

Final Regulatory Impact Assessment: Immigration and asylum final fee scheme

1. Introduction

1.1 This document provides a final regulatory impact assessment (“RIA”) for proposals further to the Department of Constitutional Affairs (“DCA”) and Legal Services Commission (“LSC”) paper, *Legal Aid Reform: the Way Ahead*, to be implemented from 1st October 2007 as follows:

- Immigration and asylum graduated fees scheme

1.2 RIAs for the remainder of the changes to civil and family fees to be implemented from 1st October 2007, as set out in *Legal Aid Reform: the Way Ahead*, are published in separate documents as follows:

- Tailored Fixed Fee (“TFF”) Replacement Scheme: final RIA published December 2006, available from the LSC website www.legalservices.gov.uk
- Family fees schemes, including family mediation: draft RIA published 1st March 2007 for further consultation, available from the LSC website www.legalservices.gov.uk
- Further details of the mental health graduated fee scheme are due to be published shortly and will include a RIA of the scheme.

1.3 Although the RIAs consider the impact of proposals on a scheme-by-scheme basis, we will also publish an analysis of the “whole provider” impact showing the cumulative impacts of all civil and family proposals on providers of legal aid services as soon as possible.

2. Title of Proposals

2.1 The immigration and asylum graduated fee scheme for implementation from 1st October is set out in *Legal Aid Reform: Final Immigration and Asylum Scheme*.

3. Purpose and Intended Effect

3.1 Objectives

Legal Aid Reform: the Way Ahead

3.1.1 The proposals are intended to create:

- A more open and responsive market, with risks shared between provider and purchaser
- Incentives for swift conclusions and minimal costs to other parties
- A diverse and competitive market of lawyers and others offering quality publicly funded advice and advocacy services.

Additional objectives of the immigration and asylum graduated fees schemes

3.1.2 The scheme has the following objectives:

- Designed to be budget neutral and maintain spend to the level expected under current funding arrangements.
- We want to devolve as many decisions as possible to the providers about what work is appropriate to be undertaken for clients, but we need to ensure that the most critical work is always done and is always financially viable.
- We need schemes that are effective in preparing the market for best-value tendering without pre-empting it. We need a structure which pays the same amount for the kind of work undertaken regardless of who undertakes it, while leaving the detailed decisions about what kind of assistance it is appropriate and cost-effective to provide, and when to provide it, to individual providers.
- We need a solution whereby cases that are justifiably costly to undertake are remunerated fairly, and can escape from the standard fees as exceptional cases at a point which is financially viable for all providers and funders.

3.2 Background

3.2.1 *A Fairer Deal for Legal Aid*¹, published in July 2005, set out the Government's long-term strategy for legal aid. The paper highlighted a number of areas in which the current system needs to be modernised. The paper identified the need to rebalance spending between civil and

¹ Department for Constitutional Affairs, *A Fairer Deal for Legal Aid* (2005)

criminal legal aid, as well as various problems with the current system. A critical element of the strategy was a detailed examination of the way the Government purchases legal aid services. To this end, *A Fairer Deal* announced that Lord Carter of Coles would be commissioned to conduct an independent review into legal aid procurement. Lord Carter's remit was to deliver a system that would achieve maximum value for money, whilst ensuring quality and the fairness of the justice system.

3.2.2 Lord Carter published his final report on 13th July 2006, recommending a move towards competition to reward good quality, efficient practitioners by providing them with the opportunity to grow through access to increased volumes of work.² The DCA and LSC simultaneously published a joint consultation paper, *Legal aid: a sustainable future*, proposing the introduction of fixed fees as a transitional step to enable providers to prepare for future competition³. Consultation ran until 12th October 2006.

3.2.3 On 28th November 2006 the DCA and LSC published an analysis of responses to *Legal Aid: a sustainable future*, together with a paper setting out next steps (*Legal Aid Reform: the way ahead*), including the Tailored Fixed Fee ("TFF") Replacement Scheme and plans for publication of further papers seeking comments on revised family fee schemes, and providing details of revised mental health and immigration fee schemes to be implemented from 1st October 2007.

3.2.4 On 1st March 2007 the LSC and DCA published a strategy for family legal aid, *Making Legal Rights a Reality for Children and Families*, and a further consultation paper on family fee schemes. On the same date, the DCA and LSC published papers setting out the final scheme for immigration and asylum graduated fees. This RIA relates to the final scheme for immigration and asylum graduated fees.

3.3 Rationale for Government Reform

General

3.3.1 The general rationale for reforming the legal aid system has been set out in the previous papers listed above. Key drivers include the need to improve quality of advice and representation for clients, to maintain a sustainable, effective and efficient provider base, to improve value for money for the taxpayer and to contain legal aid spending within a finite budget.

3.3.2 The Government has concluded that it is essential to move towards a competitive market as soon as practicable, so that the market can determine the best price of providing services. It has also concluded

² Lord Carter of Coles, *Legal Aid: A market-based approach to reform* (2006)

³ Department for Constitutional Affairs and Legal Services Commission, *Legal Aid: a sustainable future* (2006)

that fixed fees provide the best way to manage the transitional period, both to prime the market and stabilise spending.

3.3.3 The specific changes considered within this impact assessment represent the first step towards achieving the Government's objectives. Taking a staged approach to implementation will give providers more opportunity to improve efficiency and restructure their businesses to take advantage of the opportunities that competition will offer, and will ensure sustainability both in the transitional period and in the long term.

3.4 Rationale for national graduated fees

3.4.1 The DCA and LSC now intend to apply national graduated fees for all providers from 1st October 2007. The rationale for setting national, rather than regional fees is as follows:

- It is our view that appropriate regional prices will be best set by competition. Existing differentials do not necessarily reflect a best value price. For example we would expect prices in some high cost areas where there are many providers to reduce after competition; this could include providers moving from other lower cost areas.
- Current price differentials between regions cannot, under an hourly rates system, be said to reflect different overheads for providers in different parts of the country. This is because the differentials in cost per case are largely a feature of the length of time the provider spends on the case.
- The distribution of case costs within regions tends to be at least as wide as the distribution between regions. In other words, there are less expensive and more expensive providers in every region, but the proportions vary.
- In the immigration and asylum categories, some providers operate over wide areas not coinciding with our regional boundaries. Indeed many work on a national basis. Regional rates, or London uplift, would reflect the high costs of firms travelling to see clients in different regions rather than the real cost of supply. Paying a high element for travel represents an inefficient use of public funds, whilst setting a national fee that includes travel incentivises local supply.

3.4.2 We therefore consider that setting national fees for work will better prepare providers for future competition, and will be fairer, more consistent, and simpler to administer and understand. Moreover, in immigration and asylum cases historical data indicates that London is not the most expensive area of supply.

- 3.4.3 Moving to graduated fees will also help the LSC to become more operationally efficient, and will contribute to achieving savings to administrative costs for providers and the LSC.

4. Consultation

4.1 Legal Aid Reform: the Way Ahead

4.1.1 Following the publication of Lord Carter's Review which recommended a move to fixed fees for all legal aid work as a transition to best value tendering, the LSC and DCA jointly published the consultation "Legal Aid: a sustainable future". This included detailed proposals for an immigration and asylum graduated fee scheme. The consultation was published on 13th July 2006, with consultation running until 12th October 2006. In addition, the LSC published a consultation paper in October 2006 setting out detailed proposals for a Unified Contract, with consultation running until 21st November 2006.

4.1.2 The Minister responsible for Legal Aid, Vera Baird, met approximately 1,000 solicitors, barristers, and other legal aid practitioners over 25 face-to-face meetings across 11 different cities to encourage practitioners to take part in the consultation process, and to listen to their views.

4.1.3 In addition, the LSC held fourteen "Carter Information" events for providers of legal aid services across England and Wales during the consultation. These were divided into civil and crime events. There were also specific events for rural providers in Cardiff, Birmingham, Cambridge and Yeovil.

4.1.4 Senior managers at the LSC met with stakeholder representative bodies, and individual providers to discuss the proposals.

4.1.5 The DCA and LSC received 2,372 written responses to the consultation *Legal aid: a sustainable future*, the highest response on record at the LSC for a consultation exercise.

4.2 Impact of Consultation

4.2.1 The DCA and LSC carefully considered all responses to the consultation papers published, as a result of which we accepted that changes to the detail and timing of the proposals were necessary. A full analysis of the issues raised on consultation, and our response, is contained in the papers *Analysis of consultation responses: legal aid: a sustainable future*.

4.2.2 A summary of key changes made following consideration of consultation responses for the proposals covered in this paper is set out below:

Main concern	Revision to proposals
Immigration & Asylum Scheme	
Exceptional case limit too high at x4 standard fee	To be exceptional, total profit costs less additional payments claimed must be greater or equal to x3 the total of the fees payable for each of the levels of work done. The graduated fees have not been reduced to offset the lower escape threshold.
The fees are too low	Despite lowering the exceptional case limit, final fees will remain broadly the same as those published in the consultation paper but with the interpreter and translation allowance removed, an amended formula for rounding, which is fairer for providers. As historically approximately three-quarters of our spend has been with London providers we have recalculated the fees based on an hourly rate that is at the three-quarter point between national and London rates.
Interpreter / translation costs should not be included within the standard fees	All disbursements, including interpreter/ translation costs, are outside the fees and claimed separately, subject to extendable financial thresholds.
The early resolution payment will not achieve its objective and that money should be recycled into the graduated fees	We are not proceeding with the early resolution payment and the money is being recycled within the scheme as a whole, but the value of this payment was low enough to not result in a direct uplift to the fees.

4.2.3 Tables setting out the new fees are included in Appendix A to this RIA.

4.3 Regulatory Impact Assessments

4.3.1 The DCA and LSC also received comments on the draft RIA published for consultation, which has also been considered when drafting this document. These are summarised in the section titled *Equity and Fairness: Race Equality, Disability Equality, Gender Equality, and Rural Impact*.

5. Options

5.1 The following options were proposed in the draft RIA in the consultation paper, *Legal aid: a sustainable future*:

Option 1: Do nothing

Option 2: Move immediately to competition

Option 3: A phased approach with the introduction of graduated fees paving the way for future competition

6. Sectors Affected – Costs, Disbenefits, Risks and Benefits

6.1 Sectors and Groups

6.1.1 Sectors and groups affected include:

- Client users of legal aid services
- Providers of legal aid services
- Employees of providers of legal aid services
- Counsel and experts (including interpreters)
- The LSC and DCA
- Partners in the wider justice system, for example AIT, other funders of legal services such as local authorities
- Suppliers of software systems to legal aid providers
- Costs draftsmen

6.2 Analysis of Costs and Disbenefits, Risks and Benefits

Option 1: Do nothing

6.2.1 Costs, disbenefits and risks

- There will be no, or lower incentives for providers to improve their efficiency and prepare for competition.
- The system of individual case controls and financial thresholds introduced within the April 2004 reforms to immigration and asylum legal aid reduced increasing average case costs. If average case costs were again to increase as a result of devolving funding decisions back to all suppliers without the control of fixed fees there is a risk that front line services currently within scope may have to be cut to remain within budget.
- Without the certainty over budget provided by fixed fees the LSC would not have the confidence to extend front-line services, such as the detention advice surgeries and telephone advice in police

stations that are currently being piloted, where concerns have been raised that the needs of clients were not previously being met.

- The LSC would not be able to become more operationally efficient, or achieve the savings to administrative costs associated with fixed fees.

6.2.2 Benefits:

- There would be no transition costs.
- Providers are already familiar with the current schemes for solicitors and NfPs.

6.2.3 This option is not recommended.

Option 2: Move immediately to competition

6.2.4 Costs, disbenefits and risks

- The combined administrative cost to the LSC of the remaining work to introduce all the civil and family fee schemes from 1st October 2007 is estimated to be £750k.
- The impact on provider income, transition costs for providers and the impact on clients would be as set out under option 3 below, however, these impacts would be brought forward.
- Rises in average costs per cases (particularly under the NfP contract) would be controlled immediately.
- There is no money available for an increase in legal aid fee levels, but no money was taken out overall when calculating the fees. The scheme has been designed to be budget neutral for the legal aid fund overall. The calculation of fees for the Immigration and Asylum Scheme is based on forecasted cost in 2007/08 of the same services under the current arrangements.
- The key risk would be that providers would not have sufficient time to adjust to the new fees and to implement necessary changes, for example to their software systems.

6.2.5 Benefits:

- The benefits would be as for option 3, but brought forward.
- In addition, the key benefits of moving immediately to graduated fees schemes would be the ending of a period of uncertainty for providers, and the immediate alignment of payment arrangements

for different types of providers, controlling increases in average costs.

6.2.6 This option is not recommended.

Option 3: Phased approach to implementation

6.2.6 Costs, disbenefits and risks:

- The combined administrative cost to the LSC of the remaining work to introduce all the civil and family fee schemes from 1st October 2007 is estimated to be £750k.
- There is no money available for an increase in legal aid fee levels, but no money was taken out overall when calculating the fees. The scheme have been designed to be budget neutral for the legal aid fund overall. The calculation of fees for the Immigration and Asylum Scheme is based on forecasted cost in 2007/08 of the same services under the current arrangements.
- The financial impact on providers of the schemes will vary depending on the types of work undertaken and current average costs. A headline analysis of the financial impacts on providers is set out at 6.3 below. The impact on different types of providers is considered in the section on Equity and Fairness.
- A key risk for the LSC and clients of a procurement system based on fixed fees and ultimately competition is that quality of service and outcomes of some cases may be adversely affected by some providers seeking to maximise profits. The LSC will manage this risk by requiring providers to meet quality standards, by monitoring a range of key performance indicators and by taking action where necessary, including terminating contracts.
- A system of fixed fees also requires providers to take a more active approach to managing cases, to ensure that overall amounts paid reflect work done even though individual cases may cost more or less to complete. The DCA and LSC will promote effective risk sharing through the operation of escapes such as remuneration by hourly rates in exceptional cases.

6.2.7 Benefits:

- National systems of graduated fees for all providers will be fairer, more consistent, simpler to administer and understand, and will provide greater certainty and predictability in funding and payment for the LSC and providers.
- The scheme will allow providers to innovate to improve the efficiency with which they provide their services, thereby increasing

their ability to profit from civil legal aid work and enabling them to prepare for future competition to ensure a sustainable future.

- Moving to graduated fees will also help the LSC to become more operationally efficient, and will contribute to achieving savings to administrative costs for providers and the LSC.
- The scheme will improve risk sharing between the LSC and providers.

6.2.8 This option is therefore recommended.

6.3 Option 3 – Headline analysis of financial impact on providers

6.3.1 The financial impact on providers of the graduated fees schemes will vary depending on the types of work undertaken and current average costs. It is important that providers consider the new schemes on the basis of what they will receive as a whole organisation, across all categories of work. Graduated fees should be seen as a tool for encouraging efficiency, and this means looking at providers' overall caseload, instead of how the fee applies in any one particular case.

6.3.2 Any comparisons need to be treated with caution as they assume that providers will spend exactly the same amount of time on cases as they did in the past, and that they will conduct exactly the same number and type of cases. Changes to these assumptions would impact on the assessment. It may, for example, be open to providers to increase the numbers of cases undertaken, which would increase their legal aid income overall. Equally some providers may make efficiency savings in a fixed fee environment.

6.3.3 Furthermore, with the Home Office introduction of the New Asylum Model for processing asylum applicants, changing dispersal practice and faster decision making the LSC plans to introduce an advice and referral service at the Asylum Screening Unit to ensure that clients can quickly obtain access to a provider local to the area in which they will be accommodated whilst their application is being processed. The LSC also intends to provide specialist services incorporating the principle of exclusivity for certain client groups where a particular need has been identified such as Unaccompanied Asylum Seeking Children and clients in detention. These developments will potentially change the case mix of providers to ensure that the needs of clients are being met.

6.3.4 The principle of swings and roundabouts works most effectively if the full range of cases is undertaken reflecting the needs of the whole community and providing a holistic service. It is vital that providers who currently do specialise in the most complex and costly cases re-organise their practices to take on the full range of cases, in line with the General Civil Contract.

- 6.3.5 At the start of 2007, the LSC had 360 contracts to provide immigration and asylum legal services, 264 held by solicitors, and 96 with Not for Profit agencies, and spent £76m in 2005/06 on these services.
- 6.3.6 It is not possible to compare the graduated fee proposals and calculate the fees based on historical payment profiles, due to a lack of complete, reliable historical average case costs and case-mix data. In addition, current reporting requirements do not reflect the stages of the graduated fee scheme.
- 6.3.7 The main reason for the lack of complete, reliable data is that there have been substantive changes in the way that applications and appeals have been processed in recent years as well as in the legal aid remuneration arrangements for this work. Furthermore, Home Office processes continue to change with the introduction of the New Asylum Model.
- 6.3.8 Significant assumptions have had to be made to allow impact modelling and therefore analysis can be considered as an approximate indicator only.
- 6.3.9 Approximately 25% of asylum cases as well as other services to underpin the provision of advice and representation will be remunerated by way of separate arrangements and will be subject to exclusive contracts or panels. As contracts for this remaining work are yet to be awarded we cannot include the impacts within the analysis.
- 6.3.10 It should also be noted that the historical data used in this analysis includes two national NfP providers who account for approximately 85% of total NfP spend. This has a negative effect on the regional impacts reported. The effect is particularly marked in Brighton, Cambridge and Leeds, as national providers have large contracts in those areas.
- 6.3.12 Please see appendix B for a full analysis of financial impacts. A headline summary of key findings is set out below:

Asylum

- Overall, this analysis suggests that if the graduated fee scheme was in place in 2005/06 we could, if all our assumptions are correct, have spent around 7.5% more under the scheme for the volume and range of cases covered by the analysis. It is indicated that 10 of the 12 LSC regions may see an overall increase in funding.
- It is indicated that 77% of providers may expect to increase their legal aid income under the new scheme. There are no regions in which a majority of providers may expect to decrease their legal aid income under the new scheme.

- On a volume of 82,344 cases, 70% of cases would be conducted by providers who may expect to increase their income under the new scheme, and 30% of cases by those who may expect their income to decrease. The highest percentage of cases conducted by providers whose income may decrease is in Brighton (84%). However, a relatively low number of cases are conducted by providers in the Brighton region (3,287 within the analysis in total) and the key reason for the high percentage of cases undertaken by providers whose income may decrease is the amount of work done by national NfP providers in this area. This is also the case for Cambridge where 42% of cases are conducted by providers whose income would decrease.
- The London region has the highest volume of cases (50,687) and the majority of these (68%) would be conducted by providers whose may see an increase in income under the new scheme.

Immigration non-asylum

- Overall, this analysis suggests if the graduated fee scheme was in place in 2005/06 we could, if all our assumptions are correct, have spent a around 1% more under the scheme for the volume and range of cases covered by the analysis. It is indicated that 9 of the 12 LSC regions may receive an overall increase in funding. The most significant decreases in financial terms are in the London and Newcastle regions.
- It is indicated that 61% of providers may expect to increase their legal aid income under the new scheme. Bristol is the only region in which a majority of providers may stand to lose and the majority of cases (52%) would be undertaken by providers who may expect to increase their income.
- Whilst a majority of providers in London (53%), where there is the highest volume of cases, may experience an increase in fees under the scheme, the percentage of cases conducted by providers who may experience an increase in fees is 43%. In setting the fees though, our funding priority remains asylum cases.

6.4 Preliminary recommendation

- 6.4.1 Our recommendation on the basis of an analysis of costs, disbenefits, risks and benefits is to take a phased approach to implementation (option 3). However, it is also important to assess the impact of the recommended options on equity and fairness, small firms and competition before a final recommendation is made. These are considered in the following sections.

7. Equity and Fairness: Race Equality, Disability Equality, Gender Equality, and Rural Impact

7.1 Our Duties:

Race Equality

7.1.1 Public authorities in Britain have a legal duty to promote race equality. This means that they must have due regard to how they will:

- Eliminate unlawful racial discrimination
- Promote equal opportunities
- Promote good relations between people from different groups.

7.1.2 The DCA and LSC is also under a specific duty to conduct race equality impact assessments of its policies in relation to the public duty to promote race equality and within this, to identify whether there is a differential and adverse impact on particular racial groups.

Disability Equality

7.1.3 The Disability Equality Duty came into force on 4th December 2006. The LSC has published a Disability Equality Scheme, which is available at our website www.legalservices.gov.uk. This sets out the actions that the LSC will be taking to promote disability equality for legal service providers and the clients they serve, and our staff.

7.1.4 When carrying out our functions, the DCA and LSC must have due regard to the duties placed upon us by the Disability Discrimination Act 2005. These are to:

- Promote equality of opportunity between disabled people and other people;
- Eliminate discrimination that is unlawful under the Disability Discrimination Act;
- Eliminate harassment of disabled people that is related to their disabilities;
- Promote positive attitudes towards disabled people;
- Encourage participation by disabled people in public life; and
- Take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.

7.1.5 From 4th December 2006, the DCA and LSC are also under a specific duty to conduct disability equality impact assessments of its policies in relation to the public duty to promote disability equality and within this, to identify whether there is a differential and adverse impact on disabled people and other people.

Gender Equality

7.1.6 The Equality Act of 2006 places a statutory duty on all public authorities, when carrying out their functions, to have due regard to the need:

- To eliminate unlawful discrimination and harassment
- To promote equality of opportunity between men and women

This general duty will come into effect on 6th April 2007.

7.1.7 From 6th April 2007, the DCA and LSC will also be under a specific duty to conduct gender equality impact assessments of its policies in relation to the public duty to promote gender equality and within this, to identify whether there is a differential and adverse impact on people of different genders.

Rural Proofing

7.1.8 Public authorities also need to take account of rural circumstances and needs (Rural White Paper, 2000). Rural proofing states that policy makers should systematically:

- Consider whether their policy is likely to have a different impact in rural areas, because of particular rural circumstances or needs;
- Make a proper assessment of those impacts, if they are likely to be significant;
- Adjust the policy, where appropriate, with solutions to meet rural needs and circumstances.

7.1.9 Where appropriate, the LSC also considers the rural impacts of its policies to identify whether there is a differential and adverse impact on rural areas.

7.2 Current Position

7.2.1 Black and minority ethnic (“BME”) groups, disabled people, people of different genders, and people living and/or working in rural communities will have an interest in any changes to the legal aid scheme, as the owners and/or managers of solicitor firms and not for profit agencies providing legal aid services, as employees of those

organisations, as barristers and experts providing services to contracted organisations and as clients of legal aid services.

7.2.2 Research conducted by the Legal Services Research Centre (LSRC) in 2006, to be published in a forthcoming report has provided information on the ethnicity, gender, age and disability profile of providers of legal aid services, their employees and their clients based on the results of diversity monitoring forms completed by 44.7% of providers with legal aid contracts, and data from the LSC corporate information system. In 2007 the LSC will also publish its 4th Equality Annual Report, which provides information on a number of areas including numbers of clients assisted in different groups. Data from both sources is used below, together with other data collated for this impact assessment.

7.2.3 Clients of legal aid services

- LSRC data shows the number of Legal Help and CLR matters completed by ethnicity of the legal aid client and category of law. The figures do not include the 4,508 (3.5%) of matters where the ethnicity of the applicant was unknown or the 17,016 (11%) of matters where regional location could not be properly identified.⁴

Controlled work matters completed by category of law and ethnicity of client

Categories of law	White %	BME %	Total
	2005/06	2005/06	2005/06
Combined LH & CLR			
Immigration – asylum	8.6	91.4	86,397
Immigration – non asylum	10.0	90.0	38,444

Controlled Work matters completed by region and ethnicity of client

- The table below shows the regional variations in Legal Help and CLR matters completed for white and BME clients: combined immigration asylum and immigration non-asylum⁵

⁴ Data from matter end data and shows closed matters only.

⁵ The figures do not include the 4,508 (3.5%) of matters where the ethnicity of the applicant was unknown or the 17,016 (11%) of matters where regional location could not be identified. Data from matter end data AND shows closed matters only.

Region	White %	BME %	Total
	2005/06	2005/06	2005/06
West Midlands	3.8	96.2	11,216
South West	13.7	86.3	3,433
East	9.3	90.7	6,285
Wales	13.6	86.4	2,436
Yorkshire & Humberside	4.4	95.6	9,986
London	11.0	89.0	57,320
North West	5.5	94.5	10,764
North East	9.1	90.9	6,638
East Midlands	7.4	92.6	6,188
South East	10.8	89.2	10,216
TOTAL	9.1	90.9	124,841

- From the LSRC survey, there appears to be a strong relationship between ethnicity of managerial control and client ethnicity: 30.1% of civil BME clients were assisted by BME majority managed providers. 93.3% of civil white British clients were assisted by white British managed providers. The percentage of BME clients using BME providers was however considerably lower for NfPs than for solicitors. This dataset is across all civil categories rather than exclusively immigration and asylum.

Controlled Work matters completed by category of law and disability status of client

- The table below shows percentages of Controlled Work matters completed for disabled and not disabled clients in 2005/6. The data is taken from the Equalities Annual Report rather than LSRC research.⁶

⁶ This excludes the 41, 248 matters (28%) of matters across immigration and asylum where it is unknown whether the client is disabled or not.

Category of law	Disabled %	Not disabled %	Total
	2005/06	2005/06	2005/06
Immigration asylum	1.3	98.7	73,907
Immigration other	3.6	96.4	33,903

7.2.4 Providers of legal aid services

- 11.2% of solicitors' offices with legal aid contracts had BME majority managerial control (9.2% of offices with a civil contract). 9.1% of NfPs with civil specialist level contracts have BME majority managerial control. This varies by region, with far higher rates of BME majority managerial control in London and the West Midlands.
- The proportion of providers with majority-disabled control is very low. 2.4% of NfPs with a civil specialist contract have majority disabled managerial control. 0.7% of solicitor offices with a contract (crime or civil) have majority disabled managerial control (7 offices in the sample).
- 17.4% of offices with a civil contract have female majority managerial control. 49.7% of NfPs with civil contracts have female majority managerial control. There is less regional variation in respect of gender.

7.2.5 Staff employed by legal aid providers, and volunteers

- According to the LSRC 2006 survey, 13% of solicitor fee earners working within solicitors' firms holding civil legal aid contracts were BME (1050 solicitors out of a total 8,093 covered by the survey). It is not possible however to determine how many of those solicitors were working on legal aid cases, as opposed to privately funded ones or which categories of law they work when it is a multi-category provider. 63% of the offices undertaking civil legal aid work contained no BME solicitors. 6.8% of the offices contained no white solicitor fee earners. A majority of offices with BME majority managerial control contained a majority of BME employees.
- According to the LSRC 2006 survey, 19.5% of paid employees working within not for profit providers holding civil legal aid contracts were BME (757 out of a total of 3,878 covered by the survey). It is not possible however to determine how many of those employees were working on legal aid cases, as opposed to cases funded from other sources or what categories of law they work in when it is a multi-category provider. 47.1% of the organisations undertaking civil legal aid work contained no BME paid employees.

2.3% of the organisations contained no white paid employees. 242 NfP organisations covered by the survey with civil legal aid contracts had volunteers. Of these, 92 (38.0%) contained no BME volunteers and 17 (7.0%) contained no white volunteers. The 242 NfPs holding contracts contained 4,582 volunteers – an average of 18.9 per organisation. Of these volunteers 705 (15.5%) were BME.

- 3% of solicitors and 22.4% of NfP providers covered by the survey reported one or more solicitors or paid employees long term ill or disabled.
- Females make up the majority of paid employees and volunteers in NfPs (74.9%) compared to 47.5% of solicitor fee earners.

7.3 Draft regulatory impact assessments, summary of responses and amendments to proposals

Legal Aid Reform: the Way Ahead

7.3.1 Preliminary assessment

Our preliminary assessment of the original immigration and asylum graduated fee scheme proposals, as published in the draft RIA for the consultation paper *Legal Aid: a sustainable future* was as follows:

- Under half of providers would increase their publicly funded income as a result of the proposals, and over half would decrease it. Initial modelling suggested that a higher proportion of NfP BME owned organisations would increase their income compared to NfP White owned organisations, and a higher proportion of solicitor BME organisations would increase their income compared to White owned solicitor organisations.

7.3.2 Summary of responses to draft RIA and other diversity issues raised

A summary of the responses to the draft RIA and other diversity issues raised is contained in the RIA for *Legal Aid Reform: the Way Ahead*, published 20th December 2006. Points specific to the immigration and asylum graduated fees scheme are summarised below:

Concern raised	Response
BME clients whose first language is not English would be adversely impacted by proposal to include costs of interpreters and translation in graduated fees	Interpreters' fees will be paid separately in addition to graduated fees.

<p>BME clients whose first language is not English take longer to advise, and there is a risk that providers will refuse to act for such clients under a fixed fee system</p>	<p>The exceptional case escape route threshold has been lowered from 4x to 3x, making it easier for more expensive cases to escape to hourly rates.</p> <p>The Unified Contract to be introduced from 1st April 2007 explicitly requires providers to comply with the Law Society's Anti-Discrimination rules (whether or not the provider is a solicitors practice) when dealing with potential clients and taking on work.</p>
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7.3.3 Revised assessment of equity and fairness

Tables of the data used to conduct this assessment are contained in Appendix B.

Clients

The impact analysis compares the fees that a provider is likely to receive under the new remuneration scheme for the volume and type of cases undertaken within an 18-month period from April 2005 to the fees received for the same volume and type of cases under current funding arrangements. The impact varies between asylum and non-asylum immigration, as summarised below

It is important to note that all comparisons need to be treated with caution as they assume that providers will spend exactly the same amount of time on cases as they did in the past, and that they will conduct exactly the same number and type of cases. Changes to these assumptions would impact on the assessment. It may, for example, be open to providers to increase the numbers of cases undertaken, which would increase their legal aid income overall. Equally some providers may make efficiency savings in a fixed fee environment.

Furthermore, with the Home Office introduction of the New Asylum Model for processing asylum applicants, changing dispersal practice and faster decision making the LSC plans to introduce an advice and referral service at the Asylum Screening Unit to ensure that clients can quickly obtain access to a provider local to the area in which they will be accommodated whilst their application is being processed. The LSC also intends to provide specialist services incorporating the principle of exclusivity for certain client groups where a particular need has been identified such as Unaccompanied Asylum Seeking Children and clients in detention. These developments will potentially change the case mix of providers to ensure that the needs of clients are being met.

In addition, it should be noted that the same fees apply to all clients and the analysis of the impact on clients is actually showing the impact

on providers broken down by the ethnicity of their client base in 2005/06 rather than a direct impact on the client.

It should also be noted that in the immigration category there is a significant difference in the proportional volumes of White and BME clients, with white clients representing only 9% of all clients across the category. Further, the proportion of white clients varies significantly between different regions, ranging from 1.9% to 20.2%, implying that any difference in impacts perceived for this client group are likely to be due to the location of the providers serving them, rather than a direct result of the ethnicity of the clientele.

Asylum:

Ethnicity

We hold ethnicity data for 99.5% of clients in the 18-month period from April 2005. Overall the impact is consistent when comparing white to BME clients served by providers whose fees would increase. 73% of white clients and 70% of BME clients are served by providers whose fees may increase according to our analysis, compared to 27% of white clients and 30% of BME clients served by providers whose fees may decrease. When examining this on a regional level there are no obvious inconsistencies within individual regions.

Disability

We are not able to produce data for disability. We have however produced data for age, and there is a known correlation between increasing age and increasing likelihood of disability, particularly over the age of 50. Apart from ages 0-16 (which is excluded from the dataset as services to children are excluded from the graduated fee scheme) the relative proportions of clients of different ages served by providers whose fees increase or decrease are roughly equal, indicating a neutral impact by age.

Gender

We hold gender data for over 99% of clients in the 18-month period from April 2005. 70% of both male and female clients are served by providers whose fees may increase according to our analysis compared to 30% who are served by providers whose fees may decrease. This indicates a neutral impact by gender.

Immigration non-asylum

Ethnicity

We hold ethnicity data for 99.9% of clients in the 18-month period from April 2005. Overall the impact is consistent when comparing white to BME clients served by providers whose fees would increase. 52% of white clients and 57% of BME clients are served by providers whose fees may increase according to our analysis, compared to 48% of white

clients and 43% of BME clients served by providers whose fees will decrease

Disability

We are not able to produce data for disability. We have however produced data for age, and there is a known correlation between increasing age and increasing likelihood of disability, particularly over the age of 50. Apart from ages 0-16 (which are not captured within this dataset) the relative proportions of clients of different ages served by providers whose fees increase or decrease are roughly equal, indicating a neutral impact by age.

Gender

We hold gender data for over 99% of clients in the 18-month period from April 2005. 57% of male clients and 54% of female are served by providers whose fees may increase according to our analysis compared to 43% of male clients and 46% of female clients who are served by providers whose fees may decrease. This indicates a neutral impact by gender.

Providers

Asylum

Ethnicity

The table below shows the number of providers nationally whose fees may increase or decrease following the implementation of the immigration and asylum graduated fee scheme according to this analysis. As information on ethnicity is provided on a voluntary basis, the table below is based on a sample of 230⁷ providers nationally. These include 93 (40.4%) White British, 118 (51.3%) BME and 19 (8.3%) split managerial controlled providers.⁸

	Ethnicity of majority managerial control			Total
	White British	BME	Split	
Number & % of providers whose fees may have decreased	<u>24</u>	<u>33</u>	<u>3</u>	<u>60</u>
	<u>40%</u>	<u>55%</u>	<u>5%</u>	100.0%
Number and % of	<u>69</u>	<u>85</u>	<u>16</u>	<u>170</u>

⁷ The LSRC has been able to use combined 2006 & 2007 diversity data as compared to just the 2006 data used in the published RIA. This increases the number of organisations for which diversity data is held.

⁸ Conducting a simple chi-squared test on the 3x2 table above indicated that there were no significant differences in ethnicity of majority managerial control between providers whose fees increase and providers whose fees decrease; $\chi^2_2 = 1.27$, $p=0.53$, White British, BME, and Split firms equally gained and lost

providers whose fees may have increased	<u>40.6%</u>	<u>50.0%</u>	<u>9.4%</u>	100.0%
Total	<u>93</u>	<u>118</u>	<u>19</u>	<u>230</u>
	<u>40.4%</u>	51.3%	<u>8.3%</u>	100.0%

- A statistical analysis of the above table (chi-squared test) indicates that there is no statistical difference in impacts between differing ethnicities of managerial control. Providers majority managed by any one of the three ethnic groups are equally likely to see their income increase or decrease.
- This sample is made up of 230 providers.
- The sample is made up of 93 White British, 118 BME and 19 Split managerial controlled providers.
- The number of providers whose fees may increase is made up of 69 White British, 85 BME and 16 Split managerial controlled providers.
- The number of providers whose fees may decrease is made up of 24 White British, 33 BME and 3 Split managerial controlled providers.
- Out of 93 White British providers 69 (74%) of them may have their fees increased.
- Out of 118 BME providers 85 (72%) of them may have their fees increased.
- Out of 19 Split providers 16 (84%) of them may have their fees increased.

We do not hold relevant data on majority ownership of providers by disability or gender to be able to report on this.

Urban/Rural

There are only two rural providers of asylum law, one of whom may expect to see an increase in their income.

Immigration non-asylum

Ethnicity

The table below shows the number of providers nationally whose fees may increase or decrease following the implementation of the immigration and asylum graduated fee scheme according to this analysis. As information on ethnicity is provided on a voluntary basis,

the table below is based on a sample of 225⁹ providers nationally. These include 91 (40.4%) White British, 115 (51.1%) BME and 19 (8.4%) split managerial controlled providers.¹⁰

	Ethnicity of majority managerial control			Total
	White British	BME	Split	
Number & % of providers whose fees may have decreased	<u>29</u>	<u>49</u>	<u>5</u>	<u>83</u>
	<u>34.9%</u>	<u>59.0%</u>	<u>6.0%</u>	100.0%
Number and % of providers whose fees may have increased	<u>62</u>	<u>66</u>	<u>14</u>	<u>142</u>
	<u>43.7%</u>	<u>46.5%</u>	<u>9.9%</u>	100.0%
Total	<u>91</u>	<u>115</u>	<u>19</u>	<u>225</u>
	<u>40.4%</u>	<u>51.1.0%</u>	<u>8.4%</u>	100.0%

- A statistical analysis of the above table (chi-squared test) indicates that there is no statistical difference in impacts between differing ethnicities of managerial control. Providers majority managed by any one of the three ethnic groups are equally likely to see their income increase or decrease.
- This sample is made up of 225 providers.
- The sample is made up of 91 White British, 115 BME and 19 Split managerial controlled providers.
- The number of providers whose fees may increase is made up of 62 White British, 66 BME and 14 Split managerial controlled providers.
- The number of providers whose fees may decrease is made up of 29 White British, 49 BME and 5 Split managerial controlled providers.
- Out of 91 White British providers 62 (68%) of them would have their fees increased.

⁹ The LSRC has been able to use combined 2006 & 2007 diversity data as compared to just the 2006 data used in the published RIA. This increases the number of organisations for which diversity data is held.

¹⁰ Conducting a simple chi-squared test on the 3x2 table above indicated that there were no significant differences in ethnicity of majority managerial control between providers whose fees increase and providers whose fees decrease; $\chi^2_2 = 3.51$ m p=0.17., White British, BME, and Split firms equally gained and lost

- Out of 115 BME providers 66 (57%) of them may have their fees increased.
- Out of 19 Split providers 14 (74%) of them may have their fees increased.
- We do not hold relevant data on majority ownership of providers by disability or gender to be able to report on this.

Urban/Rural

There are only three rural providers of immigration law, one of whom is expected to see an increase in their income.

Staff employed by legal aid providers

- We anticipate that the fees schemes will also have an impact on staff employed by legal aid providers.
- From the information gathered for the LSRC 2006 Survey it would appear that BME majority managed providers are significantly more likely to contain a majority of BME staff, and therefore impacts on BME providers are likely to have an impact on BME staff. This will vary depending on whether they are employed by a provider that would have been paid increased or decreased amounts on their 2005/6 caseloads. A proportion of BME staff also work for White majority managed organisations, and the impacts on them will vary similarly depending on the outcome for the employing organisation.

Conclusion

Owing to the issues around the reliability of historical data we hold in the immigration and asylum categories (see section 6.3), the impacts set out above are subject to a number of caveats and therefore no definitive conclusions can be reached. However, the findings would seem to suggest that the immigration and asylum graduated fee scheme has differing impacts according to the area of law. If our assumptions are correct the scheme is likely to have a positive impact on both asylum and immigration providers, with the majority set to experience an increase in fees - we would expect these benefits to pass on to clients. There do not appear to be any obvious adverse impacts on stakeholders based on ethnicity or rural/urban location.

Overall, we believe the benefits to stakeholders, particularly clients, outweigh any disbenefits. We will monitor and evaluate the impact of the scheme following implementation and report on our findings in accordance with our statutory duties and the intentions set out in the LSC's Equality Scheme.

8. Small Firms Impact Test

8.1.1 The majority of providers of legal and advice services are small organisations as defined by the Cabinet Office (employing fewer than 250 staff). The Law Society, the Legal Aid Practitioners' Group, the Advice Services Alliance and other representative bodies with whom the DCA and LSC consult represent their interests.

8.1.2 The economic research supporting the Carter Report suggests that many smaller organisations should be able to compete on a cost basis with larger providers in the short-term. The research does however suggest that over the longer term smaller organisations may struggle to remain sustainable, because for example, they face problems recruiting qualified staff. The period of transition will allow such organisations to either grow and/or address issues of sustainability.

9. Competition Assessment

9.1 Having applied the Cabinet Office's competition filter test to the market for legally aided services in England and Wales, the LSC anticipates the proposals, which represent the first steps towards managed competition, will have only a limited impact on the market. However, we anticipate that as we move to rollout the remainder of Lord Carter's reforms the impact on markets, particularly at the regional, sub-regional and category of work level will become more significant and both the DCA and LSC will consider this in more detail.

10. Legal Aid Impact Test

10.1 The graduated fees schemes are intended to be budget neutral and there should therefore be no additional costs to the Legal Aid Fund.

11. Compensatory Simplification

11.1 The Cabinet Office has published interim guidance on compensatory simplification, to be applied when producing regulatory impact assessments. The interim guidance requires government bodies to actively look for opportunities to simplify or remove existing requirements when they want to introduce new regulation, and to assess both the extent to which the simplification proposal(s) will offset the cost of the new regulatory measure and the impact of removing the existing provision.

11.2 The graduated fees scheme is based on a fixed fees system, which will be clearer, simpler and easier to understand and administer.

11.3 The LSC therefore anticipates that the proposals will make a positive contribution to the Government's objectives to simplify and reduce the burdens of regulatory systems.

12. Enforcement, sanctions and monitoring

The LSC will monitor the performance of providers using a range of key performance indicators and take action where necessary, including terminating contracts.

13. Implementation and Delivery Plans

Please refer to Appendix C.

14. Post Implementation Review

14.1 The LSC will monitor and evaluate the impact of the scheme post implementation and report on findings in accordance with our statutory duties and the LSC Equality Scheme.


15. Summary and Recommendation

15.1 After full consideration the LSC recommends taking a phased approach to implementation (option 3) for the proposals.

16. Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed:



Date: 21 March 2007

Minister's name, title and department: Vera Baird QC MP, Parliamentary Under-Secretary of State, Department for Constitutional Affairs

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Appendices:

Appendix A: Fees table for Immigration and asylum final fee scheme

Appendix B: Impact analysis for Immigration and asylum fee scheme

Appendix C: Implementation plan