set out that the LSC will:

- Remove experts' cancellation fees from the scope of funding other than in exceptional circumstances;
- Remove experts' administration costs from the scope of public funding;
- Cap the remuneration rates for travel time to £40 per hour; and
- Cap the mileage rates to the current guidance for solicitor travel, currently 45p per mile.

We are working with the Judiciary and local authorities in family proceedings to ensure that practice directions are complied with and assessments carried out under the Public Law Outline are fit for purpose so that additional expert reports, which place an additional cost burden on the legal aid fund and the whole family justice system, are not required.

We are familiar with concerns raised in previous discussions about the cost, quality and supply issues with expert witnesses and we will continue our engagement with key stakeholders to ensure their views and knowledge inform the outcome of this consultation and our future strategy.

Examination of the issues around the quality and supply of experts underpinned the Chief Medical Officer's proposals published in Bearing Good Witness. The LSC is currently working with the Department of Health to pilot the approach proposed in Bearing Good Witness in certain Public Law Childcare cases and will examine among other things how supply can be increased and quality assured.

The LSC is also working with the Forensic Regulator to ensure current quality developments within the profession inform and reflect our longer-term quality strategy.

Proposal

We aim to reduce expenditure in the longer term by 20%, subject to further work on experts' fees/rates. In the short-term we propose, as a first step, to set maximum rates in crime and civil cases through amendments to the relevant Funding Orders made under the Access to Justice Act 1999, with limited provision for exceptions.

There are currently guideline rates set out by the Ministry of Justice that are intended to guide court staff dealing with claims from expert witnesses under the Costs in Criminal Cases Regulations 1986. These rates are used as a benchmark by the Crown Prosecution Service, Her Majesty's Courts Service (payments from central funds) and the LSC with exceptional circumstances taken into consideration, although in practice the LSC has gradually exceeded these rates. Historically, higher rates have been claimed in civil cases. From the LSC experience there does not appear to be any objective reason for this and sometimes the same expert working across different categories of law may charge different rates. By paying different amounts for the same work by different experts and across categories, it is unlikely that we are obtaining best value for money.

As a starting point, we would expect the LSC to pay the same rates in both criminal and civil/family cases with these rates based on the Ministry of Justice guideline rates for payments to expert witnesses from central funds, with only limited exceptions. The medical category has been expanded into more detailed groups to distinguish between experts. This level of detail and some additional experts such as DNA and drug tests have been included to reflect the expert types that make up 90% of the LSC spend. Where regulations did not cover the type of expert, we have used rates routinely allowed by the LSC for the more 'run of the mill' case.

Setting rates aims to increase transparency, ensure consistency and control the unsustainable rising costs of expert's fees.

In criminal cases and we would expect defence and prosecution rates, for similar work, to be consistent. Where similar types of experts work across the civil and crime categories we would expect that, as a starting point, the rates should be the same.

Total costs depend on a variety of factors. The complexity and type of case and level of experience required of the expert will influence the amount of time taken. This is the first stage of a longer-term strategy aimed at controlling costs in this area. There has been a general move towards paying solicitors and barristers on the basis of fixed fees. Our view is that there is no reason not to take this approach to the payment of experts in the future, but we have insufficient data at this stage to model fixed fees taking all of the relevant factors into account. Part of our strategy is therefore to get a better understanding of the market place and what it is we purchase.

The proposed rates are hourly rate bands that would be allowed on assessment. We would not expect payments very often to reach the top end of the band – the amount allowed would vary by type of expert. So for example, we would expect a report by a nurse to be at the lower end of the General Medical rate set out in Annex C. In exceptional circumstances, solicitors will be able to apply for prior authority to exceed these rates.

The LSC should allow exceptions to these rates in circumstances where there is a need to maintain access in a particular area, where there is a particular market problem or where an unusual level of expertise is required for the case. The reasonableness of the total cost will still be considered at assessment or at prior authority stage.

Neither MOJ nor the LSC have a direct relationship with experts. They cannot be accessed through a small number of representative groups and without resorting to extensive data collection from legal aid providers the LSC has only limited data on expert costs. The LSC is currently carrying out a further data verification exercise but we are seeking views in this consultation about how effective the proposals set out above are in taking the first step to control costs. We would also like your views on how we might take even more effective steps in the future, allowing for cost control, whilst maintaining the supply of sufficient quality experts. We have provided questions to guide responses, but please feel free to provide other relevant information.

Details of the proposed rates are set out in Annex B.

Question 7: Do you agree that the proposed hourly rates based on current guidelines are a reasonable starting point?

Question 8: Are there situations when this would not be appropriate? If so, what would they be and why?

Question 9: Do you agree that it is appropriate to pay the same rates for the same type of expert in both civil and criminal cases? If not, why and what would the difference be?

Question 10: What are the circumstances when prior authority would need to be sought to go above the proposed rates?

Question 11: Are there any circumstances where fixed fees would be appropriate, for example DNA and GP reports? What should the fixed fees be?

Question 12: Are there particular types of experts who may cease to do the work for the proposed rates? Who are they and what can be done to address this?

Question 13: What other factors lead to issues with supply in some areas? What can be done to address these?

Part Four: Other Issues

Legal Services Commission Administration Budget

While considering measures to reduce expenditure on criminal legal aid in order to protect access to civil legal aid, we also need to ensure that expenditure on the administration of the legal aid budget is also kept to a minimum. We therefore propose to reduce the LSC administration budget by 5% in the second half of this financial year and by 10% next year, saving approximately £6m and £11m in the respective years.

File Review under the CDS contract 2010

File review payments are not available under the present civil contract, but are still available both in the present crime contract and the crime contract proposed for 2010 outside the pilot BVT areas. Currently LSC policy is to remove payment for file review only as BVT is rolled out (subject to the evaluation of the pilot in 2012). Given that the full roll-out of BVT will not now take place until 2013 at the earliest, and the financial pressures on MOJ, and consequently the LSC, but given the timeline the LSC has now adopted for BVT (i.e. that no BVT contracts would be rolled out before at least 2013, other than the pilot contracts), we therefore propose to ask the LSC to remove this payment from all contracts from July 2010 to ensure that savings can be made as soon as possible.

Costs and Benefits

As part of the consultation process we have undertaken Impact Assessments on the proposals. These are set out at Annexes C and D. The impact assessments cover policy proposals on police station fees and Litigators Graduate Fees / Committals for Trial respectively.

The costs and benefits of the impact assessments have been assessed over time. The **police station fee** and **Litigators Graduate Fees / Committals for Trial** proposals would deliver a net present value of zero. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers, with negligible administration costs.

Both the assessed proposals would lead to other impacts which are more difficult to value or may be highly uncertain and which are discussed in the impact assessments.

All of these proposals would, however, deliver significant benefits to the legal aid fund by reducing criminal legal aid expenditure. The Government believes this is essential given current financial pressures, the need to contribute towards overall efficiency savings, and the Government's desire to protect civil legal aid expenditure during the current economic downturn so that it can continue to help as many people as possible with their civil law problems.

Advocates Graduated Fees, File Review and Experts' Fees

No impact assessment has been undertaken on AGFS, file review or on expert fees at this stage.

We will publish an impact assessment on changes to AGFS when we bring forward more detailed proposals.

In the case of file review payments, the potential costs and benefits are lower than is the case for the other proposals. According to LSC data on claims during 2008/09, removing payment for file review would affect 914 offices. The average amount claimed for file review was £2,800 and this figure therefore represents the average impact on solicitors' offices. We have assessed how this would affect different types of firms within the Equalities Impact section at Annex E.

In relation to experts' fees, in 2007/08, the LSC spent £192 million on disbursements, of which payments to solicitors for work carried out by experts accounted for about two-thirds. Gross spend on disbursements has gone up by a further £20m in 2008-9. Since the LSC does not contract directly with expert witnesses, it does not routinely collect the level of data that would be required in order for us to carry out an impact assessment on how the proposals may affect this sector.

We recognise that, through implementing these rates, some experts may see a change in the income they gain from publicly funded work. The potential impact may be mitigated as we propose that, in exceptional circumstances, solicitors will be able to apply for prior authority to exceed the guideline rates.

We will be undertaking further work throughout the consultation period in order to better inform our understanding of the potential impacts of introducing guideline rates for expert witnesses. This work will include engaging with key stakeholders to ensure their views are taken into account in our final proposals.

We will review the analysis for all of the proposals during the consultation period and will also take account of information received from respondents to the consultation. We would welcome views and additional data relating to the impact assessments.

Next steps

The consultation will close on 12 November 2009. Following consultation, we intend to publish our response by December 2009.

If we proceed with the proposals in Parts One to Three of this consultation paper, the MoJ will make a Funding Order to implement these changes. Once the Order is made, the LSC would need to consult the usual representative bodies about any consequential changes to the legal aid contracts which might be necessary to implement these changes. The LSC would then need to give notice of the contract amendments before they took effect.

We would usually enclose draft regulations/orders with the consultation. We have not done so in this case, but the regulations will not be complex and so we consider their inclusion with the consultation to be unnecessary.

The proposals in relation to file review would be made by the LSC in the July 2010 contract, if accepted.

Question 14: Do you agree with the initial Impact Assessments? Do you have any evidence of impacts we have not considered?

Question 15: Do you have any information or views on the Equality Impact Assessment? Do you consider that any of these proposals will have a disproportionate adverse impact on any group? How could nay impact be mitigated?

Question 16: Are there alternative proposals you would suggest to reduce criminal legal aid expenditure?

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1: Do you agree that, rationalising police station fees in these areas is the right approach to contain costs and discourage inefficiencies?

Question 2: Do you agree that reductions should be made only against areas that are both over-subscribed with above median fees?

Question 3: Do you agree with the proposal to replace the current standard fee with a Committal for trial fixed fee?

Question 4: Is it reasonable in most cases for prosecuting and defending counsel to expect the same level of reward?

Question 5: Should harmonisation be achieved in more than one stage?

Question 6: How quickly should we aim to move towards harmonised fees?

Question 7: Do you agree with the proposed hourly rates based on current guidelines are a reasonable starting point?

Question 8: Are there situations when this would not be appropriate? If so, what would they be and why?

Question 9: Do you agree that it is appropriate to pay the same rates for the same type of expert in both civil and criminal cases? If not, why and what would the difference be?

Question 10: What are the circumstances when prior authority would need to be sought to go above the proposed rates?

Question 11: Are there any circumstances where fixed fees would be appropriate, for example DNA and GP reports? What should the fixed fees be?

Question 12: Are there particular types of experts who may cease to do the work for the proposed rates? Who are they and what can be done to address this?

Question 13: What other factors lead to issues with supply in some areas? What can be done to address these?

Question 14: Do you agree with the initial Impact Assessment? Do you have any evidence of impacts we have not considered?

Question 15: Do you have any information or views on the Equality Impact Assessment? Do you consider that any of these proposals will have a disproportionate adverse impact on any group? How could any impact be mitigated?

Question 16: Are there alternative proposals you would suggest to reduce criminal legal aid expenditure?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 12 November 2009 to:

Annette Cowell
Ministry of Justice
Criminal Legal Aid Strategy Division
Postpoint 4.41
102 Petty France
London SW1H 9AJ

Tel: 020 3334 4217
Fax: 020 3334 4295
Email: annette.cowell@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at www.justice.gov.uk.

Alternative format versions of this publication can be requested from Annette Cowell – see contact details above.

Publication of response

A paper summarising the responses to this consultation will be published by December 2009. The response paper will be available online at www.justice.gov.uk.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Julia Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4492, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Julia Bradford Consultation Co-ordinator Ministry of Justice 6.36, 6th Floor
102 Petty France London SW1H 9AJ**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 26.

Annex A: Proposed Police Station Fixed Fees

Schemes	CJS AREA	Fixed fee exc VAT	New fees excluding VAT		
			Option1	Option 2a	Option 2b
Abingdon, Didcot & Witney (South Oxfordshire)	THAMES VALLEY	259	238	224	230
Aldershot / Petersfield (North East Hampshire)	HAMPSHIRE	248	228	214	221
Amman Valley	DYFED-POWYS	209	192	209	186
Ashford & Tenterden / Dover / Folkestone	KENT	254	234	220	227
Barking	LONDON	278	256	240	248
Barnsley	SOUTH YORKSHIRE	179	165	179	179
Basildon	ESSEX	201	185	201	179
Bedford	BEDFORDSHIRE	189	174	189	189
Berwick & Alnwick	NORTHUMBRIA	199	183	199	199
Beverley / Bridlington	HUMBERSIDE	214	198	185	191
Bexley	LONDON	249	229	215	221
Bicester / North Oxon (Banbury)	THAMES VALLEY	241	222	208	214
Birmingham	WEST MIDLANDS	207	190	207	184
Bishop's Stortford / East Hertfordshire	HERTFORDSHIRE	316	291	273	281
Bishopsgate	LONDON	290	267	251	258
Blackburn / Accrington / Ribble Valley	LANCASHIRE	212	195	183	189
Bootle & Crosby	MERSEYSIDE	182	168	182	182
Boston / Bourne / Stamford	LINCOLNSHIRE	195	179	195	195
Bradford	WEST YORKSHIRE	153	141	153	153
Braintree	ESSEX	246	227	213	219
Brent	LONDON	271	249	234	241
Brentford	LONDON	276	254	238	246
Brentwood	ESSEX	309	285	267	275
Brighton & Hove & Lewes	SUSSEX	227	209	196	202
Bromley	LONDON	262	241	227	233
Camberwell Green	LONDON	271	250	235	242
Cambridge	CAMBRIDGESHIRE	183	169	183	183
Canterbury / Thanet	KENT	220	203	190	196
Cardiff	SOUTH WALES	214	198	185	191
Carrick / Kerrier (Camborne) / Penwith	DEVON AND CORNWALL	206	190	206	183
Central London	LONDON	294	270	254	261
Chelmsford / Witham	ESSEX	198	183	198	198
Cheltenham	GLOUCESTERSHIRE	178	164	178	178
Chichester & District	SUSSEX	182	168	182	182
Clacton & Harwich / Colchester	ESSEX	206	190	206	183
Clerkenwell/Hampstead	LONDON	274	252	237	244
Colwyn Bay	NORTH WALES	195	179	195	195
Crewe & Nantwich /	CHESHIRE	197	182	197	197

Sandbach & Congleton / Macclesfield					
Cromer & North Walsham	NORFOLK	228	210	197	203
Croydon	LONDON	267	246	231	238
Cynon Valley	SOUTH WALES	206	190	206	183
Dacorum (Hemel Hempstead)	HERTFORDSHIRE	260	239	224	231
Derby / Swadlincote	DERBYSHIRE	209	192	209	186
Dereham	NORFOLK	245	226	212	218
Diss / Thetford	NORFOLK	197	181	197	197
Doncaster	SOUTH YORKSHIRE	172	158	172	172
Durham	DURHAM	203	187	203	180
Ealing	LONDON	285	263	246	254
Easington	DURHAM	187	172	187	187
	DEVON AND				
East Cornwall	CORNWALL	247	227	213	220
East Gwent	GWENT	191	176	191	191
Ely	CAMBRIDGESHIRE	210	194	210	187
Enfield	LONDON	270	248	233	240
Epsom	SURREY	260	240	225	232
Gloucester	GLOUCESTERSHIRE	174	161	174	174
Goole	HUMBERSIDE	226	208	195	201
Grays	ESSEX	289	266	249	257
Greenwich/Woolwich	LONDON	259	238	224	230
Guildford & Farnham	SURREY	223	205	193	199
Haringey	LONDON	279	257	241	249
Harlow & Loughton	ESSEX	289	266	249	257
Harrow	LONDON	271	250	235	242
Hartlepool	CLEVELAND	148	136	148	148
Hastings	SUSSEX	160	147	160	160
Havering	LONDON	253	233	218	225
Heathrow	LONDON	340	314	294	303
Hendon/Barnet	LONDON	273	252	236	243
High Wycombe & Amersham	THAMES VALLEY	237	218	204	211
Highbury Corner	LONDON	284	262	246	253
Hull	HUMBERSIDE	172	158	172	172
Keighley & Bingley	WEST YORKSHIRE	172	158	172	172
Kidderminster / Redditch	WEST MERCIA	218	201	188	194
Kingston-Upon-Thames	SURREY	283	260	244	252
Knowsley	MERSEYSIDE	186	171	186	186
Leeds	WEST YORKSHIRE	162	149	162	162
Leicester	LEICESTERSHIRE	202	186	202	180
Lichfield & Tamworth / Burton Upon Trent / Uttoxeter	STAFFORDSHIRE	194	179	194	194
Llanelli	DYFED-POWYS	156	143	156	156
Lower Rhymney Valley / North Bedwellty / South Bedwellty	GWENT	203	187	203	181
Luton	BEDFORDSHIRE	220	202	190	196
Mansfield	NOTTINGHAMSHIRE	180	166	180	180
Merthyr Tydfil	SOUTH WALES	213	196	184	189
Mid Glamorgan & Miskin	SOUTH WALES	214	198	185	191
Milton Keynes	THAMES VALLEY	186	171	186	186

Mold & Hawarden	NORTH WALES	203	187	203	180
Neath	SOUTH WALES	224	206	193	199
Newcastle & Ogmore	SOUTH WALES	218	201	188	194
Newcastle upon Tyne	NORTHUMBRIA	155	143	155	155
Newham	LONDON	272	251	235	243
Newport	GWENT	187	172	187	187
North Tyneside	NORTHUMBRIA	157	145	157	157
North West Surrey (Woking)	SURREY	243	224	210	217
Old Street	LONDON	271	250	235	242
Oxford	THAMES VALLEY	241	222	208	214
Pembrokeshire	DYFED-POWYS	188	173	188	188
Poole East Dorset	DORSET	172	158	172	172
Port Talbot	SOUTH WALES	271	249	234	241
Redbridge	LONDON	279	257	241	249
Richmond-Upon- Thames	LONDON	298	274	257	265
Rotherham	SOUTH YORKSHIRE	183	169	183	183
Salisbury	WILTSHIRE	196	180	196	196
Sandwell	WEST MIDLANDS	197	182	197	197
Scarborough / Whitby	NORTH YORKSHIRE	171	158	171	171
Scunthorpe	HUMBERSIDE	163	150	163	163
Sheffield	SOUTH YORKSHIRE	188	173	188	188
Shrewsbury	WEST MERCIA	186	172	186	186
Skipton, Settle & Ingleton	NORTH YORKSHIRE	200	184	200	178
Slough (East Berkshire)	THAMES VALLEY	259	238	224	230
South Durham	DURHAM	171	158	171	171
South East Surrey	SURREY	257	237	222	229
South London	LONDON	284	262	246	253
South Tyneside	NORTHUMBRIA	150	138	150	150
St Albans	HERTFORDSHIRE	266	245	229	236
St Helens	MERSEYSIDE	173	159	173	173
Stafford / Cannock & Rugeley	STAFFORDSHIRE	200	184	200	178
Staines	SURREY	298	274	257	265
Stansted	ESSEX	319	294	276	284
Stevenage & North Hertfordshire	HERTFORDSHIRE	293	270	253	261
Stoke on Trent / Leek	STAFFORDSHIRE	206	190	206	183
Stroud	GLOUCESTERSHIRE	200	184	200	178
Sudbury & Hadleigh / Bury St Edmunds / Haverhill / Newmarket	SUFFOLK	202	186	202	180
Sunderland / Houghton					
Le Spring	NORTHUMBRIA	168	154	168	168
Sutton	LONDON	270	248	233	240
Swansea	SOUTH WALES	193	178	193	193
Swindon	WILTSHIRE	193	178	193	193
Teeside	CLEVELAND	152	140	152	152
Telford	WEST MERCIA	194	179	194	194
Thames	LONDON	270	248	233	240
Tower Bridge	LONDON	289	266	249	257
Tynedale & Hexham	NORTHUMBRIA	174	160	174	174
Uxbridge	LONDON	261	241	226	233
Wakefield	WEST YORKSHIRE	157	144	157	157
Walsall	WEST MIDLANDS	201	185	201	179
Waltham Forest	LONDON	254	234	219	226

Watford	HERTFORDSHIRE	261	241	226	233
West London	LONDON	292	269	252	260
Wimbledon	LONDON	277	255	239	246
Wirral	MERSEYSIDE	177	163	177	177
Wolverhampton & Seisdon	WEST MIDLANDS	197	182	197	197
Worksop & East Retford	NOTTINGHAMSHIRE	191	176	191	191
Worthing	SUSSEX	185	170	185	185
York / Selby	NORTH YORKSHIRE	180	165	180	180

Annex B: Proposed rates for experts

Expert Type	Proposed Rate
1 General Medical (Accident and Emergency, Chemist, Dentist, General Medical Report, GP, Injury Report, Nurse, Paediatrician)	Preparation (examination/report): £70 - £100 per hour Attendance at court (full day): £346 - £500
2 Specialist Medical (Gynaecology, Obstetrics, Oncology, Orthopaedic, Radiology, Urology, Haematologist, Ophthalmology, Neurology, other specialist medical)	Preparation (examination/report): £70 - £100 per hour Attendance at court (full day): £346 - £500
3 Pathologist	Preparation (examination/report): £70-100 per hour Attendance at court (full day): <p style="text-align: right;">£346-£500</p>
4 DNA Test	Up to £100 per hour or £385 per test (£350 in London)
5 Drug Testing	Up to £100 per hour (£180 fixed fee in London)

Expert Type	Proposed Rate	
6 Age Determination	Preparation (examination/report):	Up to £100 per hour
7 Other Medical	Preparation (examination/report):	£70-100 per hour
	Attendance at court (full day):	£346-£500
8 Psychiatric	Preparation (examination/report):	£70 - £100 per hour
	Attendance at court (full day):	£346 - £500
9 Psychologist	Preparation (examination/report):	£70 - £100 per hour
	Attendance at court (full day):	£346 - £500
10 Forensic scientist (including questioned document examiner), accountant, surveyor, engineer, medical practitioner, architect, veterinary surgeon, meteorologist	Preparation (examination/report):	£47 - £100 per hour
	Attendance at court (full day):	£226 - £490
11 Fire (assessor) and/or explosives expert	Preparation (examination/report):	£50-£75 per hour

Expert Type	Proposed Rate	
12 Fingerprint	Attendance at court (full day):	£255-£365
	Preparation (examination/report):	£47-£100 per hour
	Attendance at court (full day):	£153-£256
13 Enquiry Agent	All work:	Up to £26 per hour
14 Foreign Country Expert	All work:	Up to £80 per hour

Summary: Intervention & Options

Department /Agency:
Ministry of Justice

Title:
Impact Assessment of revised police station
scheme area fees

Stage: Consultation

Version: 1.0

Date: 20 August 2009

Related Publications: Consultation paper, *Legal Aid: Funding Reforms*

Available to view or download at: www.justice.gov.uk

Contact for enquiries: Annette Cowell

Telephone: 020 3334 4217

What is the problem under consideration? Why is government intervention necessary?

Legal aid resources are finite and under significant pressure. The Ministry of Justice (MoJ) is required to contribute £1 bn of efficiency savings towards wider Government savings targets, and this includes savings from legal aid. As part of a broader suite of consultation proposals, MoJ would like to rationalise police station fees within the most over-subscribed areas. Government intervention is necessary because legal aid is funded by the taxpayer and therefore any changes to it would have to be made by Government.

What are the policy objectives and the intended effects?

The objective is to protect the civil fund as far as possible from any rise in criminal legal aid spend in the short to medium term. This is intended to support the Government's broader objective of helping as many people as possible with their civil law problems. Government aims to achieve this by prioritising criminal legal aid expenditure more effectively than at present by including a reduction in the level of fees paid for police station schemes that are over-subscribed.

What policy options have been considered? The following options have been assessed against the base case of "no change" in the existing fee levels for police station schemes.

Option 0 – Base Case ("Do Nothing")

Option 1 – Reduce police station fixed fees in all over-subscribed areas

Option 2a – Reduce police station fixed fees in all over-subscribed areas with *above average* (mean) fee costs

Option 2b – Reduce police station fixed fees in all over-subscribed areas with *above median* fee costs

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? If this policy was to be taken forward, the impact of any preferred option (s) would be evaluated for their effectiveness within five years of policy implementation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 19 August 2009

Summary: Analysis & Evidence

Policy Option:
1, 2a and 2b

Description: Reduce police station fees in *all* over-subscribed areas (1), those with above average (mean) costs (2a) or those with above median costs (2b).

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>There would be a loss in surplus for providers of £8.7m over the next 3 years until any future roll-out of Best Value Tendering. There are likely to be administration costs on the Legal Services Commission (LSC) but these are currently viewed to be minimal.</p>
	One-off (Transition)	Yrs	
	£0	1	
	Average Annual Cost (excluding one-off)		
	£8.7m	3	Total Cost (PV) £ 26.2m
<p>Other key non-monetised costs by 'main affected groups' There could be indirect costs which are uncertain in the form of a possible impact on the service provided by solicitors' firms, market exit and corrective action. The key differences between the options are that Option 1 affects the greatest proportion of firms without taking into account the current fee level. Although Option 2b takes into account current fee levels, it affects more firms than Option 2a but the maximum fee impact leads to a lower decrease in surplus for firms.</p>			

BENEFITS	ANNUAL BENEFITS		<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>The benefit to Government in terms of cost savings for the legal aid budget brought about from reduced fees is estimated be a discounted value of £26,097,248m over a 3 year period.</p>
	One-off	Yrs	
	£0	1	
	Average Annual Benefit (excluding one-off)		
	£8.7m	3	Total Benefit (PV) £ 26.2m
<p>Other key non-monetised benefits by 'main affected groups' There are potential indirect benefits in the form of efficiency of the Government, a transfer payment from firms to the taxpayer and a re-alignment of the fee level so that demand for duty slots equals supply. Equity considerations are greater in Option 1, where the current level of fees is not taken into account, and Option 2a, where the proposed percentage reduction in fees is greater.</p>			

Key Assumptions/Sensitivities/Risks The net present value is sensitive to assumptions on administration costs; modelled volumes and fee rates data; and behavioural responses (discussed in the main body).

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	England & Wales			
On what date will the policy be implemented?	As soon as practicable			
Which organisation(s) will enforce the policy?	LSC			
What is the total annual cost of enforcement for these organisations?	£ minimal			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	N/A			
What is the value of changes in greenhouse gas emissions?	N/A			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase £ Decrease £ **Net** £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

1. Scope of Impact Assessment

1. 1 This Impact Assessment (IA) considers the costs and benefits of implementing options with respect to the level of police station fees. The policy objective underlying the consultation is to ensure that the legal aid budget is sustainable and contributes towards efficiency savings required from the MoJ. These issues are discussed in more detail in the main consultation document. The Impact Assessment focuses on the impacts of various options. It is undertaken in line with the criteria set out in the Impact Assessment Guidance.¹
1. 2 The main proposals are to homogenise fees across police station schemes that have an over-subscription (explained later on in this Impact Assessment) where the fee paid is above the average (mean) or median fee level. This policy change would affect criminal legal aid in England and Wales only.
1. 3 The Legal Services Commission (LSC) currently spends around £180m on police station advice and this spend is distributed across a network of police station duty schemes, all of which have separate fees. We are aware that there is inefficiency in the LSC's current police station fees model and that this should be tackled. It is expected that any inefficiencies in these fees would be resolved through Best Value Tendering (BVT). However, the Government and the LSC have committed to reviewing a BVT pilot before considering any wider implementation of BVT, which would not occur until 2013 at the earliest. We therefore believe that the current high levels of disparity in fees between areas should be narrowed now in order to reduce these in-built inefficiencies.
1. 4 These proposals would affect the following groups / sectors:
 - **The Legal Services Commission** (LSC) is responsible for managing the legal aid budget on behalf of Government. The proposals would be implemented by the LSC and may impose administration impacts discussed in the impact assessment.
 - **Solicitors firms** which are the principle providers of legal services within the context of this impact assessment. Any changes in the fees would have a first round impact on their businesses and other players who depend on them.
 - **Consumers** are the ultimate users of legally aided services. Although the measures are not directly aimed at them, they may be impacted in the long term through behavioural changes of solicitors' firms as they accommodate the changes.

2. Rationale for Government Intervention

2. 1 The conventional economic approach to Government intervention is based on efficiency or equity arguments. Government intervenes if there is a perceived failure in the way markets operate ("market failures") or it would like to correct existing institutional distortions ("government failures") e.g. existing laws or legislation. Government also intervenes for equity or fairness reasons.
2. 2 In this context the relevant "market" of interest is the provision of duty solicitors at police stations, specifically within the context of legally aided solicitors' firms. The question is

¹<http://www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44199.html>

whether or not the current level of fees for each police station scheme area leads to Government or market failures, which need to be corrected. In economic terms, we are essentially asking whether the current level of fixed fee in each of the 230 police station scheme areas imposes a greater cost on the taxpayer than there needs to be for the provision of the service.

2. 3 There are reasons to believe that the current level of police station fees is creating a distortion in the number of firms willing to provide duty solicitor services in particular police station scheme areas.

Fee Distortion

2. 4 The Government currently provides legal aid funding in order to ensure full coverage of legal advice at police stations across England and Wales. This intervention sets the level of fees in each of the 230 police station schemes. The basis for the current level reflects the historical level of hourly fees in particular areas which may not reflect actual delivery costs as it results in dissimilar fees for areas with comparatively similar geographical characteristics. The fixed fees paid for police station attendances therefore may not be representative of the unit costs that are actually incurred, thereby creating an incentive for firms to ask for duty slots in areas where there are potentially lower relative unit costs of delivery. Existing Government intervention may therefore be distorting the ideal allocation of resources.

Fiscal Pressures

2. 5 As legal aid continues to be a vital service for many people in the UK, particularly in the current economic downturn, there is a greater pressure on the Government to prioritise legal aid effectively. There should be help available for a potentially increasing number of individuals who may be vulnerable to civil law problems, and the objective is to have their problems resolved as quickly and efficiently as possible.
2. 6 Due to this external economic pressure, we have concluded that the best way to meet the potentially increasing level of demand for civil legal aid and contribute towards Government efficiency savings is to focus on reforming our funding regime where possible so as to target the best possible use of scarce resources. We believe that the alternatives, including reducing the scope or eligibility for civil legal aid are undesirable during the current downturn.

“Over-subscription”

2. 7 Over-subscription is a term that is used to describe police station scheme areas that have a greater than 400% supply of solicitor firms willing to provide solicitors for duty slots than there is a demand for them.
2. 8 Duty slots are allocated to all the firms that are willing to supply them, with those firms that employ greater numbers of duty solicitors given larger numbers of slots. Over-subscription in areas could potentially be a signal that the work is of greater profitability than those areas that have fewer firms willing to provide legal services.
2. 9 There may be an arms race effect taking place due to the number of slots allocated to firms being dependent on the number of duty solicitors; each firm thus has an incentive to hire an increasing number of solicitors. This effect could potentially be mitigated against by reducing the level of the fixed fee.

Equity

2. 10 There are also equity reasons that provide an argument for why the Government needs to intervene by changing the level of the fixed fee in areas that are over-subscribed. The levels of fixed fee set by the LSC vary greatly despite the fact that firms are undertaking essentially the same work. The Government needs to intervene to bring the higher fee levels more in line with the average fee level.

3. Cost Benefit Analysis

OPTION 0 – Base Case (“Do Nothing”)

Description

3. 1 The Impact Assessment and HMT Treasury Green Book Guidance require that all options are assessed relative to a common “base case.” The base case for this IA has been assumed to be “do nothing.” As the base case effectively compares against itself, the net present value is therefore **zero**.
3. 2 In order to allow for an informed consideration of the options that we are proposing, we have considered the effect of making no changes to the structure of how legal aid is funded. The LSC currently “help over two million people per year access justice”.² To achieve this, the legal aid budget is now approximately £2 billion per annum – increasing from £835 million per annum twenty years ago (in today’s prices).³
3. 3 The fixed fee levels differ across the country with VAT-exclusive fees ranging between £140 and £340 per matter.⁴ The current contract process currently allocates duty slots to any firm that asks for them but the numbers of duty slots that are given are dependent on the number of duty solicitors that are employed within that particular firm. The greater the number of duty solicitors a firm employs, the greater the number of slots that are allocated to that firm.
3. 4 Making no change would mean that there would continue to be an incentive for oversubscription of duty solicitors to those police station schemes that offer a higher level of fixed fee than those that are lower. Intuitively speaking, there is no reason to believe there has been a significant change in the levels of over-subscription since fixed fees were brought in to existence in January 2008.
3. 5 Many homeowners, consumers, employees may potentially face increased financial hardship during the current economic downturn that would increase their likelihood of experiencing civil law problems and becoming eligible for legal aid. The extent of this increase cannot be accurately predicted but if the legal aid budget did not allow for the potential increase in numbers eligible for civil legal aid and if the numbers receiving criminal legal aid remain broadly similar, this could add to existing pressures on the legal aid budget.

² <http://www.legalservices.gov.uk/default.asp>

³ <http://www.justice.gov.uk/news/speech110609a.htm>

⁴ See Annex B for old and proposed new fee levels

OPTION 1 – All over-subscribed areas

Description

3. 6 Option 1 would lead to the homogenisation of the level of fixed fees in all the areas that are over-subscribed by over 400% irrespective of the level of fee in the area.⁵ This option would amount to a blanket percentage adjustment, regardless of the level of the fixed fee that is currently being paid in these areas.
3. 7 As Best Value Tendering (BVT) will be piloted in Avon and Somerset and Greater Manchester from October 2009 with contracts beginning in July 2010, we will not seek to reduce the police station fixed fees that apply there ahead of the tender. Outside the BVT areas, the rationale behind the focus on police station fixed fees, and not magistrates' court and Crown Court fees, is that these represent the lower value, high volume work for a provider which generates the "up-stream" work in the courts that is remunerated more highly. There would potentially be a disincentive to take up the lower value police station work and ultimately magistrates' courts and Crown Court work if the levels of fees in these other areas were reduced. By reducing police station fees, there is an expectation that the supply of duty solicitors should not change significantly as the greater monetary reward for work in the courts is unchanged.

Costs of Option 1

First Round Costs

3. 8 Option 1 would impose direct costs which are more certain to identify. These are:

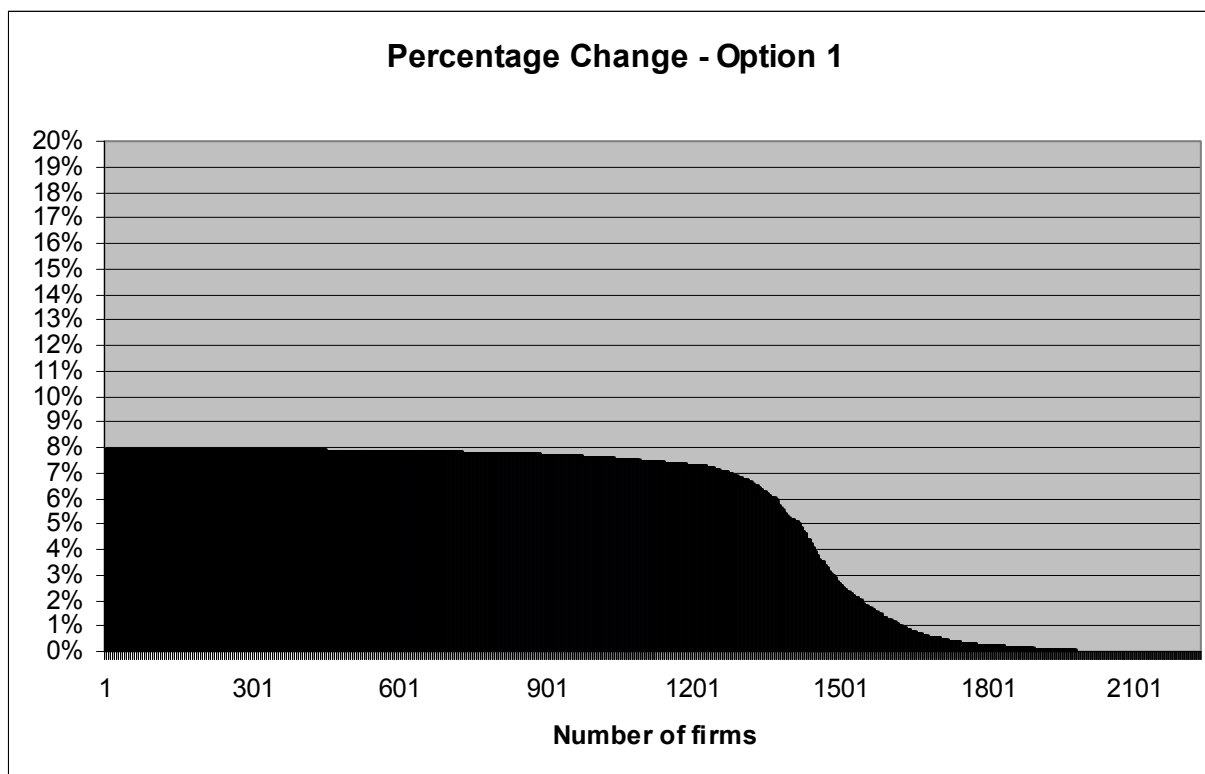
Providers: There would be a loss in surplus for providers of approximately £9 million⁶ per year. This equates to the discounted cost of £26 million three years after the implementation of the revised fees.

The graph below shows the distributional impacts on all firms undertaking police station work of this option. The reduction in fees would affect 142 schemes, approximately 90% of firms with the maximum fee impact of 8%. The maximum fee impact is the fee reduction that would apply under the option. In the case that all work of a single firm falls in selected schemes, this also represents the maximum reduction it would bear as a result of the new fees. The shaded area in figure 1 shows the value of the £9 million surplus that providers would lose.

⁵ The current aggregate value of the payments that the LSC makes to firms that operate in these oversubscribed areas is around £114 million.

⁶ See Table A1 in Annex A.

Figure 1



LSC: There are likely to be administration costs on the LSC from implementing this new regime, but these are currently viewed to be minimal.

Second Round

3. 9 Option 1 would lead to indirect costs which are more uncertain than the direct costs as these would depend on behavioural responses. The reduction in fees in areas that are oversubscribed may have an impact on the supplier base and could lead to the following potential costs:

- **Compensatory adjustments:** Areas that are over-subscribed may simply reflect the lack of alternative work available and not necessarily be a sign that there are greater than average profits being made. Those firms that were perhaps on the *margin* in terms of being able to hire solicitors to carry out work may need to make adjustments, for example to their staffing structures or the delivery of advice to the client. However, the effect may be mitigated since police station work represents the lower value, high volume work for a provider which generates the “up-stream” work in the courts that is remunerated more highly.
- **Market exit:** The reduction in fixed fees could result in the risk that the supplier base of providers could dwindle. The number of firms exiting the market is dependent on their attitude or ability to be able to implement “swings and roundabouts” in terms of diversification in the types of cases they are prepared to take on. For example short cases should be balanced with long cases and simple cases balanced with more complex ones.⁷ Those firms that have higher costs of delivery and were breaking even would be at most risk of being forced to exit the market. This would lead not just to wider economic impacts in the area but to the industry as a whole. However, these effects should be mitigated by focusing fee adjustments on oversubscribed schemes, and the access police station work affords to higher value work.

⁷ Legal Aid Reform: the Way Ahead – Department for Constitutional Affairs, 2006

- **Corrective action:** Any reduction in services or subsequent market exit may lead to Government taking corrective action to maintain the status quo. This preventative or corrective action could impose additional costs on taxpayers.

Benefits of Option 1

First Round

3. 10 The main direct benefits of Option 1 are the financial benefits to Government. There would be a financial saving of approximately £9 million⁸ over the next legal aid funding phase. This equates to the discounted benefit of £26 million over 3 years until any future full roll-out of BVT, should this be implemented following the evaluation of the BVT pilot in 2012.⁹

Second Round

3. 11 Option 1 would lead to indirect benefits which are more uncertain than the direct benefits. These would include the following:
- **Efficiency:** There is evidence that the Government may be paying more for duty solicitor services than what it would be paying in a free market outcome. There would therefore be a £9 million transfer taking place from the providers of services to the Government, which can use the extra funds to fund the potentially increasing demand for civil legal aid and to contribute towards efficiency savings.
 - **Wider society:** In the long run the transfer taking place from firms may benefit taxpayers as, over time, if the potential demand for civil legal aid services decreases, there would be additional funds available for other public services.
 - **Equity:** The benefit to reducing the fixed fee level in areas of over-subscription is that there would be a reduced incentive for firms to provide services in one particular area over another. The fixed fee would therefore re-align the fee level so that demand for duty slots is more closely aligned to the supply, as opposed to there being excess demand in particular areas.

Net Impact of Option 1

3. 12 Option 1 would generate a zero net present value. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers, with negligible administration costs. However, Option 1 would result in savings to the legal aid budget which are necessary given the current financial context, the requirement to find efficiency savings and the Government's desire to protect civil legal aid expenditure.
3. 13 However, this has to be considered within the context of the non-monetised impacts which are more uncertain. There would be *non-monetised costs* from possible changes to behaviour and the way that solicitors' firms choose to deliver the service, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include the possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies described under the rationale for Government intervention section (Section 2).

⁸ See Table A1 in Annex A

⁹ See Table A3 in Annex A

OPTION 2a – All over-subscribed areas with *above average* costs

Description

3. 14 Option 2a would lead to the homogenisation of the level of fixed fees in over-subscribed areas with *above average* (mean) costs. It therefore differs from Option 1 in that the fixed fee level would be reduced for only those areas that are at the higher end of the spectrum. There would be a reduction in the level of fixed fees for areas that have above the average (mean) fee level of £248¹⁰ (or £211 excluding VAT) as well as those with over a 400% level of over-subscription on duty scheme applications from the LSC's July 2008 bid round¹¹.

Costs

First Round

3. 15 Option 2a would impose direct costs which are more certain to identify. These are :

Providers: There would be a loss in surplus for providers of approximately £9 million¹² in the first year that these changes will be made. This equates to the discounted cost of £26 million over the 3 year appraisal period until any future full roll out of BVT, should this be implemented.¹³ The costs of this option are less than those in option 1 as the fee reduction is not approached as a blanket cut and the current actual level of fee is taken into account.

Figure 2 shows the distributional impact of a percentage change in fees on all firms undertaking police station work for this option. The reduction in fees would affect 70 schemes, approximately 58% of firms with the maximum fee impact of 14%. The shaded area in Figure 2 shows the value of the £9m surplus that providers would lose.

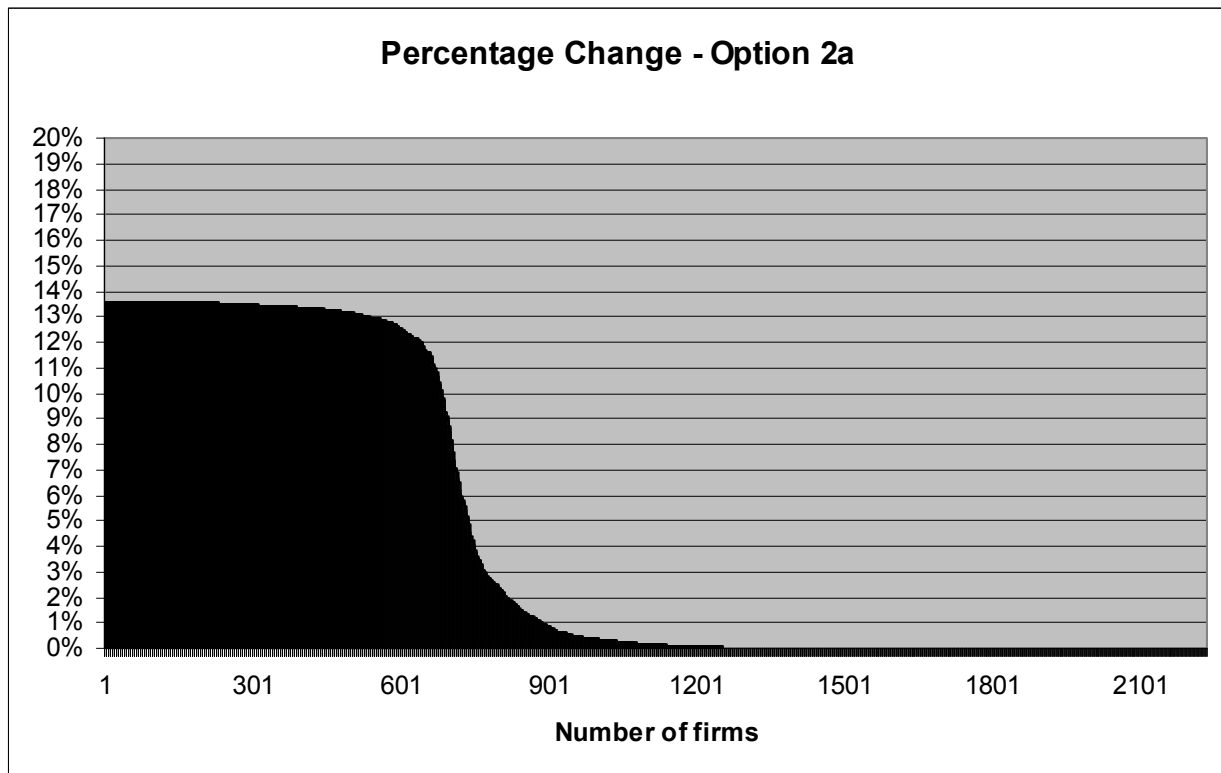
¹⁰ Calculated using the financial year 2007/08 fixed fees including VAT at 17.5%.

¹¹ The current aggregate value of the payment that the LSC makes to firms that operate in areas that are over-subscribed and have fee levels above the average is £66,225,000.

¹² See Table A2 in the Annex A

¹³ See Table A4 in the Annex A

Figure 2



LSC: There are likely to be administration costs on the LSC from implementing this new regime, but these are currently viewed to be minimal.

Second Round

3. 16 The impacts are similar to Option 1. However, the impacts would be reduced because instead of affecting 90% of firms, only 58% would be affected when compared to Option 1. However, the impact on affected firms would be greater than under Option 1.

Benefits

First Round

3. 17 **Efficiency savings:** The level of efficiency savings would be greater than in option 1 due to the nature of the fee reduction being more tailored to those areas that currently have a fee level above the average.

Second Round

3. 18 The impacts are similar to Option 1. However, there would be greater level of equity in financial terms with this option as firms that are receiving a greater than average fee level have their income brought more into line with other firms that may have similar delivery costs and operate in areas with similar geographic characteristics.

Net Impact of Option 2a

3. 19 Option 2a would generate a zero net present value. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers,

3. 20 However, this has to be considered within the context of the non-monetised impacts which are more uncertain. There would be *non-monetised costs* from possible compensatory adjustments to the way solicitors' firms deliver the service, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include the possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies described under the rationale for government intervention section (Section 2).

OPTION 2b – All over-subscribed areas with above median costs

Description

3. 21 Option 2b is almost identical to option 2a but it differs in that it uses the median fee instead of the average (mean) fee. We think it is more appropriate to use the median fee because the distribution of fees is heavily skewed. In this case, the median is a better measure of central tendency than the mean.
3. 22 This would lead to the homogenisation of the level of fixed fees in the top 50% over-subscribed areas. It therefore differs from Option 1 in that the fixed fee level would be reduced for only those areas that are at the higher end of the spectrum. It also differs from Option 2a in that the fee reduction would be shared by a larger number of schemes.
3. 23 Under option 2b, there would be a reduction in the level of fixed fees for areas that have above the median fee level of £235¹⁴ (£200 excluding VAT) as well as those with over a 400% level of over-subscription on duty scheme applications from the LSC's July 2008 bid round.¹⁵

Costs

First Round

3. 24 Option 2b would impose direct costs which are more certain to identify. These are:

Providers: There would be a loss in surplus for providers of approximately £9 million¹⁶ in the first year that these changes will be made. This equates to the discounted cost of £26,097,248 over the 3 year appraisal period until any full roll-out of BVT, should this be implemented.¹⁷ The costs of this option are less than those in option 1 as the fee reduction is not approached as a blanket cut and the current actual level of fee is taken into account.

Figure 3 below shows the distributional impacts on all firms undertaking police station work of a reduction in fees described for this option. The decrease in fees would affect 88 schemes, approximately 75% of firms with the maximum fee impact of 11%. The shaded area in figure 3 shows the value of the £9 million surplus that providers would lose.

¹⁴ Calculated using the financial year 2007/08 fixed fees including VAT at 17.5%.

¹⁵ The current aggregate value of the payment that the LSC makes to firms that operate in areas that are over-subscribed and have fee levels above of above the median is £82 million.

¹⁶ See Table A3 in the Annex A.

¹⁷ See Table A4 in the Annex A.

Figure 3

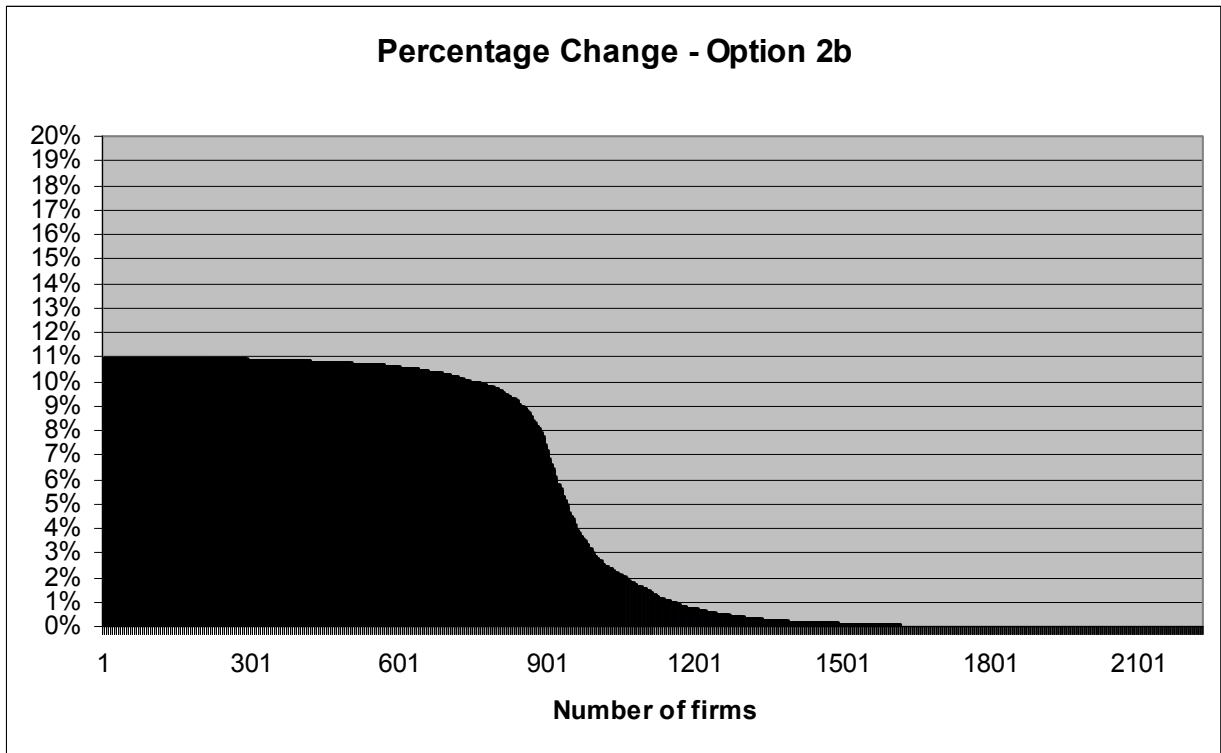
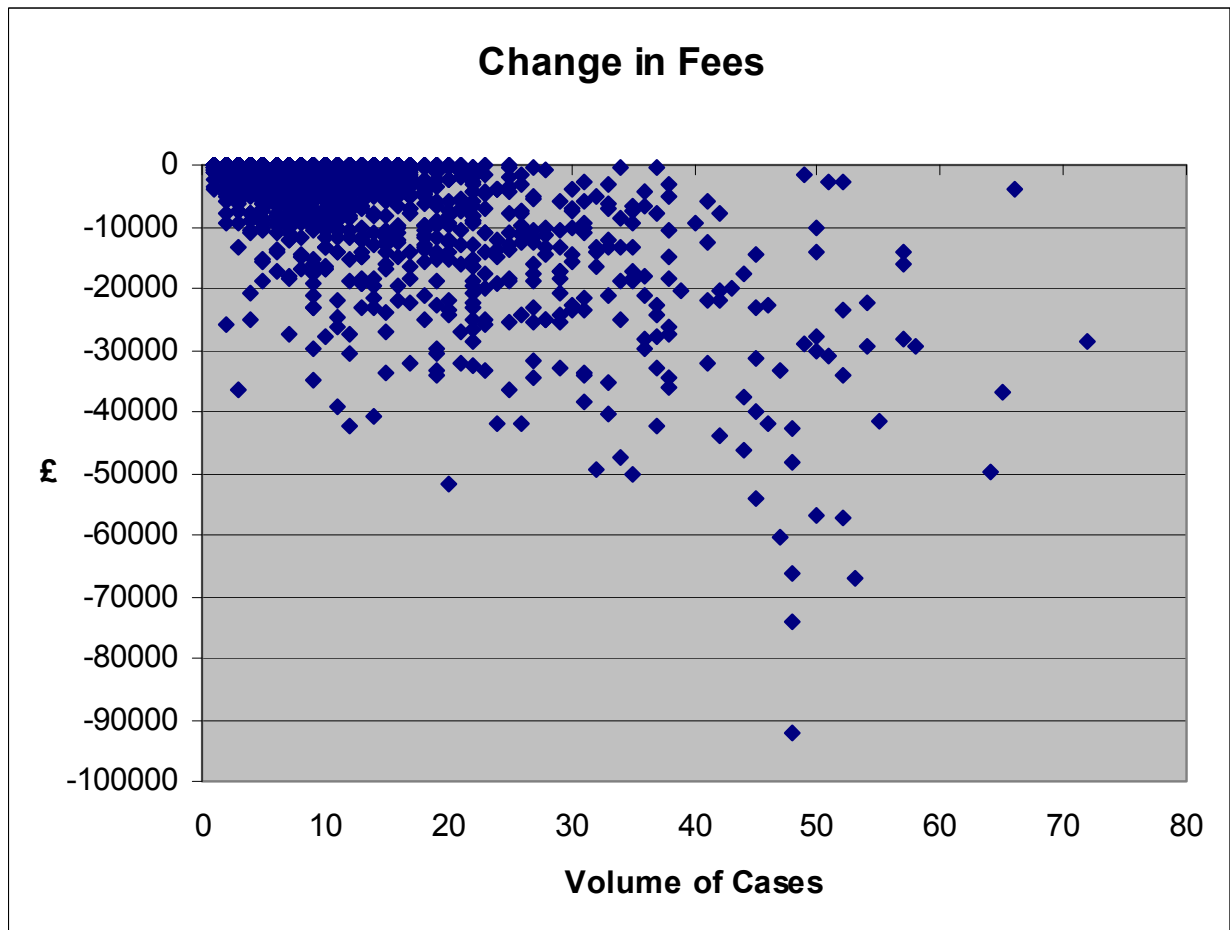


Figure 4 below shows the reduction in fees that would result from the new fee against the volume of cases undertaken by firms in 2007/08.

Figure 4



LSC: There are likely to be administration costs on the LSC from implementing this new regime, but these are currently viewed to be minimal.

Second Round

3. 25 The impacts are similar to Option 2a. However, the impacts would be lower than when comparing to option 2a despite there being a greater number of firms being affected. This is due to the percentage reduction in fees being reduced compared with Option 2a.

Benefits

First Round

3. 26 *Efficiency savings:* The level of efficiency savings would be greater than in option 2a due to the nature of the fee reduction being more tailored to those areas that currently have a fee level above the median and the median being a better measure of central tendency than the mean.

Second Round

3. 27 The impacts are similar to Option 2a. However, there would be greater level of equity in financial terms with this option as firms that are receiving a greater than median fee level have their income brought more into line with other firms that may have similar delivery costs and operate in areas with similar geographic characteristics.

Net Impact of Option 2b

3. 28 Option 2b would generate a zero net present value. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers, with negligible administration costs. However, as with the other options, there would be significant benefits to the legal aid fund.
3. 29 However, this has to be considered within the context of the non-monetised impacts which are more uncertain. There would be *non-monetised costs* from possible compensatory adjustments to the way solicitors' firms deliver the service, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include the possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies described under the rationale for government intervention section (Section 2).

Summary of Options

3. 30 The table below summarises the differences between options 1, 2a and 2b:

Table 1

	Option 1	Option 2a	Option 2b
Maximum Fee Impact	7.91%	13.59%	10.95%
Proportion of Firms affected	90%	58%	75%
Number of Schemes affected	142	70	88

3. 31 The Maximum Fee Impact is the fee reduction that would apply under each of these three options. In the case that all the work of a single firm falls in selected schemes, this also represents the maximum reduction it would bear as a result of the new fees.
3. 32 The second row shows the proportion of all firms providing services in the police station that would be affected by the new fees. The last row represents the number of schemes that would be affected by a fee reduction.
3. 33 Option 1 has the lowest maximum fee impact but it should be noted that it is applied globally without considering that some over-subscribed schemes may have a below average fee level. Option 2a affects the lowest proportion of firms but has the highest maximum fee levels for those firms that would be affected by the fee reductions. Option 2b takes into account those fee levels that are already below the median and, due to the skewed distribution of fees, the median may be a better measure of central tendency than the mean. Option 2b affects a lower proportion of firms than Option 1 but a greater number than Option 2a. However, the fee adjustment is lower than under Option 2a.

4. Enforcement and Implementation

4. 1 The proposals would be implemented by means of regulations made by the MoJ. Once these regulations were made, the LSC would need to consult the usual representative bodies about any changes to the legal aid contracts which might be necessary to implement these changes. The LSC would then need to give notice of any contract amendments before they took effect.

5. Impact Tests

5. 1 The Impact Assessment Guidance sets out a number of tests which would need to be assessed.

Competition Assessment

5. 2 The market affected by these proposals is the publicly funded criminal defence service market. The impact on competition is difficult to fully assess at this stage. Further consideration will be given to developing a formal competition assessment during the consultation process and in the light of responses to consultation.

Small Firms

5. 3 The Impact Assessment Guidance states that “*any new proposal that imposes or reduces the cost on business requires a Small Firms Impact Assessment Test*”. The assessment of the potential impacts has relied on the BERR Small Firms Impact Assessment Guidance (September 2007). It is unclear at this stage what the impact on firms might be. We aim to seek further information on any particular impacts to small firms and the likely costs and effects to their business during the consultation period.

Legal Aid and Justice Impact Test

5. 4 The impact on the Justice System has been assessed as part of the options analysis.

Human Rights

5. 5 The proposals are compliant with the Human Rights Act.

Race / Disability / Gender Equality

5. 6 An Equalities Impact Test was undertaken for all the policy proposals. This is set out separately in the consultation document.

Rural Proofing

5. 7 Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. It is a mandatory part of the policy process, which means as policies are developed, policy makers should consider whether their policy is likely to have different impacts in rural areas, because of particular circumstances and if so adjust the policy where appropriate, with solutions to meet rural needs and circumstances. Our initial assessment is that there are no impacts specific rural impacts from the proposals. However, further work will be done over the consultation period to fully assess any possible implications.

Health Impact Assessment

5. 8 The Health Impact Assessment considers the effects policies, plans, programmes and projects have on health and well-being, and in particular, how they can reduce health inequalities. Screening questions for health and well-being are provided by the Department for Health. Our initial assessment is that there are no impacts on health from the proposals.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

Annex A

This annex contains data on the level of fixed fees that are charged for police station advice from the financial years 2007/08. The total number of schemes excludes those areas where Best Value Tendering (BVT) will be piloted in the near future.

Table A1

Option 1	
Total number of schemes	227
Total number oversubscribed	142
Oversubscribed at	400%
Value of schemes covered	£113,830,918
% Saving	8%
Saving	£9,000,000

Table A2

Option 2a	
Total number of schemes	227
Total number oversubscribed & above average fee	70
Oversubscribed at	400%
Average (mean) fee including VAT at 17.5%	£248
Average (mean) fee excluding VAT	£211
Value of Schemes covered	£66,225,000
% Saving	14%
Saving	£9,000,000

Table A3

Option 2b	
Total number of schemes	227
Total number oversubscribed & above median	88
Oversubscribed at	400%
Median fee including VAT at 17.5%	£235
Median fee excluding VAT	£200
Value of Schemes covered	£82,177,313
% Saving	11%
Saving	£9,000,000

Table A4

Calendar year	Year	Saving	Discount factor	Discounted Saving
2009	0	9,000,000.00	1	9,000,000.00
2010	1	9,000,000.00	0.966183575	8,695,652.17
2011	2	9,000,000.00	0.9335107	8,401,596.30
2012	3	9,000,000.00	0.901942706	8,117,484.35
2013	4	9,000,000.00	0.871442228	7,842,980.05
2014	5	9,000,000.00	0.841973167	7,577,758.50
2015	6	9,000,000.00	0.813500644	7,321,505.80
2016	7	9,000,000.00	0.785990961	7,073,918.65
2017	8	9,000,000.00	0.759411556	6,834,704.01
2018	9	9,000,000.00	0.733730972	6,603,578.75
2019	10	9,000,000.00	0.708918814	6,380,269.32

Annex B

This annex contains data on the current fixed fees (excluding VAT) and the new levels that are proposed with each option.

Schemes	CJS AREA	Current fixed fee (£)	New fees		
			Option 1 (£)	Option 2a (£)	Option 2b (£)
Abingdon, Didcot & Witney (South Oxfordshire)	THAMES VALLEY	259	238	224	230
Aldershot / Petersfield (North East Hampshire)	HAMPSHIRE	248	228	214	221
Amman Valley	DYFED-POWYS	209	192	209	186
Ashford & Tenterden / Dover / Folkestone	KENT	254	234	220	227
Barking	LONDON	278	256	240	248
Barnsley	SOUTH YORKSHIRE	179	165	179	179
Basildon	ESSEX	201	185	201	179
Bedford	BEDFORDSHIRE	189	174	189	189
Berwick & Alnwick	NORTHUMBRIA	199	183	199	199
Beverley / Bridlington	HUMBERSIDE	214	198	185	191
Bexley	LONDON	249	229	215	221
Bicester / North Oxon (Banbury)	THAMES VALLEY	241	222	208	214
Birmingham	WEST MIDLANDS	207	190	207	184
Bishop's Stortford / East Hertfordshire	HERTFORDSHIRE	316	291	273	281
Bishopsgate	LONDON	290	267	251	258
Blackburn / Accrington / Ribble Valley	LANCASHIRE	212	195	183	189
Bootle & Crosby	MERSEYSIDE	182	168	182	182
Boston / Bourne / Stamford	LINCOLNSHIRE	195	179	195	195
Bradford	WEST YORKSHIRE	153	141	153	153
Braintree	ESSEX	246	227	213	219
Brent	LONDON	271	249	234	241
Brentford	LONDON	276	254	238	246
Brentwood	ESSEX	309	285	267	275
Brighton & Hove & Lewes	SUSSEX	227	209	196	202
Bromley	LONDON	262	241	227	233
Camberwell Green	LONDON	271	250	235	242
Cambridge	CAMBRIDGESHIRE	183	169	183	183
Canterbury / Thanet	KENT	220	203	190	196
Cardiff	SOUTH WALES	214	198	185	191
Carrick / Kerrier (Camborne) / Penwith	DEVON AND CORNWALL	206	190	206	183
Central London	LONDON	294	270	254	261
Chelmsford / Witham	ESSEX	198	183	198	198
Cheltenham	GLOUCESTERSHIRE	178	164	178	178
Chichester & District	SUSSEX	182	168	182	182
Clacton & Harwich / Colchester	ESSEX	206	190	206	183
Clerkenwell/Hampstead	LONDON	274	252	237	244
Colwyn Bay	NORTH WALES	195	179	195	195
Crewe & Nantwich / Sandbach & Congleton / Macclesfield	CHESHIRE	197	182	197	197
Cromer & North Walsham	NORFOLK	228	210	197	203
Croydon	LONDON	267	246	231	238
Cynon Valley	SOUTH WALES	206	190	206	183

Dacorum (Hemel Hempstead)	HERTFORDSHIRE	260	239	224	231
Derby / Swadlincote	DERBYSHIRE	209	192	209	186
Dereham	NORFOLK	245	226	212	218
Diss / Thetford	NORFOLK	197	181	197	197
Doncaster	SOUTH YORKSHIRE	172	158	172	172
Durham	DURHAM	203	187	203	180
Ealing	LONDON	285	263	246	254
Easington	DURHAM	187	172	187	187
East Cornwall	DEVON AND CORNWALL	247	227	213	220
East Gwent	GWENT	191	176	191	191
Ely	CAMBRIDGESHIRE	210	194	210	187
Enfield	LONDON	270	248	233	240
Epsom	SURREY	260	240	225	232
Gloucester	GLOUCESTERSHIRE	174	161	174	174
Goole	HUMBERSIDE	226	208	195	201
Grays	ESSEX	289	266	249	257
Greenwich/Woolwich	LONDON	259	238	224	230
Guildford & Farnham	SURREY	223	205	193	199
Haringey	LONDON	279	257	241	249
Harlow & Loughton	ESSEX	289	266	249	257
Harrow	LONDON	271	250	235	242
Hartlepool	CLEVELAND	148	136	148	148
Hastings	SUSSEX	160	147	160	160
Havering	LONDON	253	233	218	225
Heathrow	LONDON	340	314	294	303
Hendon/Barnet	LONDON	273	252	236	243
High Wycombe & Amersham	THAMES VALLEY	237	218	204	211
Highbury Corner	LONDON	284	262	246	253
Hull	HUMBERSIDE	172	158	172	172
Keighley & Bingley	WEST YORKSHIRE	172	158	172	172
Kidderminster / Redditch	WEST MERCIA	218	201	188	194
Kingston-Upon-Thames	SURREY	283	260	244	252
Knowsley	MERSEYSIDE	186	171	186	186
Leeds	WEST YORKSHIRE	162	149	162	162
Leicester	LEICESTERSHIRE	202	186	202	180
Lichfield & Tamworth / Burton Upon Trent / Uttoxeter	STAFFORDSHIRE	194	179	194	194
Llanelli	DYFED-POWYS	156	143	156	156
Lower Rhymney Valley / North Bedwellty / South Bedwellty	GWENT	203	187	203	181
Luton	BEDFORDSHIRE	220	202	190	196
Mansfield	NOTTINGHAMSHIRE	180	166	180	180
Merthyr Tydfil	SOUTH WALES	213	196	184	189
Mid Glamorgan & Miskin	SOUTH WALES	214	198	185	191
Milton Keynes	THAMES VALLEY	186	171	186	186
Mold & Hawarden	NORTH WALES	203	187	203	180
Neath	SOUTH WALES	224	206	193	199
Newcastle & Ogmore	SOUTH WALES	218	201	188	194
Newcastle upon Tyne	NORTHUMBRIA	155	143	155	155
Newham	LONDON	272	251	235	243
Newport	GWENT	187	172	187	187
North Tyneside	NORTHUMBRIA	157	145	157	157
North West Surrey (Woking)	SURREY	243	224	210	217

Old Street	LONDON	271	250	235	242
Oxford	THAMES VALLEY	241	222	208	214
Pembrokeshire	DYFED-POWYS	188	173	188	188
Poole East Dorset	DORSET	172	158	172	172
Port Talbot	SOUTH WALES	271	249	234	241
Redbridge	LONDON	279	257	241	249
Richmond-Upon-Thames	LONDON	298	274	257	265
Rotherham	SOUTH YORKSHIRE	183	169	183	183
Salisbury	WILTSHIRE	196	180	196	196
Sandwell	WEST MIDLANDS	197	182	197	197
Scarborough / Whitby	NORTH YORKSHIRE	171	158	171	171
Scunthorpe	HUMBERSIDE	163	150	163	163
Sheffield	SOUTH YORKSHIRE	188	173	188	188
Shrewsbury	WEST MERCIA	186	172	186	186
Skipton, Settle & Ingleton	NORTH YORKSHIRE	200	184	200	178
Slough (East Berkshire)	THAMES VALLEY	259	238	224	230
South Durham	DURHAM	171	158	171	171
South East Surrey	SURREY	257	237	222	229
South London	LONDON	284	262	246	253
South Tyneside	NORTHUMBRIA	150	138	150	150
St Albans	HERTFORDSHIRE	266	245	229	236
St Helens	MERSEYSIDE	173	159	173	173
Stafford / Cannock & Rugeley	STAFFORDSHIRE	200	184	200	178
Staines	SURREY	298	274	257	265
Stansted	ESSEX	319	294	276	284
Stevenage & North Hertfordshire	HERTFORDSHIRE	293	270	253	261
Stoke on Trent / Leek	STAFFORDSHIRE	206	190	206	183
Stroud	GLOUCESTERSHIRE	200	184	200	178
Sudbury & Hadleigh / Bury St Edmunds / Haverhill / Newmarket	SUFFOLK	202	186	202	180
Sunderland / Houghton Le Spring	NORTHUMBRIA	168	154	168	168
Sutton	LONDON	270	248	233	240
Swansea	SOUTH WALES	193	178	193	193
Swindon	WILTSHIRE	193	178	193	193
Teeside	CLEVELAND	152	140	152	152
Telford	WEST MERCIA	194	179	194	194
Thames	LONDON	270	248	233	240
Tower Bridge	LONDON	289	266	249	257
Tynedale & Hexham	NORTHUMBRIA	174	160	174	174
Uxbridge	LONDON	261	241	226	233
Wakefield	WEST YORKSHIRE	157	144	157	157
Walsall	WEST MIDLANDS	201	185	201	179
Waltham Forest	LONDON	254	234	219	226
Watford	HERTFORDSHIRE	261	241	226	233
West London	LONDON	292	269	252	260
Wimbledon	LONDON	277	255	239	246
Wirral	MERSEYSIDE	177	163	177	177
Wolverhampton & Seisdon	WEST MIDLANDS	197	182	197	197
Worksop & East Retford	NOTTINGHAMSHIRE	191	176	191	191
Worthing	SUSSEX	185	170	185	185
York / Selby	NORTH YORKSHIRE	180	165	180	180

Summary: Intervention & Options

Department /Agency: Ministry of Justice	Title: Impact Assessment of single fixed fee for committals for trial	
Stage: Consultation	Version: 1.0	Date: 20 August 2009
Related Publications: Consultation paper, <i>Legal Aid: Funding Reforms</i>		

Available to view or download at: www.justice.gov.uk

Contact for enquiries: Annette Cowell

Telephone: 020 3334 4217

What is the problem under consideration? Why is government intervention necessary?

Legal aid resources are finite and under significant pressure. The Ministry of Justice (MoJ) is required to contribute £1 bn of efficiency savings towards wider Government savings targets, and this includes savings from legal aid. As part of a broader suite of consultation proposals, MoJ would like to replace the current fee for committals paid as part of the magistrates' court standard fee scheme with a single fixed fee paid under the Litigators Graduated Fee Scheme (LGFS) to avoid any element of duplication between the two fee schemes. Government intervention is necessary because legal aid is funded by the taxpayer and therefore any changes to it would have to be made by Government.

What are the policy objectives and the intended effects?

The objective is to protect the civil fund as far as possible from any rise in criminal legal aid spend in the short to medium term. This is intended to support the Government's broader objective of helping as many people as possible with their civil law problems. Government aims to achieve this by prioritising criminal legal aid expenditure more effectively than at present by replacing the existing mechanism for the payment of committals for trial with a single fixed fee as part of the LGFS.

What policy options have been considered? The following options have been assessed against the base case of "no change" to the existing mechanism for the payment of committals for trial.

Base Case / Option 0 – "Do Nothing"

Option 1 – Single Fee - £318 excluding VAT

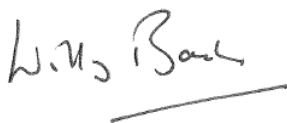
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

If this policy was to be taken forward, the impact of any preferred option would be evaluated for its effectiveness within five years of policy implementation.

Ministerial Sign-off consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



.....Date: 19 August 2009

Summary: Analysis & Evidence

Policy Option: 1

Description: Single Fee - £318 excluding VAT

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>Costs to providers from a reduction in payment for committals are estimated at £11.8m annually and discounted over the next 10 years. The total discounted costs are estimated to be £109.7m over the appraisal period. The impact on administrative costs would be minimal and has therefore not been assessed.</p>
	One-off (Transition)	Yrs	
	£ 0	1	
	Average Annual Cost (excluding one-off)		
£ 11.8 m		10	Total Cost (PV)
			£ 109.7m
<p>Other key non-monetised costs by 'main affected groups' There would be potential indirect costs on society in the form of a possible impact on the service provided by litigators, and potential market exit. If corrective action was undertaken in the long term, this might also impose costs on taxpayers.</p>			

BENEFITS	ANNUAL BENEFITS		<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>The financial benefit to Government in terms of cost savings for the legal aid budget is estimated at £11.8m annually and discounted over the next 10 years. The total discounted benefits are estimated to be £109.7m over the appraisal period.</p>
	One-off	Yrs	
	£ 0	1	
	Average Annual Benefit (excluding one-off)		
£ 11.8 m		10	Total Benefit (PV)
			£ 109.7m
<p>Other key non-monetised benefits by 'main affected groups' There would be potential indirect benefits in the form of a potentially more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of existing institutional inefficiencies. The freeing up of financial resources would potentially allow Government to spend it in other areas.</p>			

Key Assumptions/Sensitivities/Risks The net present value is sensitive to assumptions on administration costs; modelled volumes and fee rates data; and behavioural responses as discussed in the main body of the Impact Assessment.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate) £ 0.0m
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	As soon as practicable			
Which organisation(s) will enforce the policy?	LSC			
What is the total annual cost of enforcement for these organisations?	£ minimal			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	N/A			
What is the value of changes in greenhouse gas emissions?	N/A			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£	Decrease	£	Net
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

1. Scope of Impact Assessment

- 1.1 This proposal is intended to change the current payment structures for committals for trial. It is part of a set of policies designed to prioritise what we spend on criminal legal aid, to reform and rationalise some of our payment structures and to remove some of the inefficiencies in payments between the magistrates' court and the Crown Court. These changes will help to sustain the legal aid budget over the next spending review period, ensure that we focus criminal legal aid spending effectively and protect the civil fund as far as possible from any rise in criminal spend in the short to medium term.
- 1.2 The policy proposals would affect the following groups / sectors:
 - **The Legal Services Commission (LSC)** is responsible for managing the legal aid budget on behalf of Government. The proposals would be implemented by the LSC and may impose administration impacts.
 - **Litigators** who are the principle providers of legal services within the context of this impact assessment. Any changes in the fees would have a first round impact on them and other players who depend on them.
 - **Consumers** are the ultimate users of legally aided services. Although the measures are not directly aimed at them, they may be impacted in the long term through behavioural changes of the part of litigators as they accommodate new changes.

2. Rationale for Government Intervention

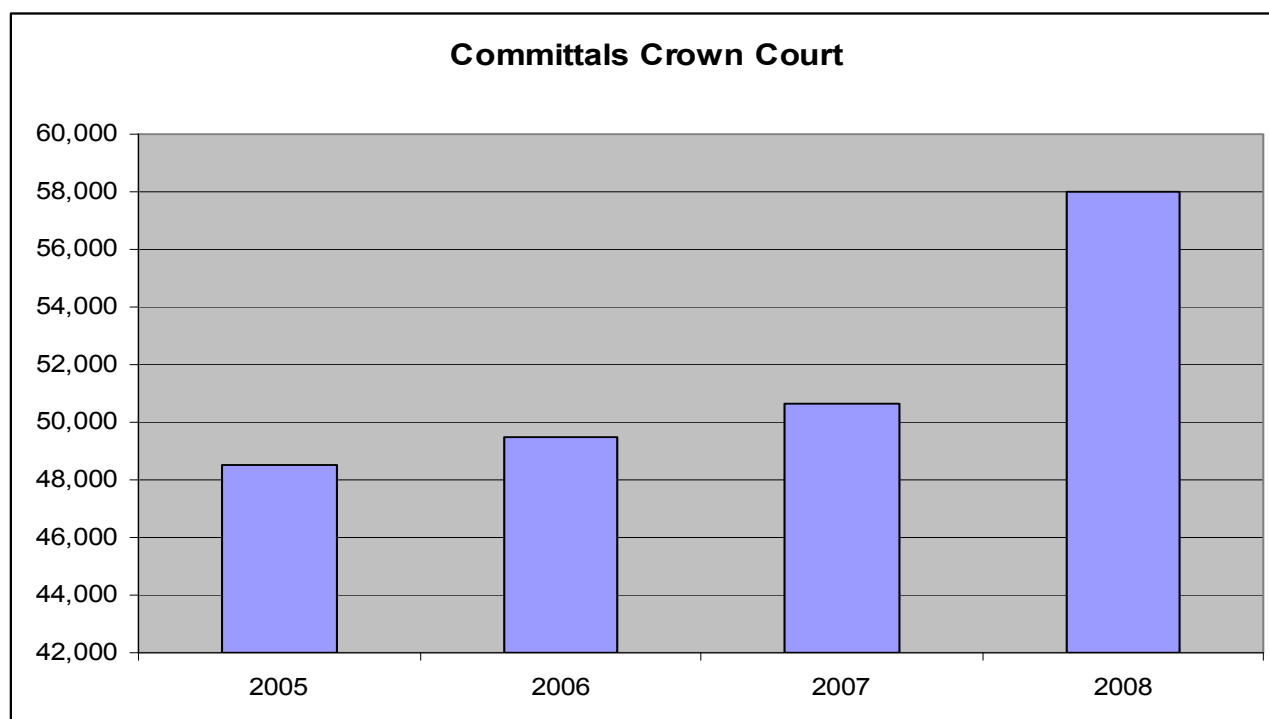
- 2.1 The current fee scheme pays solicitors firms at the magistrates' court for preparation work in committal hearings – this includes consideration of the committal bundle and conferences with the client.
- 2.2 Where a case is committed to the Crown Court, the litigator is then entitled to make a claim under the LGFS. The LGFS scheme remunerates litigators for preparation required in Crown Court cases by means of a Graduated Fee. One of the proxies for the LGFS is Pages of Prosecution Evidence (PPE). In calculating the PPE proxy, the LGFS includes all of the pages that have been served as part of the committal bundle.
- 2.3 We believe that this allows for an element of duplication of funding within the current arrangements and therefore does not lead to an optimal allocation of scarce resources.

3. Cost Benefit Analysis

BASE CASE / OPTION 0 – “Do Nothing”

- 3.1 The total cost of remunerating cases that are committed for Crown Court trial was £33m in 2008/09. The volume of committals has increased by about 17% from 2005 to 2008, as shown in Figure 1 below. Therefore, the level of duplication in payments has been increasing at the same rate. In addition, the number of cases where defendants have elected for Crown Court trial has increased by 29%. If we continue to make payments under the current structure, we may introduce further inefficiencies.

Figure 1: Committals in the Crown Court



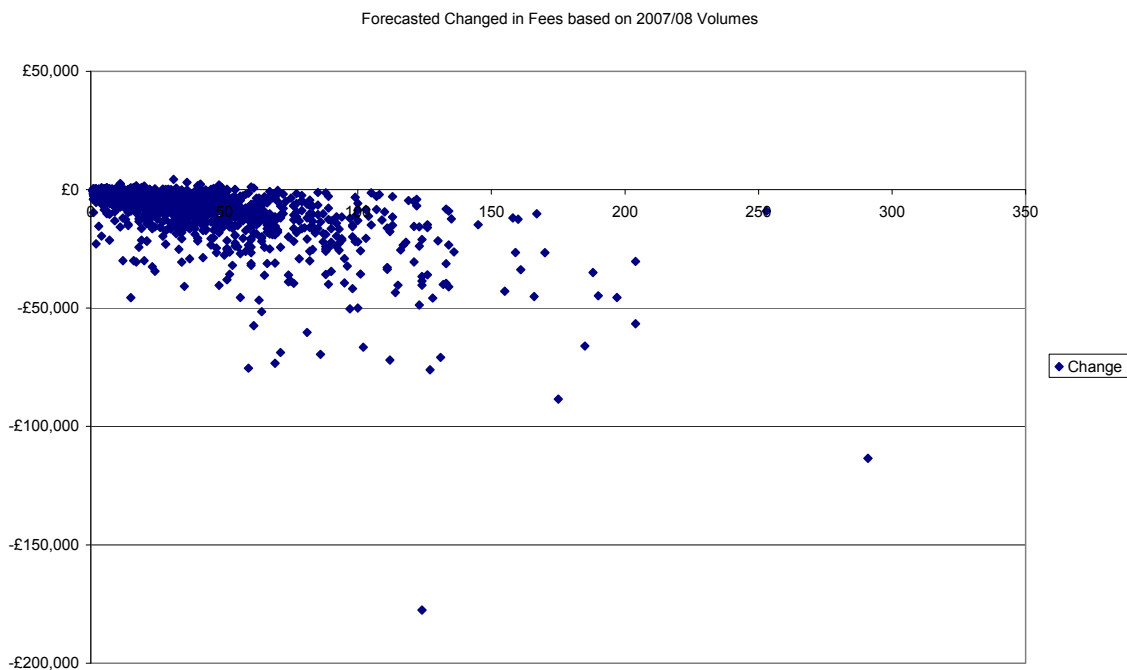
OPTION 1 – Single Fee of £318 (excluding VAT)

3. 2 Our preferred option is to replace the existing mechanism for the payment of committals for trial with a single fixed fee of £318 (excluding VAT). We propose to pay the new fee as part of the LGFS. This proposal will eliminate an element of duplication of funding within the current arrangements. The total cost of remunerating cases that are committed for trial was £33m in 2008/09 and we are keen to rebalance the financial incentive which is currently in place to elect to the Crown Court and then pursue a guilty plea.

Costs

3. 3 It is not possible to produce an exact calculation of the level of duplication. Therefore, this policy will move committal payments in magistrates' courts to the LGFS scheme. This single fee would represent a reduction in payments for committals of £11.8m, equivalent to 5% of the aggregated Crown Court expenditure. We have assessed the costs over 10 years and discounted them accordingly at 3.5%. The total discounted costs are estimated to be £109.7m over the appraisal period.
3. 4 The impact on solicitors' firms would depend on how much publicly funded work they undertake. Figure 2 below shows the reduction in fees that would result from a new fee of £318 (or £366 including VAT at 15%) against the volumes of committal cases undertaken by firms in 2007/08. The average fee reduction for solicitors from current levels of standard fees would be £5,928. However, the distribution is heavily skewed so the median loss is a much more accurate measure of central tendency. This would be £2559 or 29% of the old committal fees.

Figure 2: Forecast Changes in Fees (2007/2008 Volumes)



3. 5 It is not possible to assess the effect on business sustainability of this proposal. Although the reduction is made from fees in the magistrates' court, it is obvious that the impact would be proportional to the amount of work firms do in the Crown Court. The proposed fee represents only a 5% reduction in aggregate expenditure in the Crown Court.

Benefits

3. 6 The proposal would bring £11.77m savings that could be redirected to priority areas of legal aid expenditure.
3. 7 Replacing the standard fee regime with a fixed fee may also mitigate the trend of increasing guilty pleas in the Crown Court by removing the financial incentive to elect.

Net Impact of Option 1

3. 8 Option 1 would generate a net present value of zero. This is based on the assessment that Government revenue savings will be offset by equal losses to private providers, with no additional administrative costs to the LSC. Nevertheless, Option 1 would result in savings to the legal aid budget which are necessary given the current financial context, the requirement to find efficiency savings and the Government's desire to protect civil legal aid expenditure.
3. 9 There would be *non-monetised costs* from a possible impact on the service provided by advocates, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies.

4. Enforcement and Implementation

- 4.1 The proposals would be implemented by means of regulations made by the MoJ. Once these regulations were made, the LSC would need to consult the usual representative bodies about any changes to the legal aid contracts which might be necessary to implement these changes. The LSC would then need to give notice of any contract amendments before they took effect.

5. Impact Tests

- 5.1 The Impact Assessment Guidance sets out a number of tests which would need to be assessed.

Competition Assessment

- 5.2 The market affected by these proposals is the publicly funded criminal defence services market. The impact on competition is difficult to fully assess at this stage. Further consideration will be given to developing a formal competition assessment during the consultation process and in the light of responses to consultation.

Small Firms

- 5.3 The Impact Assessment Guidance states that *“any new proposal that imposes or reduces the cost on business requires a Small Firms Impact Assessment Test”*. The assessment of the potential impacts has relied on the BERR Small Firms Impact Assessment Guidance (September 2007). It is unclear at this stage what the impact on firms might be. We aim to seek further information on any particular impacts to small firms and the likely costs and effects to their business during the consultation period.

Legal Aid and Justice Impact Test

- 5.4 The impact on the Justice System has been assessed as part of the options analysis.

Human Rights

- 5.5 The proposals are compliant with the Human Rights Act.

Race / Disability / Gender Equality

- 5.6 An Equalities Impact Test was undertaken for all the policy proposals. This is set out separately in the consultation document.

Rural Proofing

- 5.7 Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. It is a mandatory part of the policy process, which means as policies are developed, policy makers should consider whether their policy is likely to have different impacts in rural areas, because of particular circumstances and if so adjust the policy where appropriate, with solutions to meet rural needs and circumstances. Our initial assessment is that there are no impacts specific rural impacts from the proposals. However, further work will be done over the consultation period to fully assess any possible implications.

Health Impact Assessment

- 5.8 The Health Impact Assessment considers the effects policies, plans, programmes and projects have on health and well-being, and in particular, how they can reduce health inequalities. Screening questions for health and well-being are provided by the Department for Health. Our initial assessment is that there are no impacts on health from the proposals.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Equality Impact Assessment Initial Screening and Initial Draft Impact Assessment

This is the draft Equality Impact Assessment (EA) initial screening and Initial Draft Impact Assessment for *Legal Aid: Funding Reforms*, a package of reforms to our funding regime designed to remove some of the anomalies and duplication that have developed over the years and secure greater value for money. The proposed measures to be consulted on are:

1. To rationalise the current police station fee arrangements by reducing fixed fees in the most costly and over-subscribed police station duty schemes in England and Wales.
2. To introduce a fixed fee for committals to the Crown Court for trial as part of the Litigator Graduated Fee Scheme, and cease payment for this work within the magistrates' court fee scheme.
3. To bring the rates paid to advocates for defence work more closely into line with the rates paid by the Crown Prosecution Service (CPS).
4. To bring criminal legal aid file review payment arrangements into line with arrangements under the civil contract, thus ending payments to firms for file review.
5. To introduce new maximum hourly rates for experts' fees in both criminal and civil cases.

What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

The aim is to contribute towards the MoJ's £1 bn efficiency savings requirement; to reform the funding regime to remove anomalies and duplication across different funding schemes; and to protect civil legal aid expenditure. The expected outcome will be to secure greater value for money for the taxpayer by realising savings in expenditure on criminal legal aid. This will mean we can continue to help as many people as possible with their civil law problems during the current recession, particularly in key areas such as social welfare law.

What existing sources of information will you use to help you identify the likely equality on different groups of people?

In relation to proposals 1–4, we will draw upon information held by the Legal Services Commission (LSC) which includes records of the payments made to solicitors' firms and on diversity data held by the Legal Services Research Centre (LSRC) on solicitors' firms. We will also draw on a workforce survey of barristers undertaken by the LSRC which includes diversity information.

Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

The LSC does not hold data on payments to individual barristers that would enable us to assess the diversity impact of proposal 3. The LSRC has undertaken a workforce survey of barristers, which showed that 38.6% (1,752) of those barristers responding practised in crime. Of these 92.7% reported doing legal aid work. Overall, 36.8% of female barristers practised in crime, compared with 39.4% of male barristers and 42.1% of BME barristers practised in crime compared with 36.8% of white barristers. The survey also showed that 34.2% of barristers with a health problem or disability practises in crime, compared with 38.9% of barristers without a health problem or disability.

Since experts are instructed directly by legal aid practitioners and not by the LSC, we do not have any diversity monitoring data on experts which would enable us to assess the impact of proposal 5. However, we aim to consult with a wide range of stakeholders to seek views on the proposals on experts fees, including the diversity impact.

The LSC does not collect data from solicitors' firms concerning religion and belief or sexual orientation. The LSC does collect information on the age of those holding ownership and control of firms and we know that these individuals predominantly fall into older age groups.

We welcome any evidence from respondents to the consultation concerning those areas where we have not been able to gather any data, or to supplement the data referred to in this EIA.

Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a positive impact on any of these different groups of people and/or promote equality of opportunity?

We have not identified any positive impacts.

Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

We are not aware of any evidence but invite views from respondents to the consultation.

Is there any evidence that proposed changes will have an adverse equality impact on any of these different groups of people?

The LSC and LSRC hold data which enables us to examine the impact of proposals 1, 2 and 4 by examining the financial impact on solicitors' firms based on ethnicity of ownership and control. This shows that there is a statistically significant differential impact by ethnicity. In relation to proposal 1, on some measures there is a statistically significant differential impact by gender based on ownership and control. These are set out in the initial EIA below.

Is there any evidence that the proposed changes have no equality impacts?

In relation to proposal 1, LSC data indicates that on most measures there is no differential impact in relation to disability. However, there is a statistically significant differential impact in relation to the monetary change for options 2a and b, although the numbers of firms involved are small. There is also evidence of some differences between firms with and without any ill or disabled manager, although it should be noted that the presence of a manager may be related to the size of the firm.

Tables 1 and 2 below show that, under proposal 1, the reduction in income for firms with an ill or disabled ownership or manager is lower than that for other firms.

Table 1: Impact of proposal 1 by illness/disability of ownership and control

	Matched offices		Option 1 (all oversubscribed schemes)		Option 2a (oversubscribed schemes with fee higher than the mean)		Option 2b (oversubscribed schemes with fee higher than the median)	
	No.	%	£	%	£	%	£	%
Ill/disabled	12	1%	-1058	-4.7	-141	-2.8	-218	-3.3
Non-ill/disabled	1344	98%	-4197	-5.0	-4052	-4.4	-4104	-4.7
Split	11	1%	-1940	-5.1	-1346	-4.1	-1482	-4.6

Table 2: Impact of proposal 1 by any employed ill/disabled manager

	Matched offices		Option 1 (all oversubscribed schemes)		Option 2a (oversubscribed schemes with fee higher than the mean)		Option 2b (oversubscribed schemes with fee higher than the median)	
	No.	%	£	%	£	%	£	%
Disabled manager(s)?								
No	1313	96%	-4205	-5.0	-4102	-4.5	-4158	-4.8
Yes	54	4%	-2845	-3.9	-1414	-2.3	-1391	-2.7

The LSC holds data which enables us to examine the impact of proposals 2 and 4. This shows that there is no statistically significant differential impact by gender based on ownership and control, or on disability based on ownership/control or employment of disabled managers. See Tables 3–6 below.

Table 3: Impact of proposal 2 by gender of ownership and control

Gender	Matched Offices		Average impact	
	No.	%	£	%
Male	961	73%	-6622	-28
Female	165	12%	-5043	-30
Split	198	15%	-6158	-31

Table 4: Impact of proposal 2 by disability

Disability	Matched Offices		Average impact	
	No.	%	£	%
No ill/disabled managers	1,284	96%	-6315	-28
1 or more ill/disabled managers	52	4%	-6777	-28

Table 5: Impact of proposal 4 by gender of ownership and control

Gender	Matched Offices		Average impact (£)
	No.	%	
Male	440	74%	2780
Female	73	12%	2498
Split	84	14%	2762

Table 6: Impact of proposal 4 by disability

Disability	Matched Offices		Average impact (£)
	No.	%	
No ill/disabled managers	580	96%	2646
1 or more ill/disabled managers	24	4%	4960

Which group(s) of people have been identified as being disadvantaged by your proposals. What are the equality impacts?

We have identified a statistically significant differential impact between solicitors' offices of proposals 1, 2 and 4 based on ethnicity of ownership and control, as shown in the tables below. In relation to proposal 1, we have identified a statistically significant differential impact based on gender of ownership and control, although under option 2b this relates to the percentage change in income only.

Proposal 1

Table 7 below shows that BME firms are likely to be more affected by the proposal than White British firms under each of the options. The differential is greater under options 2a and 2b and this may reflect the concentration of BME firms in urban areas such as London, where fees tend to be higher and there are also higher levels of over-subscription.

Table 7: Impact of proposal 1 by ethnicity

Ethnicity	Matched offices		Option 1 (all oversubscribed schemes)		Option 2a (oversubscribed schemes with fee higher than the mean)		Option 2b (oversubscribed schemes with fee higher than the median)	
	No.	%	£	%	£	%	£	%
White British	1085	80	-3759	-4.6	-3171	-3.2	-3343	-3.7
BME	196	14	-5522	-6.9	-6887	-9.3	-6728	-9.1
Split	76	6	-6440	-5.8	-8592	-7.7	-7544	-7.0

We examine the impact of options 1 and 2b on BME firms in London and outside London separately in Tables 8 and 9 below. This shows that BME firms in London are expected to see

a slightly greater reduction in income in percentage terms compared with White British owned firms. However, in absolute terms the expected reduction in income is lower, which may reflect the fact that BME firms tend to be smaller firms. Outside London, the differential impact on BME firms is greater both in monetary and percentage terms, although the overall impact is reduce compared with the impact on London firms.

Table 8: Impact of proposal 1 by ethnicity, London firms

London						
	Matched offices		Option 1 (all oversubscribed schemes)		Option 2b (oversubscribed schemes with fee higher than the median)	
Ethnicity	No.	%	£	%	£	%
White British	100	41%	-10970	-7.7%	-15158	-11.4%
BME	112	46%	-6213	-7.8%	-8580	-11.7%
Split	32	13%	-9532	-7.6%	-13179	-11.4%

Table 9: Impact of proposal 1 by ethnicity, non-London firms

Non London						
	Matched offices		Option 1 (all oversubscribed schemes)		Option 2b (oversubscribed schemes with fee higher than the median)	
Ethnicity	No.	%	£	%	£	%
White British	985	88%	-3027	-4.2%	-2143	-3.0%
BME	84	8%	-4601	-5.7%	-4258	-5.6%
Split	44	4%	-4192	-4.5%	-3446	-3.9%

Table 10 below shows that firms with female overall ownership and control are likely to be slightly more affected in percentage terms, although the impact on income is not large. The monetary change differential for Option 2b is not considered statistically significant.

Table 10: Impact of proposal 1 by gender of ownership and control

	Matched offices		Option 1 (all oversubscribed schemes)		Option 2a (oversubscribed schemes with fee higher than the mean)		Option 2b (oversubscribed schemes with fee higher than the median)	
	No.	%	£	%	£	%	£	%
Male	981	72%	-4360	-4.8	-4203	-4.1	-4300	-4.5
Female	173	13%	-3836	-5.5	-4010	-5.8	-3840	-5.8
Split	201	15%	-3548	-5.2	-3097	-4.6	-3130	-4.8

Proposal 2

Table 11 below shows that BME and split ownership firms are likely to be more affected by the proposal than White British owned firms.

Table 11: Impact of committal fee changes by ethnicity of ownership and control

Ethnicity	Matched Offices		Average impact	
	No.	%	£	%
White British	1,059	80%	-5854	-26
BME	192	14%	-7796	-35
Split	76	6%	-9762	-40

Proposal 4

Table 12 shows that BME and Split owned firms are likely to be more affected by the proposal than White British firms.

Table 12: Impact of removing file review payments by ethnicity of ownership and control

Ethnicity	Matched Offices		Average impact (£)
	No.	%	
White British	482	80%	2481
BME	84	14%	3633
Split	34	6%	4339

What changes are you planning to make to your original proposals to minimise or eliminate the adverse equality impacts? Please provide details.

Proposal 1 focuses funding changes on oversubscribed schemes and those with fees higher than the median or mean. As a consequence, many of the affected schemes are in urban areas

including London. This is also where BME firms tend to be concentrated which may explain the differential impact.

Proposal 2 will affect all firms undertaking publicly funded work at magistrates' courts and the Crown Court and the same fee will apply on the same basis to all firms. We are unable at present to explain the differential impact. We know that BME firms tend to be concentrated in larger urban areas, in particular London. As the level of fees claimed in London tends to be higher, the fee adjustment may have a greater impact in London and this may therefore explain the differential impact.

Proposal 4 will affect all firms undertaking publicly funded criminal work and will apply on the same basis to all firms. We know that only around one third of eligible firms claim for file review costs and it is possible that smaller firms, including BME firms, are more inclined to claim costs since they would represent a more significant sum of money than for larger firms. It may also be a more important sum of money for firms whose work is concentrated in more costly areas such as London, which may also have a bearing.

We believe the differential impacts on BME firms are not great in financial terms and represent a small proportion of overall income from crime work. It is not obvious how they could be mitigated in relation to proposals 2 and 4, since we propose to apply the same adjustments to all firms undertaking publicly funded work. In relation to option 1, we believe it is fair to focus funding adjustments on oversubscribed, higher paying schemes since the level of competition for work in these areas demonstrates that it is attractive for firms to work in these areas and this would suggest a reduction in the fees is sustainable. Therefore at this stage we believe this is justified in the context of the overall aims of the proposals. **However, we welcome views and evidence as part of the consultation.**

A full impact assessment and updated EIA will accompany the response to consultation.

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