

# The Litigator Graduated Fee Scheme - A Final Impact Assessment



## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Legal Services Commission</b>	<b>Title:</b> <b>Final Impact Assessment of Litigator Graduated Fee Scheme</b>	
<b>Stage:</b> Final IA	<b>Version:</b> Draft 1.0	<b>Date:</b> 04 October 2007
<b>Related Publications:</b> 'The Litigator Graduated Fee Scheme' Response to Consultation		

Available to view or download at: <http://www.legalservices.gov.uk>

Contact for enquiries: Kirsten Alderson

Telephone: (020) 7759 1060

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

Expenditure on criminal legal aid has increased significantly over the past decade, beyond the rate of inflation and available resources. From 1997/98 to 2004/05 there was an increase in real terms of 86% on Crown Court expenditure, which had reached £647 million by 2004/05. Crown Court costs have consistently grown ahead of the mainstream economic indicators, and are taking an increasing proportion of the overall legal aid budget. This poses a significant risk to the budget for Civil legal aid. The current payment system does little to reward or encourage efficiency as firms are paid for inputs rather than outputs. Government intervention is necessary to address shortcomings of the existing system and eliminate the aforementioned cost increases.

### What are the policy objectives and the intended effects?

The following key objectives have informed the development of the final LGFS: To ensure the Government and taxpayer receive value for money; to pave the way for best value tendering proposals and introduction of a single fee for advocates and litigators' in the Crown Court; to implement cost control and generate savings against current legal aid expenditure, in order to secure a sustainable future for Legal Aid and safeguard the provision of civil and family legal aid services; to reduce inefficiency and minimise duplication between work done by litigators and advocates; to ensure a high quality, sustainable supplier base that enables efficient legal aid providers to prosper; to enable forecasting of expenditure in Crown Court cases; to provide greater certainty to litigators around the timing and value of payments; to maintain the provision of quality legal services for clients.

### What policy options have been considered? Please justify any preferred option.


The LSC have considered provider responses to proposals for a litigator graduated fee scheme and have published its response and final decisions in the 'Litigator Graduated Fee Scheme Response to Consultation'. The LSC have considered options for a LGFS and have decided to proceed to replace the existing *ex post facto* (EPF) determination system with a graduated fee scheme for litigators undertaking work in the Crown Court. There are fixed fee payments for committals for sentence, appeals against sentence and conviction, contempt and breaches of Crown Court orders. Since consultation, the fees have been rebalanced to remunerate larger, more complex cases more appropriately. The final LGFS will now achieve savings of £11million from current legal aid expenditure (2006/07) in the Crown Court and not £28 million as stated in the LGFS consultation.

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

Quarterly from 6 months after implementation. Fully before the introduction of the Single Fee Scheme.

### **Sign-off** For Litigators Graduated Fee Scheme Final Impact Assessment:

*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: 

Date: 04/10/07

## Summary: Analysis & Evidence

<b>Policy Option: 1 'Do nothing'</b>	<b>Description: Continue using ex post facto (EPF) determination and the standard fee to remunerate litigators in the Crown Court. The LSC do not wish to pursue this option as continued use of EPF will not address/control rising Crown Court costs, or enable further reform of the system to secure better value for money and enable a long term sustainable legal aid scheme.</b>
--------------------------------------	--

<b>EPF</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  No transition costs but continued cost of the National Taxing Team and HMCS staff to manage the EPF and standard fee systems (rough estimate £4m). Continued lack of control on rising costs due to the payment of cases by the hour under EPF (not estimated).
	<b>One-off (Transition)</b> <b>Yrs</b>	
	<b>£ 0.00</b>	
	<b>Average Annual Cost (excluding one-off)</b>	
	<b>£ 4,000,000</b>	<b>Total Cost (PV)    £ 4,000,000</b>
<b>Other key non-monetised costs by 'main affected groups'</b> The subjective element of EPF determination leaves the current system open to many and varied appeals on the determination, often resulting in higher payments following appeal. Could encourage more time spent on cases.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'  None.
	<b>One-off</b> <b>Yrs</b>	
	<b>£ 0.00</b>	
	<b>Average Annual Benefit (excluding one-off)</b>	
	<b>£ 0.00</b>	<b>Total Benefit (PV)    £ 0.00</b>
<b>Other key non-monetised benefits by 'main affected groups'</b> Litigators can be sure that their bill is determined according to the specifics of their case.		

### Key Assumptions/Sensitivities/Risks

Risk of 'ratchet' effect, where costs are difficult to control and tend to increase year on year.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
-----------------	-------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	National			
On what date will the policy be implemented?	14 January 2008			
Which organisation(s) will enforce the policy?	LSC			
What is the total annual cost of enforcement for these organisations?	£ SLA costs			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes/No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase – Decrease)	
Increase	£	Decrease	£	<b>Net</b>	£

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

## Summary: Analysis & Evidence

**Policy Option: 2**  
**'Introduce Option 2**  
**of the LGFS with**  
**amendments'**

**Description: The LGFS set out in detail in the Consultation Paper – removing £11 million from current legal aid expenditure (2006/07) in the Crown Court rather than £28 million; fees have been rebalanced to remunerate larger, more complex cases more; payment for most pieces of work to be included in the basic fee; fixed fees for committals for sentence, appeals against sentence and conviction, breaches of crown court orders and contempt.**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' One off costs includes the development of the policy, the I.T. software and the financial modelling of the scheme. Average annual costs comprise approximate staff and admin costs for the National Courts Team (LSC). Costs of SLA with HMCS (support).
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£400,000</b>	2.5	
	<b>£ 500,000</b>		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			
None.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Average annual benefits are based on the first full year saving (this increases year on year due to inflation – not factored in here).
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0.00</b>		
	<b>Average Annual Benefit</b>		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
Provide greater certainty to litigators around the timing and value of payments.			

### Key Assumptions/Sensitivities/Risks

The LGFS will need to be monitored to ensure the correct levels of savings are being made. Modelling of the scheme at the top end has been tapered slightly to tie in with the VHCC scheme.

Price Base Year 2005	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
-------------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?		National		
On what date will the policy be implemented?		14 January 2008		
Which organisation(s) will enforce the policy?		LSC		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		Yes/No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		Yes		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£	Decrease	£3,500,000	<b>Net</b>
				£

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

### 1. Introduction

- 1.1 This document is a final Impact Assessment (IA) and is based on the proposals outlined in the Consultation Paper 'The Litigator Graduated Fee Scheme' (LGFS), which was published on the LSC website ([www.legalservices.gov.uk](http://www.legalservices.gov.uk)) on 26 June 2007. The proposals outlined in that paper were the subject of a public consultation that closed on 7 August 2007. The recommendations contained within this document are based on the responses received during the consultation period. The LSC published its response to consultation on the LSC website on 4 October 2007.
- 1.2 'The Litigator Graduated Fee Scheme' (LGFS) outlined a number of amended proposals to implement Lord Carter's recommendation for a new graduated fee payment system for litigators undertaking criminal defence work in the Crown Court. Following responses to the proposed LGFS during consultation, the LSC have made some further changes to the model.
- 1.3 The following key changes have been proposed, and are outlined in full in the LSC response to the consultation paper:
- Replacement of the existing *ex post facto* (EPF) determination system with a graduated fee scheme for litigators undertaking work in the Crown Court;
  - Inclusion of payments for most pieces of work likely to arise within a case in the basic case fee;
  - Payment for certain hearings in the Crown Court, such as committals for sentence, by fixed fees.

### 2. Purpose and Intended Effect

#### Objectives

- 2.1 The following key objectives have informed the development of these proposals:
- To pave the way for best value tendering proposals and introduction of a single fee for advocates and litigators in the Crown Court;
  - To reduce inefficiency and minimise duplication between work done by litigators and advocates;
  - To ensure a high quality, sustainable supplier base that enables efficient legal aid providers to prosper;
  - To enable forecasting of expenditure in Crown Court cases;
  - To provide greater certainty to litigators around the timing and value of payments;
  - To implement cost control and generate savings against current legal aid expenditure, in order to secure a sustainable future for Legal Aid and safeguard the provision of civil and family legal aid services;
  - To maintain the provision of quality legal services for clients; and
  - To ensure the Government and taxpayer receive value for money

- 2.2 In order to achieve the above objectives, it is intended that the LGFS will be implemented on 14 January 2008.

## **Background**

- 2.3 The command paper, 'A Fairer Deal for Legal Aid', set the terms of reference for Lord Carter's review of legal aid procurement, which began in July 2005 and published its findings in July 2006.
- 2.4 Lord Carter's review was tasked with setting out a plan to deliver fundamental reform to the procurement of legal aid that would ensure access to justice, a sustainable provider base, and deliver greater value for money.
- 2.5 Lord Carter's final report, 'Legal Aid: A market-based approach to reform', recommended a number of changes to the way publicly funded legal services are structured and remunerated.
- 2.6 In response to Lord Carter's report, the LSC and the former Department for Constitutional Affairs (now Ministry of Justice - MoJ) issued a joint consultation paper entitled 'Legal Aid: A Sustainable Future.' Consultation closed on 12 October 2006, and a response entitled 'Legal Aid: the Way Forward' was published by the LSC and the DCA on 28 November 2006. This included information on the way forward in relation to the LGFS.
- 2.7 The LSC worked closely with the Law Society and practitioners to address the concerns raised around the LGFS during the recent consultation 'The Litigator Graduated Fee Scheme', which set out the amended proposals for a graduated fee scheme for work undertaken by litigators in the Crown Court. The purpose of the consultation was to allow stakeholders to comment on the options for operating the scheme following responses to the Carter consultation. Responses to the recent consultation have been received, analysed and a response to the consultation has now been published, by the LSC.
- 2.8 The draft IA was focused solely on the impact of the specific proposals set out in the consultation paper 'The Litigator Graduated Fee Scheme'. This final IA examines the impacts of the final LGFS that the LSC will implement in January 2008.
- 2.9 Remuneration of litigators for criminal legal aid work is currently governed by The Criminal Defence Service (Funding) Order 2007 (SI 2007 No. 1174). This will be amended by MoJ to reflect the final LGFS. A draft version of the Funding Order will be consulted on shortly for six weeks that will enable us to be certain that the Order accurately reflects the policy and to pick up any other policy issues that emerge during the drafting of the Funding Order.

## **Rationale for Government Intervention**

- 2.10 The LGFS is designed to provide greater certainty and control around expenditure on Crown Court legal aid, and to safeguard the legal aid fund.
- 2.11 Expenditure on criminal legal aid has increased significantly over the past decade, beyond the rate of inflation and available resources. From 1997/98 to 2004/05 there was an increase in real terms of 86% on Crown Court expenditure and by 2003/04, expenditure on Criminal legal aid had reached £1.2 billion. Research by Cape and Moorhead<sup>1</sup> showed that spending on higher criminal cases (Crown Court and above) had

---

<sup>1</sup> Cape, E. & Moorhead, R. (2005), *Demand Induced Supply? Identifying Cost Drivers in Criminal Defence Work*, Legal Services Research Centre, London

constituted the largest cumulative increase between 1995/96 and 2003/04 in comparison with other legal aid spend, and had exceeded both cumulative increases in inflation and general public spending during this period. Crown Court costs have consistently grown ahead of the mainstream economic indicators, and consequently are taking an increasing proportion of the overall legal aid budget. This poses a significant risk to the budget for Civil legal aid. The current EPF system of payment does little to reward efficiency, as firms are paid for inputs (hours worked) rather than outputs (throughput of cases).

- 2.12 If the LSC is to secure a sustainable future for legal aid, reform must be put in place as soon as possible. The LGFS is designed to transform the way in which criminal defence services are procured and delivered for litigators in the Crown Court in ways that will enable efficient providers to prosper, ensure quality service provision for clients, and safeguard civil and family legal aid services.
- 2.13 The LGFS will change the payment levels for individual firms. Whereas under the current EPF regime firms are paid for hours worked, the LGFS will pay for case factors irrespective of time spent on the case. Traditionally, there has been a lack of consistency around amounts paid for similar cases under EPF – this in part is a reflection of varying amounts of work undertaken on similar cases by different firms. The LGFS will also encourage a more efficient split of work between litigator and counsel by rewarding efficiency and discouraging duplication of effort.

### **3. Consultation**

- 3.1 The amended proposals were under a public consultation that concluded on 7 August 2007. This followed the full initial consultation undertaken with stakeholders after the publication of Lord Carter's review into the procurement of criminal and civil legal aid.
- 3.2 The Commission has engaged with stakeholders prior to and during the consultation period, and has specifically sought the views of the Law Society on the impact of the options proposed in the Consultation Paper.
- 3.3 The LSC has provided an analysis of the responses to the consultation in a separate document, which was published on 4 October 2007. The final IA has been published alongside this document.

## 4. Options

### Do NOTHING

- 4.1 The current system for paying litigators for publicly funded Crown Court cases is through EPF determination. This is a system that requires the litigator to present a bill, together with supporting documentation, to the National Taxing Team (NTT) of Her Majesty's Court Service (HMCS) at the end of a case. The bill is then assessed and a payment is determined according to what is considered to be reasonable by the Determining Officer.
- 4.2 Some smaller Crown Court cases are remunerated by a standard fee scheme that was introduced in 1988. The standard fee scheme is a fixed fee scheme, which covers some cases of one to two days' trial and some guilty pleas. However, almost 50% of the eligible cases avail of an escape clause to EPF determination.

### Costs, disbenefits and risks

- 4.3 EPF determination has made it difficult for the LSC and MoJ to predict and control costs, and so proved to be expensive (see paragraph 2.11).
- 4.4 The current system does little to reward efficiency as firms are paid for inputs (hours worked) rather than outputs (throughput of cases), providing no incentive for firms to minimise the hours worked on each case. This could reduce the operational efficiency of the CJS as a whole, as it provides no incentive for litigators to secure the earliest possible appropriate disposal of individual cases or minimise duplication with the work done by advocates.
- 4.5 EPF also provides less certainty for firms in both the timing of payment and the final amount that might be allowed by the Determining Officer of NTT, as costs are only assessed after the event.

### IMPLEMENT THE LGFS

- 4.6 The LGFS is a graduated fee scheme, which has been modelled on 4 years' historic data on EPF cases. It has also learnt lessons from the Advocates Graduated Fee Scheme (AGFS), which has been successful in controlling advocates' fees since 1997 and has provided increased certainty for both the purchaser and suppliers of advocacy services. This has been due to the use of variables within the formula of the fee, which are outside the advocate's control (such as number of pages of evidence and number of witnesses). We have sought to employ similar variables within the LGFS.
- 4.7 The LGFS provides payment for a case, which is the mean payment for cases of the same description, and factors in case type, offence type, trial length and amount of documentary evidence served by the Prosecution (PPE). There are also fixed fees for certain hearings arising out of non-trial Crown Court cases, such as Committals for sentence and appeals from the Magistrates' Court.
- 4.8 The fees for the LGFS have been modelled on the fees actually paid to litigators in the Crown Court in the financial year 2004/05, with an additional reduction to keep payments within the LSC's budget. Since the recent consultation on the LGFS, the scheme has been amended in light of the responses (see 4.9 below). It has also been amended to take into account further recent analysis undertaken on an up to date dataset for 2007 cases. The reduction in fee income is now in £11m against the 2006/07 Crown Court spend on litigation, or 5.5%. It had originally been thought necessary to reduce the

2004/05 payments rates by £28m, due to predicted rises in spend, and the LSC welcomes the fact that a smaller reduction is possible.

- 4.9 Following the Carter Report, the options for amending the LGFS were considered to take into account the views expressed by providers during the initial consultation phase. Specifically, the fees for LGFS cases at the top end of the scheme (40 days) have now been modelled with regard to the payments under VHCC contract. This has been achieved by replacing the taper originally modelled into the LGFS with a very small tapering effect on payments at the top end of the scheme. The 'VHCC' taper ensures that the two Crown Court schemes fit well together. It also, in LSC's view, provides an appropriate level of incentive to minimise trial length.
- 4.10 In addition to the reduction of the taper on payments for longer cases, two further options were proposed for the consideration of practitioners in the LGFS consultation. Stakeholders suggested that additional proxies were required to better remunerate for more complicating factors in a case. The LSC modelled a number of potential uplifts to the scheme with a view to obtaining practitioners' views. These were provided as Option 1 of the consultation. The LSC also modelled another option, which proposed increasing the basic fee of each case proportionately by 12.5%. This was provided as Option 2 of the consultation. The LSC expected the overall remuneration for litigation services in the Crown Court to be the same for both options. The level of remuneration would provide a level of savings (now estimated at £11m) to legal aid funds, which is required for sustainability across the legal aid fund as a whole. Therefore, the LSC proposed if either or both of the two options achieved greater or lesser savings, the LSC would reserve the right to adjust the options accordingly until the right level of savings were achieved.
- 4.11 The LSC intend to adopt a revised option 2. Option 2 was the LGFS as proposed in the *Way Ahead* with increased base fees of 12.5%. This option obtained the majority of support from respondents. Having re-examined the LGFS against the recently analysed data sample [please refer to the response [paragraph 3.2] for more details of this exercise], we have revised this option to reduce some of the base fees and increase PPE uplifts for the more serious offence types. We have done this to more accurately reflect the historic payments for these types of cases, which we are now able to do due to the greater accuracy in data obtained from the recent data exercise. We have also made decisions on other aspects of the fee, which were posed as consultation questions in the LGFS Consultation Paper published in June 2007. These decisions are detailed in the Response to Consultation Paper.

#### Costs, disbenefits and risks

- 4.12 The modelling of the LGFS, including the modelling of both Options 1 and 2 proposed in the consultation, has taken a period of 18 months. A web-based IT software package has been developed at a total cost of £140k, which would be suitable for implementation of this option.
- 4.13 The LSC propose to run the new scheme from the National Courts Team (NCT), a processing centre within the LSC. The centre would need to be staffed to handle bills and enquiries on the litigator fee, and it is envisaged that approximately 20 staff may be required. This would be an annual staffing cost to the LSC of approximately £500k per annum (including all employer's costs).
- 4.14 Off set against this is the reduction in workload and therefore necessary staffing at the National Taxing Team (NTT). The NTT currently employ approximately 75 staff to determine EPF bills. This requirement would reduce over the next 2-3 years, and staffing would fall commensurately.

- 4.15 Staffing levels at HMCS, where the standard fee system is currently managed, are unlikely to vary to any great extent as standard fee payments form only a small part of the Crown Court clerk's role.
- 4.16 Therefore whilst the LSC's staffing costs would increase under the LGFS, their financial obligation under the Service Level Agreement with HMCS would decrease as the requirement for services and staff from the NTT reduced over the next 2-3 years.
- 4.17 There is a risk, as with any new system, that managing the LGFS would require a higher volume of staff than originally envisaged. However, the current thinking (based on a workload analysis) assumes a staffing level of 27% that of the NTT. This shows a 73% saving in staff, which equates to an 81% saving in cost, as it is anticipated that more junior staff would be suitable for the NCT processing role. There is some flexibility to increase these costs to recruit more staff should that be necessary.

## **5. Sectors Affected – Costs, Disbenefits, Risks and Benefits**

### **Sectors and Groups**

5.1 Sectors and groups affected by the final LGFS include:

- Solicitors' firms undertaking Criminal Defence legal aid work in the Crown Court, and:
- Their clients
- Barristers;
- The LSC and MoJ;
- HMCS National Taxing Team and Crown Court staff;
- Costs Draftsmen.

### **Analysis of Costs and Disbenefits, Risks and Benefits**

#### **Providers**

- 5.2 Under the final LGFS, litigators would benefit from more certainty of payment, reduced administration and an ability to forecast expenditure more clearly. In particular, the process of claiming fees will be simpler and allow for quick and efficient billing especially through the online billing process, which will be introduced following implementation of the scheme. In addition, there will be an electronic calculator available to firms so that they could work out the fee for a case before billing. Also, the more complex cases are likely to be paid more quickly under LGFS than under the current payment system (ex post facto determination), which will benefit firms in terms of cash flow.
- 5.3 The main disbenefit of the scheme from the litigator's point of view is that it represents a move away from individual payments for individual cases, based on hourly rates, to payment for the outcome or service generally expected. The LGFS uses tried and tested proxies that provide a good statistical fit with an average case; though there is not necessarily a close fit with every individual case, the LGFS provides a firm with a reasonable overall payment for a 'basket' of cases. The aim is to ensure that overall payments approach the 'mean' over the course of a year. For firms who have a large, mixed caseload, this system works well.
- 5.4 For firms with a smaller caseload, or those with a specialized case mix, the LGFS may increase or decrease the firms' overall payments. In particular, firms who undertake disproportionate amounts of preparation on cases (not related to the length of trial or amount of prosecution evidence) or firms who undertake a greater proportion of longer (11+ day) cases might find that their payments may be less under the LGFS.
- 5.5 Whilst the fees earned by some firms may reduce, we consider that firms will adjust to the new environment and that service supply will be maintained. There is an opportunity for firms to improve their efficiency and work more productively with advocates, minimising unnecessary duplication, increasing cooperation, and ensuring that both litigators and advocates fully understand the cost of their respective functions. Quality measures (such as Peer Review) will need to work alongside the LGFS to ensure that appropriate levels of preparation are being undertaken on Crown Court cases in line with litigators' duties to both their client and the court.

## Client

- 5.6 The LSC believes that the payments under the LGFS will be sufficient to ensure that clients continue to receive a good quality service as at present. However, the LSC recognises that there may be a risk to clients from the altered incentives under the LGFS – encouraging providers to be more efficient under the LGFS has the potential to reward firms for doing 'less work' and this has the potential to affect the quality of service clients receive in some cases. To counter this, the LSC has developed measures, which will assure quality for clients. The performance of all providers will continue to be monitored by peer review and other existing quality controls and appropriate action will be taken by the LSC where providers are found not to be delivering sufficient quality services to clients. The reform programme may reduce the number of providers available to clients but the LSC is still committed to providing a variety of providers in any given area. Clients are therefore likely to continue to have a choice.
- 5.7 Please refer to paragraphs 6.34 – 6.39 for an analysis undertaken by the Legal Services Research Centre (LSRC)<sup>2</sup> who examined data on CDS client ethnicity, and the relationship between client and supplier ethnicity.

## Barristers

- 5.8 The roles of litigators and advocates are different but the proxies used in both AGFS and LGFS are valid for both schemes. The final LGFS takes a similar approach to the AGFS, excluding most additional factors relating to the client.

## LSC and MoJ

- 5.9 The main impacts on the LSC and MoJ revolve around the changes to the payment schemes and the impacts on staffing which are dealt with in paragraphs 5.10 – 5.15.

## HMCS

- 5.10 HMCS, through its NTT and Crown Court staff, are currently responsible for the processing of EPF and standard fee claims for all legal aid defence work undertaken by litigators in the Crown Court.
- 5.11 The final scheme will mean that responsibility for the processing and payment of solicitors' claims for work governed by the new regulations is transferred to the National Courts Team (NCT), within the LSC. The NCT is based in Merseyside and Nottingham. HMCS would continue to be responsible for processing EPF and standard fee claims where the representation order pre-dates the effective date of the new regulations.
- 5.12 Crown Court clerks currently process the standard fee claims submitted by Crown Court litigators. It is understood that this activity comprises only a small portion of the totality of the court work undertaken by these staff, and as such the implementation of the LGFS and subsequent transfer of responsibility to the NCT is expected to have a minimal impact on this group. The support currently provided by Crown Court staff in examining discrepancies in claim information will continue to be required by the NCT.
- 5.13 Responsibility for determination of Crown Court litigators' fees under the EPF scheme currently lies with the NTT. Transfer of this activity to the NCT is likely to have a greater

---

<sup>2</sup> CDS Client Choice: Preliminary Analysis (Ref: DIVNJB-110507), LSRC

impact on this team, as determination of EPF payments comprises a significant proportion of their workload.

- 5.14 However, it is expected that the requirement on NTT staff for processing EPF claims that fall under the current payment scheme will continue for a period of approximately 2-3 years following implementation of the LGFS. In addition NTT staff will continue to perform other non-legal aid Crown Court work.
- 5.15 As such, the reduction in processing of EPF claims is not anticipated to have a significant impact on NTT in the short to medium-term. It is expected that any long-term reduction in resource requirement could be reasonably managed through the non-replacement of staff following natural attrition.

### Costs Draftsmen

- 5.16 Solicitors often use Costs Draftsmen to assess their cases and put together a claim, which can be submitted as a bill to the NTT. Under the LGFS there will be no need to submit a detailed claim, as the payment will be a graduated fee. This will create a saving for providers, possibly up to 6% of the amount allowed on payment for a case under EPF determination. Costs Draftsmen are aware of the proposed introduction of the LGFS.
- 5.17 The LSC has been informed by a member of the Association of Costs Draftsmen that the majority of costs currently assessed by Costs Draftsmen are civil claims and/or private claims. These will continue after the introduction of the LGFS. There are few Costs Draftsmen who specialise in criminal costs.
- 5.18 In terms of future work for Costs Draftsmen with Crown Court billing, there may be some large firms who choose support in billing even with the simplified system being introduced under the LGFS. The Association of Costs Draftsmen has indicated that they will be exploring this avenue.

## **6. Equity and Fairness: Race Equality, Disability Equality, Gender Equality, and Rural Impact**

### **Our Duties**

6.1 The LSC published its Equality Scheme in May 2002, and revised it in 2005. This identifies the Commission's principal functions (relating to service provision and employment), and includes commitments in respect of impact assessments, consultations, monitoring, access to information, training and complaints.

### **Race Equality**

6.2 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.

6.3 The MoJ and LSC are also under a specific duty to include race equality impact assessments of their policies as part of the Impact Assessment, 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**

6.4 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](http://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.

6.5 When carrying out our functions, the MoJ 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.

6.6 From 4th December 2006, the MoJ 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

6.7 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 came into effect on 6th April 2007.

6.8 The MoJ and LSC are now also under a specific duty to conduct gender equality impact assessments of their 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

6.9 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.

6.10 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.

6.11 We have undertaken an analysis of the impacts of the LGFS on urban and rural firms. We have used the same definitions for urban and rural as those recently used in the LSC's lower crime analysis. The split for urban and rural is shown in table 1 below:

Table 1

	<b>No of firms</b>	<b>Vol% by firms</b>	<b>Adjusted Actual Fee Amt%</b>	<b>Calculated Lit Fee Amt%</b>
URBAN	878	44%	66%	62%
RURAL	888	45%	27%	32%
UNKNOWN	215	11%	7%	7%
Total	1,981			

6.12 This table shows that urban firms make up 44% of the volume of firms but account for 66% of the overall Crown Court Litigator's spend under EPF and 62% for the proposed LGFS.

6.13 The impact of the LGFS can be seen in the table 2 below:

Table 2

Urban/Rural	No of firms			Vol% by firms	
	Negative	Positive	Total	Negative	Positive
URBAN	427	451	878	48.6%	51.4%
RURAL	353	535	888	39.8%	60.2%
Total	780	986	1766	44.2%	55.8%

6.14 This table shows that a majority of firms are positively impacted by the LGFS [i.e. they would expect greater fees under the LGFS than they would under EPF] in both rural and urban areas but that rural firms will benefit more. The dataset also includes 11% unknown status of firms (as shown in table 1).

6.15 The monetary impact on firms can be seen in table 3 below:

Table 3

Urban/Rural	Adjusted Actual Fee Amt 000s			Calculated Lit Fee Amt 000s		
	Negative	Positive	Total	Negative	Positive	Total
URBAN	17,402	9,309	26,711	10,418	13,773	24,191
RURAL	5,630	5,352	10,982	4,056	8,340	12,396
Total	23,032	14,662	37,694	14,474	22,113	36,586

6.16 One of the concerns regarding the LGFS particularly for rural firms is the potential for under remuneration due to the fact that travel payments are included in the overall fee. The analysis above, exemplified in table 2 shows that this is not the case and that rural firms are more positively impacted by the LGFS than urban firms. Overall, on average, more firms are positively impacted by the LGFS than EPF as shown in this analysis.

### **Background to Diversity Data**

6.17 Black and minority ethnic ('BME') groups, the disabled, 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 suppliers.

6.18 The Legal Services Research Centre (LSRC) Diversity Report 2006 has provided information on the ethnicity, gender, age, and disability profile of providers of legal aid services, their clients and their employees. This information is based on the results of diversity monitoring forms completed by 44.7% of providers who held legal aid contracts at the time of the study.

6.19 In addition, further activities were undertaken by the LSRC to isolate gender, disability, and ethnicity information on solicitor providers of legal aid in the Crown Court. These findings are provided under the relevant sub-headings below. The 2006 Diversity Report is available on the LSRC website ([www.lsrc.org.uk](http://www.lsrc.org.uk)).

## **Gender**

6.20 Of all solicitors' offices holding crime contracts, findings from the Diversity Report demonstrated that 72.8% had majority male, 12.7% majority female and 14.5% had split managerial control. The Diversity Report also showed that in offices holding crime contracts, 43.5% of solicitor fee earners and 73.6% of all non-solicitor fee earners were female.

6.21 The LSRC examined the impact on remuneration of the final LGFS on the latest dataset. This analysis is provided in Annex A Tables 1 - 2.

6.22 There is no reason to think that there will be any disparate impact of the LGFS based on gender, and the data that is available, confirms this position.

6.23 Of the sample of 1,981 firms who had undertaken Crown Court work, 38.7% had matched data on gender of majority managerial control (563 male, 88 female, 116 split control between male and female).

## **Long-term Limiting Illness or Disability**

6.24 In the 2006 diversity monitoring exercise, there were 6 offices (0.6%) with majority long-term ill or disabled managerial control, and a further 9 with 'split' control, out of a total of 1,063 offices holding crime contracts.

6.25 Of the total 1,850 solicitors' offices (both crime and civil), 55 (3.0%) reported one or more long-term ill or disabled solicitor fee earner. Of these 55, 43 reported just one long-term ill or disabled solicitor fee earner, 11 reported two and 1 reported five. Figures were similar for offices holding civil and offices holding criminal contracts. Of 1,536 offices with valid data on non-solicitor fee-earners, 78 (5.1%) reported one or more long-term ill or disabled non-solicitor fee earners. Of these, 68 reported only one and 10 reported two or more.

6.26 The LSRC examined the impact on remuneration of the final LGFS on the latest dataset. This analysis is provided in Annex B Tables 1 - 2.

6.27 There is no reason to think that there will be any disparate impact of the LGFS based on long-term illness or disability, and the data that is available, confirms this position.

6.28 Of the sample of 1,981 firms who had undertaken Crown Court work, 39.3% had matched data on gender of majority managerial control (5 ill or disabled firms, 765 non-ill or disabled firms, 8 split control between ill or disabled firms and non-ill or disabled firms).

## **Ethnicity**

### **Providers of Legal Aid Services**

- 6.29 The following data shows the frequency and percentage of each ethnicity category amongst all those with managerial control of 1,044 solicitors' offices holding crime contracts in the 2006 Diversity Report dataset.
- 6.30 In total, 11.8% of solicitors with (part or full) managerial control of offices with crime contracts were BME, with a further 4.6% reporting that managerial control was equally split between White British<sup>3</sup> and BME employees. BME firms are largely concentrated in urban areas particularly London. London had 58% of all BME firms 2006 and these firms were 44% of all London firms. The next largest concentration is West Midlands with 16% of all BME firms, which were 19% of all firms in that area. Some regions have very low numbers of BME firms. The North-East, South-West, Merseyside and South-East have 2% or less of BME firms and in no area do BME firms represent more than 3% of all firms in that area. There are substantial parts of the country where there are few if any BME firms. For that reason our analysis looks at London and the national picture. It is impossible to derive statistically significant results for other areas because the numbers of firms are too small.
- 6.31 In the Crown Court sample, 10.8% of firms reported having BME managerial control, with an additional 4.3% of firms reporting split control between White British and BME employees. The slight disparity in the figures nationally is probably due to a small number of firms who do no Crown Court work at all.
- 6.32 The LSRC data shows that BME firms (as defined) are more frequently found in lower fund take (value of legal aid income) categories and that they typically have fewer fee earners. Data also shows that BME firms are much more likely to employ BME fee earners than white British fee earners.
- 6.33 In addition, an overlap was observed between those firms with BME managerial control and those with a majority of BME employees. 74.8% of offices with BME managerial control contained a majority of BME employees.
- 6.34 The 2006 Diversity Report showed 59.1% of 952 solicitors' offices holding crime contracts contained no BME solicitor fee earners. In contrast, 8.5% of the 952 offices contained no white British solicitor fee earners. Of 389 offices with at least one BME solicitor fee earner, 49.6% reported containing no more than one. The 952 offices contained 5,673 solicitor fee earners – an average of 6.0 solicitor fee earners per office. Of these solicitor fee earners, 16.0% were BME.

### **Clients of Legal Aid Services**

- 6.35 Preliminary analysis undertaken by the LSRC<sup>4</sup> examined data on CDS client ethnicity, and the relationship between client and supplier ethnicity.
- 6.36 The LSRC collected data from suppliers via their standard Equal Opportunities Monitoring forms, which request information on ownership/ managerial control and employees (solicitor and non-solicitor) by ethnicity. Data examined was collected from CDS6 returns from the period October 2006 – February 2007.

---

<sup>3</sup> Ethnicity descriptors used by the LSC/LSRC follow the (then) CRE best practice/recommendations

<sup>4</sup> CDS Client Choice: Preliminary Analysis (Ref: DIVNJB-110507), LSRC

- 6.37 When interpreting the data, a reference to a 'White British' firm refers to a firm with White British majority ownership/managerial control, a 'BME' firm to a firm with majority BME ownership/managerial control and a 'split' firm to an equal mix of BME and white British ownership/managerial control.
- 6.38 In addition, analysis shows that although BME clients are more likely than White British clients to use solicitors from firms with BME majority managerial control, when BME clients choose their own solicitor (as opposed to using a duty solicitor) they are no more likely to use a BME majority managed firm than BME clients who use a duty solicitor. This indicates that ethnicity of a majority managerial control may not be a key determinant of BME client choice, but that other factors (such as geography) may play a role. Far more BME clients go to White British firms than to BME firms (see Table 1 below). We suspect that white British firms in areas with large BME populations have a higher proportion of BME clients than in the country as a whole, but we do not have the data to demonstrate that.
- 6.39 Table 1 provides an overview of client ethnicity by supplier ethnicity of majority managerial control.

**Table 1. Client Ethnicity by Supplier Ethnicity of Majority Managerial Control**

	Ethnicity of majority managerial control			Total
	White British Firm	BME Firm	Split Firm	
White British Client	51,716	3,646	3,050	58,412
	88.5%	6.2%	5.2%	100.0%
BME Client	9,834	3,570	1,992	15,396
	63.9%	23.2%	12.9%	100.0%
Unknown Client	46,064	7,031	2,886	55,981
	82.3%	12.6%	5.2%	100.0%

- 6.40 Potential impacts on BME firms of the proposed scheme are examined below. Impacts of change on clients [including those that are disabled] are harder to establish. Our view is that there will be no material impact on clients from the change provided that all firms continue to provide a quality service. We believe that these fees (and other measures like peer review) will provide the necessary mechanisms and incentives to achieve that. We also consider that supply will be maintained and that clients will continue to have a wide choice of representation

## **BME Impact Assessment of Proposals**

### **Background to Analysis**

- 6.41 The original LGFS modelling was undertaken using case data obtained from two sources – HMCS NTT, and AGFS data from the CREST system. Information from both sources was required, as no single system contained the full range of data necessary to enable modelling of the LGFS. As a result, only cases that could be matched between the two systems could be included in the sample. In addition there were limitations to the information available from the AGFS. Specifically, information on cracked trial and guilty plea cases, and larger cases (11+ days duration), which has only now become available following amendments to the AGFS and subsequent regulations in 2004 and 2005. As a result, the availability of information on such cases for inclusion in the sample was limited. This was the data used for the original LGFS modelling and was therefore the data that was examined in the draft Impact Assessment, published alongside the consultation paper, in June 2007.

- 6.42 Therefore, the LGFS was modelled in part against historic data and in part against the VHCC scheme. Historic data informed the modelling of the smaller Crown Court cases (0 day<sup>5</sup> and 1 – 10 day trial length cases). For cases of 11+ days' duration, a very small sample of historic data on these cases was available to the LSC. However, for the reasons outlined above, this sample was far too small to provide any statistically significant data for modelling purposes. In addition, the LGFS has been developed to ensure that the larger Crown Court cases do not receive remuneration at levels exceeding VHCC payment rates. Since 2003 VHCC cases have been subject to strict controls that have significantly reduced average costs. Non-VHCC cases have not been subject to these controls. For these reasons, the VHCC scheme has largely informed our modelling of 11+ day cases. In addition, as there were so few 11+ day cases in the sample, there was a concern that these would provide an incomplete and inaccurate picture of the impact of the LGFS on BME firms. These cases were subsequently removed from the sample of data used in the draft Impact Assessment, to enable more accurate conclusions on the effects of the LGFS on remuneration of 0 – 10 day cases to be drawn.
- 6.43 Accordingly, an impact analysis of the proposed LGFS on cases of 0 – 10 days duration only was undertaken by the LSRC for the draft Impact Assessment, to compare the fees paid to White British, BME and split firms on a case-by-case basis under the EPF regime with those that would be paid under the proposed graduated fee scheme.
- 6.44 Since that time, the LSC and MoJ have run a new data analysis exercise, examining all the cases [including cases lasting 11 days+] billed in the Crown Courts between March and May 2007. This was undertaken to ensure that we are able to examine comprehensively the effects of the LGFS on remuneration for all cases that litigators undertake in the Crown Court. Due to the recent changes to the AGFS<sup>6</sup>, there is now much more information held in the CLAT database. For cases still without the complete case information, a new data collection exercise was undertaken in July 2007 to obtain the outstanding case information from the respective Crown Courts. The purpose of collecting the data was to obtain as much information as possible on the larger Crown Court cases. This amounted to 17,752 claims. Of these claims, 15,445 claims were matched with AGFS data, which made them usable for analysis purposes. These matched claims made up 87% of the sample and 77% of the value of the claims. This means that the new dataset was able to provide a much larger amount of detail for analysis purposes. Therefore, the new 2006/07 dataset has been used in this Impact Assessment.
- 6.45 This data sample has been used to test the LGFS model and to make any small adjustments to the proposed fees to ensure the best fit to historic data.
- 6.46 A full impact analysis of the final LGFS was undertaken by the LSRC, to compare the fees paid to White British, BME and split firms on a case-by-case basis under the EPF regime with those that would be paid under the proposed graduated fee scheme, assuming that firms do not make adjustments to their work profiles and practices in the light of the new fee scheme.

---

<sup>5</sup> 0 day cases are guilty plea cases and cases that crack before trial.

<sup>6</sup> This information is available on cases that commenced after October 2005.

### *Considerations in Evaluating BME data*

- 6.47 Moving from a system of *ex post facto* determination based on hourly rates for work undertaken to any form of standardized payment system will have the effect of reducing overall levels of payments to firms with high average costs under the old payment system and increasing overall levels of payment to firms with pre-existing low average costs.
- 6.48 This will particularly be the case where the pre-existing system of control is weak and there are large variations in average costs between different firms.
- 6.49 In the current case, of the LGFS, as well as standardizing payments we are reducing the overall level of payments. This means that there will be a tendency for there to be a greater proportion of “losers” rather than “winners” under the new scheme than a scheme introduced on a ‘cost neutral’ basis. However, the relative impact on different groups of firms should be similar to that which would occur under a cost neutral scheme.
- 6.50 Nationally firms with majority BME ownership or control earn more from Crown Court work on average than firms with majority white British ownership or control (see Table 6 at page 30). Therefore, in moving to a “standardised” payment system we would expect to see the reduction in fee income for BME majority owned and controlled firms to be greater than that on white British majority owned and controlled firms nationally. In London BME firms’ income from Crown Court cases is on average less than white British-controlled firms on average, and we would expect to see a smaller fee reduction.
- 6.51 In order to understand the drivers for any difference in payments between BME and white British firms the LSC made an initial assessment of each of the basic proxy measures included in the LGFS, to determine whether any trends existed that might cause the proxies to have a greater impact on BME firms<sup>4</sup>. The dataset for this analysis comprised of 60,362 Crown Court cases where the first determination bill was paid in the 2004/05 financial year. Ethnicity information was available in 22,784 of these cases.

### *Multiple Defendants*

- 6.52 There was little evidence of differences in number of defendants between White British and BME majority managed organisations.

### *Pages of Evidence*

- 6.53 There was little evidence of differences in pages of evidence between White British and BME majority managed organisations.

### *Case Type*

- 6.54 There was some evidence of differences in case type between white British and BME majority managed firms. BME majority managed organisations had a higher percentage of trials, comprising 32.8% of cases compared with 26.8% for White British firms.

### *Offence Class*

- 6.55 There were some differences between white British and BME majority managed firms in offence class of their cases. BME majority managed firms showed a higher proportion of Class F offences (other offences of dishonesty), with these comprising 10.4% of total offences compared with 7.5% for white British firms. They also demonstrated a lower percentage of Class E offences (burglary etc), comprising 7.4% of total offences compared with 10.1% for white British firms. However this trend is not expected to create any disparate impact in the remuneration of BME and white British firms under the LGFS.

## Trial Length

- 6.56 There was some evidence of slightly longer trials for the BME majority managed firms' cases when compared to white British firms. This difference was found to just reach statistical significances. Under LGFS shorter trials tend to receive slightly better remuneration than longer trials.
- 6.57 This may, in part, explain the different impact on BME remuneration from that on white British firms, as BME firms tend to manage cases with longer trials and manage less cracked trial and guilty plea cases. Therefore case mix may be a factor in any different impact on BME firms. However, these differences are apparent at a national level analysis. As indicated previously, BME majority owned and controlled firms are concentrated in urban areas and, therefore, these differences may well arise from differences in case mix between rural and urban areas (where the majority of more serious cases occur).

## Analysis of the Final LGFS Scheme

- 6.58 The proposed scheme for litigators in the Crown Court has now been finalised. The proposed scheme does not include uplifts (Option 1 from the Consultation Paper) and is similar to Option 2 from the Consultation paper, but with amendments. Following the collection and analysis of the 15,445 2007 claims, the LGFS has been adjusted slightly to better fit the historic fee. This adjustment was identified in the consultation paper as something that the LSC would undertake following collection of the new data, in order to ensure that the proposed LGFS reflected historic payments as closely as possible. This modelling reflects historic payments but may not reflect future practices if there are changes to working practices in Crown Courts in the future.
- 6.59 This adjustment has involved reducing some of the base fees to reflect a better payment for some simpler cases, and to increase the PPE uplift on some of the more serious offence types. This means that implementation of the full Option 2, increasing the base fee by 12.5%, was not possible. However, the proposed scheme reflects a reduction of £11m from the 2006/07 *ex post facto* figures, rather than a £28m reduction, which was originally anticipated.
- 6.60 The LSC is now able to draw some conclusions about the potential impacts on firms with majority BME ownership or control of the final LGFS, due to the larger and more reliable dataset available for analysis. Because of the small numbers of firms in particular areas outside London it is only possible to analyse the London and national pictures.
- 6.61 The LSRC examined the impact on remuneration of the final LGFS on the latest dataset. This analysis is provided in full in Annex C Tables 1 - 6.
- 6.62 Tables 1 – 3 focus on London data. Table 1 has been included for completeness but the apparent differences in impact– which are close for winners and losers (or binary impact) – are not statistically significant. This means that for the figures in the table, there is no evidence that any particular ethnic group will see an impact different to any other.
- 6.63 Tables 2 and 3 shows that BME firms in London earn less than white British firms on average from Crown Court work, but will also lose rather less income as a result of the introduction of LGFS than white British firms. In fact when the mean impact is calculated for the new scheme, and this is weighted for each firm's experience, we see a positive impact, which is slightly higher for BME firms than for white British (8.58% compared to 7.47%). Various other figures are given which show slightly different pictures. Our view,

on the basis of the evidence, is that the impact on BME firms in London is no worse than on white British firms.

- 6.64 Table 4 shows binary impact (winners and losers) nationally. The proportions of winners (BME – 38%, white British 61%) and losers (BME – 62%), white British 39%) are disproportionate. In terms of monetary impact (table 5) BME firms lose a (mean) average of £3,649 compared with a loss of £32 by white British firms. The median figures are £-1070 and £577 respectively.
- 6.65 However these figures must be seen against the fact that nationally, BME firms earn more from Crown Court work than white British firms. Their income will therefore tend to be more affected than that of white British firms. According to table 6, BME firms earn £25,684 on (mean) average compared with £18,445 for white British firms nationally. These figures change to £22,034 (BME) and £18,413 (white British) under the LGFS. We believe this reflects the fact that these firms have a higher turnover and take on cases that turn out to be longer.
- 6.66 Second BME firms in London (the majority of BME firms) seem to be affected in much the same way as white British firms. That pattern is not repeated nationally where BME firms seem to do less well than white British firms. We are not able to repeat the London analysis in other areas with concentrations of BME firms and cannot confirm whether the same pattern holds in (for example) the West Midlands as in London. This is because the numbers of BME firms are small and statistically valid analysis is not possible. The national comparison of largely urban BME firms with white British firms in all areas tends to show a differential impact. But where BME firms are a higher proportion of the total in an urban area like London the comparison with white British firms in the same area shows a balanced picture. This is perhaps to be expected given the differential impact between rural and urban firms (see Table 2 page 15). It is likely that nationally the differential impact stems from different rural/urban patterns of cases.
- 6.67 Given that, as set out above at paragraph 6.65, we do not consider that the picture apparently demonstrated above by the national level analysis is wholly representative, we cannot be sure that there will be any disproportionate adverse impact on BME firms outside of London. However, to the extent that this might be the case, we believe that any disproportionate impact of the LGFS on BME firms can be justified. In particular, we would rely on the inherent advantages of the LGFS set out at paragraph 2.1. These are:
- To pave the way for best value tendering and introduction of a single fee for advocates and litigators in the Crown Court;
  - To reduce inefficiency and minimise duplication between work done by litigators and advocates;
  - To ensure a high quality, sustainable supplier base that enables efficient legal aid providers to prosper;
  - To enable forecasting of expenditure in Crown Court cases;
  - To provide greater certainty to litigators around the timing and value of payments;
  - To implement cost control and generate savings against current legal aid expenditure, in order to secure a sustainable future for Legal Aid and safeguard the provision of civil and family legal aid services;
  - To maintain the provision of quality legal services for clients; and
  - To ensure the Government and taxpayer receive value for money

- 6.68 The impact on firms from LGFS must be seen alongside the impact of changes to the Magistrates' court fees (in major urban areas April 2007) and police station fees (proposed January 2008). The relevant sections regarding BME impacts for these two policies are attached at Annex D (Magistrates' court revised standard fees and Annex E (police station Race Equality Impact Assessment). These are also available on the LSC website. The LSC will shortly show this data in a single place.
- 6.69 It is acknowledged that the LGFS is the third policy change and therefore the third adjustment to the working practices of providers operating within the Criminal Defence Service. As such the cumulative impact of the reforms must be considered in addition to the impact of each policy. By standardising provider costs we accept that cumulatively these policies will have the greatest impact on the most expensive providers operating within the urban areas. It is these providers who will suffer the greatest financial loss. This loss is irrespective of ethnicity issues.
- 6.70 This cumulative impact can be justified by our policy objectives, which include implementing cost control within the current legal aid expenditure, in order to secure a sustainable future for Legal Aid and safeguard the provision of civil and family legal aid services.
- 6.71 We do not consider that this impact will in fact materialize to the level suggested using historical data, as the new fee structures aim to encourage more efficient practices and more local working. We therefore anticipate that firms will adjust their working patterns with better planning and co-ordination in terms of travelling and waiting time. The impact will also be reduced by administrative savings through a reduction in the time taken to prepare bills. In addition, providers will also benefit in terms of their cash flow.
- 6.72 We will keep the LGFS under review and will continue to monitor the cumulative ethnicity impact as part of our wider commitment to equality proof the legal aid reforms. The LSC is currently carrying out a full impact assessment on all the legal aid reforms to determine the actual/cumulative impact of the reforms on the provider base. The results of this assessment will be published shortly.

## **7. Small Firms Impact Test**

- 7.1 Cabinet Office guidelines for the Small Firms Impact Test indicate that any organisation with fewer than 250 employees is considered small.
- 7.2 Almost all legal and advice service providers fall into the category of small firms. As such, no disparate impact on small firms is anticipated as a result of these proposals.
- 7.3 The interests of these firms are represented by a number of representative bodies, including The Law Society, the Legal Aid Practitioners' Group, the Advice Services Alliance and others. The LSC has been, and will continue to be, engaged with these groups on both an informal and formal basis to gain as much practitioner input as possible into any proposals. In particular, since November 2006 the LSC has engaged the Law Society and others in more detailed consideration of the possible changes to the LGFS following responses to consultation on the Carter report.

## 8. Competition Assessment

8.1 The key market affected by these proposals is that of Solicitors' firms undertaking legal aid work in the Crown Court.

8.2 The Cabinet Office Competition Filter Test was applied to the LGFS, to determine the likely impact of the proposals on the legal aid market. Of the nine impact measures identified by the test, the LGFS tested positive against only two. Cabinet Office guidelines suggest that this would indicate the proposals are likely to have little or no effect on competition.

8.3 The LGFS returned a positive result against the following two measures:

- *Question 4 – Would the costs of the regulation affect some firms substantially more than others?*

Yes. The LGFS is based on a 'swings and roundabouts' principle, which is more effective in remunerating firms with a larger caseload as this will better enable payments to approach the mean over a year. For firms with a smaller caseload, or those with a specialized case mix, the LGFS may increase or decrease the firms' overall payments. In particular, firms who undertake disproportionate amounts of preparation on cases (not related to the length of trial or amount of prosecution evidence) or firms who undertake a greater proportion of longer (11+ day) cases might find that their payments may be less under the LGFS.

- *Question 5 – Is the regulation likely to affect the market structure, changing the number or size of firms?*

Yes. As the LGFS remunerates more effectively for firms with a larger caseload, it is anticipated that the size of firms participating in the market will begin to increase over time.

## 9. Legal Aid Impact Test

9.1 The proposals in the Consultation Paper will have a direct impact on the level of spending incurred by the Commission on litigator work in the Crown Court, as the Commission seeks to realise savings of approximately £11m in the first full financial year from the introduction of the fee. Savings generated in the future will stem from the cessation of escalating costs year on year.

## 10. Compensatory Simplification

10.1 The Cabinet Office has published interim guidance on compensatory simplification, to be applied when producing 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.

10.2 It is believed that this scheme will provide a clearer system for all legal service providers with increased certainty around the value and timing of payment for each case, reward efficient providers, and simplify the claims process.

- 10.3 The IT system which accompanies the scheme will enable the current multiple payment process to be simplified to a single system for all work with the exception of a small number of very high cost cases. It will also provide more detailed information on payments, which will enable these to be managed and forecast more accurately by both providers and the LSC.
- 10.4 This focus on value for money will enable the LSC to improve sustainability of legal aid funding and will, in particular, allow the LSC to focus on achieving best value for our clients.
- 10.5 The proposals may also have an effect on improving the efficiency of the wider CJS and the ability of the CJS to achieve its goal of Delivering Simple, Speedy, Summary Justice, as the shift in payment based on inputs to outputs could provide an increased incentive for litigators to reduce inefficiency and minimize duplication with the work done by Advocates.
- 10.6 The proposals do not provide firms with any additional regulatory burdens.

## **11. Enforcement, Sanctions and Monitoring**

- 11.1 The LSC will continue to monitor the quality and availability of providers on an ongoing basis following implementation using a range of key performance indicators and audit methods, to assess any impacts of the scheme.

## **12. Contact Details**

- 12.1 Please direct any queries or comments concerning this draft IA to:

Kirsten Alderson  
CDS Policy Team  
Legal Services Commission  
12 Roger Street  
London WC1 2JL

Email: [cds.directorate@legalservices.gov.uk](mailto:cds.directorate@legalservices.gov.uk)

Fax: 0207 759 1060

## Specific Impact Tests: Checklist

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

## Annex A – Gender Impact Assessment Data

### Analysis of final LGFS

The difference in impact between gender majority managed firms was not significant.

Table 1. Binary impact of final LGFS by gender of majority managerial control.

Gender of majority managerial control	Binary impact		Total
	Negative	Positive	
Male control	229	334	563
	40.7%	59.3%	100.0%
Female control	42	46	88
	47.7%	52.3%	100.0%
Split	49	67	116
	42.2%	57.8%	100.0%
Total	320	447	767
	41.7%	58.3%	100.0%

Table 2. Summary statistics for monetary and percentage impact of the LGFS, split by gender of majority managerial control, on providers.

		Gender of majority managerial control		
		Male	Female	Split
Monetary impact (£) (per case)	Mean	-850.85	782.12	1013.29
	Standard Error of Mean	1081.54	813.05	1241.04
	Median	414.40	233.58	420.38
	Percentile 25	-1909.49	-1409.97	-1318.82
	Percentile 75	3899.92	2904.40	3296.03
	<i>Number of 'matched' firms</i>	563	88	116
Percentage impact (%) (per case)	Mean	34.33	35.36	32.20
	Standard Error of Mean	4.81	17.11	7.47
	Median	12.14	4.34	10.98
	Percentile 25	-19.14	-21.39	-19.31
	Percentile 75	58.11	43.10	62.51
	<i>Number of 'matched' firms</i>	563	88	116

## Annex B – Disability Impact Assessment Data

### Analysis of final LGFS

The differences in impact between disability status of majority-managed firms was not significant. However, there were only 5 ill or disabled majority managerial controlled firms; this is too a small number for making generalizations.

Table 1. Binary impact of final LGFS by disability status of majority managerial control on Providers

Disability status of majority managerial control	Binary impact		Total
	Negative	Positive	
Ill or disabled	3	2	5
	60.0%	40.0%	100.0%
Non-ill or disabled	320	445	765
	41.8%	58.2%	100.0%
Split	3	5	8
	37.5%	62.5%	100.0%
Total	326	452	778
	41.9%	58.1%	100.0%

Table 2. Summary statistics for monetary and percentage impact of the LGFS, split by disability status of majority managerial control, on Providers

		Disability status of majority managerial control		
		Ill or disabled	Non-ill or disabled	Split
Monetary impact (£) (per case)	Mean	-366.26	-419.87	935.58
	Standard Error of Mean	1598.10	823.51	1837.90
	Median	-1673.27	402.71	823.94
	Percentile 25	-2581.07	-1642.20	-1539.92
	Percentile 75	486.78	3799.96	1599.98
	<i>Number of 'matched' firms</i>	5	765	8
Percentage impact (%) (per case)	Mean	26.63	33.70	25.50
	Standard Error of Mean	34.93	4.19	27.19
	Median	-19.51	10.55	27.89
	Percentile 25	-21.33	-20.17	-40.31
	Percentile 75	91.83	57.44	58.32
	<i>Number of 'matched' firms</i>	5	765	8

Again, these numbers are small for making generalizations.

# Annex C – BME Impact Assessment Data

## BME London Firm Analysis

Of the sample of 405 account numbers, 212 had matched data on ethnicity of majority managerial control.

There were no statistically significant differences in binary impact between White British and BME majority managed firms.

Table 1. Binary impact of final LGFS by ethnicity of majority managerial control.

Ethnicity of majority managerial control	Binary impact		Total
	Negative	Positive	
White British	50	45	95
	52.6%	47.4%	100.0%
BME	53	36	89
	59.6%	40.4%	100.0%
Split	15	13	28
	53.6%	46.4%	100.0%
Total	118	94	212
	55.7%	44.3%	100.0%

Table 2. Summary statistics for monetary and percentage impact of the final LGFS, split by ethnicity of majority managerial control, on Providers

		Ethnicity of majority managerial control		
		White British	BME	Split
Monetary impact (£)	Mean	-4298.69	-1553.35	-3875.09
	Standard Error of Mean	4190.89	1572.79	6628.41
	Median	-152.96	-891.39	-898.45
	Percentile 25	-8436.11	-3846.50	-8355.74
	Percentile 75	7348.03	2258.18	3098.43
	<i>Number of 'matched' firms</i>	95	89	28
Percentage impact (%)	Mean	7.47	8.58	15.98
	Standard Error of Mean	5.82	11.37	13.52
	Median	-2.34	-16.35	-8.15
	Percentile 25	-31.08	-38.89	-26.22
	Percentile 75	37.24	17.83	38.20
	<i>Number of 'matched' firms</i>	95	89	28

Table 3. Summary statistics for EPF and LGFS, split by ethnicity of majority managerial control

		Ethnicity of majority managerial control		
		White British	BME	Split
EPFt	Mean	42215	25468	38832
	Standard Error of Mean	6129	3696	10736
	Median	23516	12543	23182
	Percentile 25	8794	5055	6393
	Percentile 75	50519	30682	38662
	<b>Valid N</b>	95	89	28
LGFS	Mean	37917	23914	34957
	Standard Error of Mean	4703	3521	8301
	Median	22343	9889	17859
	Percentile 25	9181	3723	7163
	Percentile 75	47723	32196	48907
	<b>Valid N</b>	95	89	28

## BME National Analysis

Table 4. Binary impact of LGFS by ethnicity of majority managerial control, on Providers.

Ethnicity of majority managerial control	Binary impact		Total
	Negative	Positive	
White British	242	382	624
	38.8%	61.2%	100.0%
BME	61	38	99
	61.6%	38.4%	100.0%
Split	16	25	41
	39.0%	61.0%	100.0%
Total	319	445	764
	41.8%	58.2%	100.0%

Table 5. Summary statistics for monetary and percentage impact of the LGFS, split by ethnicity of majority managerial control, on Providers

		Ethnicity of majority managerial control		
		White British	BME	Split
Monetary impact (£) Per case	Mean	-31.84	-3649.06	2430.46
	Standard Error of Mean	931.92	2095.79	2942.53
	Median	576.85	-1069.73	199.96
	Percentile 25	-1207.75	-4613.03	-1992.83
	Percentile 75	3895.46	2310.35	3953.30
	<b>Valid N</b>	624	99	41
Percentage impact (%) Per case	Mean	37.58	3.29	39.07
	Standard Error of Mean	4.74	8.56	14.26
	Median	14.47	-15.96	10.97
	Percentile 25	-17.30	-39.84	-7.19
	Percentile 75	61.89	20.17	42.46
	<b>Valid N</b>	624	99	41

Table 6. Summary statistics for EPF and LGFS, split by ethnicity of majority managerial control

		Ethnicity of majority managerial control		
		White British	BME	Split
EPF	Mean	18445	25684	23329
	Standard Error of Mean	1459	3567	4212
	Median	7761	12543	18151
	Percentile 25	2845	5055	5509
	Percentile 75	18535	31001	34544
	<b>Valid N</b>	624	99	41
LGFS	Mean	18413	22034	25760
	Standard Error of Mean	1162	3019	4603
	Median	9028	8605	18910
	Percentile 25	3459	4248	5443
	Percentile 75	21430	28741	31749
	<b>Valid N</b>	624	99	41

## Annex D

### Magistrates' Court Revised Standard Fees Final Regulatory Impact Assessment

#### Race Equality Impact Assessment

- 1.1. The LSC takes seriously its obligations under the Race Relations Act 1976 and has conducted annual surveys examining the ethnic mix of its supplier base. These surveys, conducted by the Legal Services Research Centre (LSRC) examine the diversity of those working within LSC contracted and quality marked organisations. The surveys are conducted at the organisation level. The LSRC has conducted surveys on diversity of the supplier base since 2000 and published annual diversity reports<sup>7</sup>.
- 1.2. The LSC has decided to collect diversity information for all service providers, and this is a contractual requirement outside of London. London providers work under a different contract, and will be encouraged to submit this information. This will allow us to collect comprehensive data on providers and increase our confidence in the conclusions that we are able to draw on the impact of policy interventions.
- 1.3. The LSC has also set up a Supplier Diversity Reference Group, which includes a wide range of representative and practitioner based groups, including the Commission for Racial Equality, Bar Council and the Law Society. The aim of the reference group is to help advise and act as a critical friend to the LSC as we develop our vision and strategy for the promotion of diversity in all its forms in and amongst the providers and clients of legally aided services and in meeting our statutory duties.
- 1.4. Respondents to the consultation on the contract amendments did not raise concerns that there would be a disparate impact on BME firms as a result of this scheme.
- 1.5. Information collected by the LSRC was used to classify firms by majority ownership or control<sup>8</sup> into majority BME and majority white British. Most BME owned and controlled firms, as defined in this way, are located within the major urban areas, which have been chosen as most suitable for implementation, and so will fall under the revised fees.
- 1.6. The financial impact analysis was compared with the classification of firms based on the LSRC data. Data was held on 39% of the firms based in the 16 urban areas.
- 1.7. Nationally the impact on white British owned and controlled firms is an 8% reduction in income from magistrates' court work, whilst the impact on BME owned and controlled firms is a 15% reduction.
- 1.8. It is currently possible to analyse the impact in two of the areas in which the fees will apply, London and the West Midlands. Outside these areas the small number of BME firms and the corresponding lack of data does not allow for a statistically valid analysis to be made.
- 1.9. In London, which has the largest concentration of BME-owned and controlled firms, a small disparity in impact was observed, with an average reduction of 19% in income from magistrates' court work for BME owned and controlled firms, compared to a 17% reduction for white British firms.

---

<sup>7</sup> Available from [www.lsrc.org.uk](http://www.lsrc.org.uk)

<sup>8</sup> The LSRC equal opportunities monitoring form asks respondents 'How many people **Own** or have **Managerial Control** of your **office**' (emphasis in original) and requests gender, age and ethnicity information about these people. Ownership and control is therefore self-defined.

- 1.10. In the West Midlands the disparity in impact was a reduction in income of 10% from magistrates' court work for BME firms, compared to 4% for white British firms.
- 1.11. However, examining potential impact by ethnicity of ownership and managerial control does not take account of the ethnicity of other fee earners in the firm. To gain a fuller picture of the potential impact of the scheme on BME fee earners and clients, further analysis was undertaken based on the proportion of BME fee earners at a firm.
- 1.12. On a national level, the impact on firms with at least one BME fee earner is a reduction of 12%, whilst the impact on firms with no BME fee earners is a 5% reduction.
- 1.13. In London, there was no statistically significant difference in percentage impact between firms that had at least one BME fee earner and those that had no BME fee earners. This may be the result of there only being a small number of firms in London with no BME fee earners.
- 1.14. In the West Midlands, the impact on firms with at least one BME fee earner is a reduction of 6%, whilst the impact on firms with no BME fee earners is a 3% reduction.
- 1.15. While looking at firms employing at least one BME fee earner is a useful indicator of potential impact on fee earners, it does not take account of the distribution of BME fee earners between firms. To gain a greater understanding of the possible impact of the scheme on BME fee earners, analysis was also carried out to compare the impact on firms with 20% or more BME fee earners to the impact on firms with less than 20% BME fee earners.
- 1.16. Nationally, the reduction for firms with 20% or more BME fee earners was 14%, compared to a 6% reduction for firms with less than 20% BME fee earners. The national impact may be affected by the concentration of BME fee earners in London, where the impact of the scheme will be larger.
- 1.17. In London, firms with 20% or more BME fee earners experienced a 19% reduction compared to a 14% reduction for firms who employed less than 20% BME fee earners.
- 1.18. In the West Midlands, the reduction for firms with 20% or more BME fee earners was 7%, compared to a 3% reduction for firms with less than 20% BME fee earners.
- 1.19. We will continue to monitor the ethnicity impact of the scheme as part of our wider commitment to equality proof the legal aid reform programme.
- 1.20. The new fee structure aims to encourage more efficient and more local working. These are aims which will also apply to BME-owned and controlled firms. These fee proposals are essentially those proposed by Lord Carter and were endorsed by the Government and the LSC. As Lord Carter's review stated:
- 'There may be some disparity of impact at regional level. It is considered, however that the recommendations are justified by the need to control legal aid spending and to promote efficiency of service in the public interest. It is considered that the recommendations constitute a proportionate means of securing a legitimate aim.'
- 1.21. Following our analysis of the likely impact and benefits of the scheme, the Government and the LSC endorse this view. Criminal legal aid expenditure has risen considerably under the current system, placing unsustainable pressure on both criminal and civil expenditure. This reform is required to bring travel and waiting expenditure under control, as part of the wider reform programme to re-balance legal aid spending and put the system on a sustainable footing. If we do not do this services to clients will suffer as scope and eligibility come under increased pressure.

- 1.22. When considering the impact of the scheme it was noted, as stated above, that respondents to the consultation on the contract amendments did not raise concerns that there would be a disparate impact on BME firms as a result of this change.
- 1.23. It should be borne in mind that the impact is solely on the travel and waiting elements of cases. These are costs, which can be controlled in part by providers and in part by the bodies that make up the criminal justice system.
- 1.24. The LSC and DCA are determined to reduce unnecessary costs imposed on providers by the criminal justice system. Both bodies are taking vigorous action at both national and local level to achieve this. These will benefit all providers and help reduce the impact of change.
- 1.25. A substantially larger proportion of criminal legal aid lawyers are BME (16%) than the proportion of all solicitors who are BME (9%)<sup>9</sup>. The LSC attaches particular importance to promoting and protecting this group. The amendments to the general criminal contract include requirements that all providers do not unlawfully discriminate and use reasonable endeavours to assist the LSC to comply with its statutory obligations. The contract also includes an Equality and Diversity Annex setting out specific requirements including the need for contractors to have an equality and diversity policy which is actively monitored, an equality and diversity training plan and a communications plan. The LSC is expanding its internal resource and expertise in this area so that it can monitor, assess and promote diversity in providers.
- 1.26. To enable BME clients to access services the LSC continues to make interpretation facilities available everywhere. Where there are communities which may require particular services, (e.g. lawyers from the same group), contractors' equality and diversity plans will be expected to address the provision of services to those groups.

---

<sup>9</sup> Law Society: Minority ethnic group solicitors 2004, Fact sheet information series

# Annex E

## Police Station Race Equality Impact Assessment

One specific consideration applies to BME clients. Anecdotal evidence, and evidence from civil legal aid, suggests that BME clients tend to prefer to be represented by BME lawyers.

Analysis has been undertaken to model the potential impact of the new fees when the ethnicity of the management was taken into consideration. Firms were grouped into three main categories, these are:

Majority White British managerial control  
Majority BME managerial control  
Managerial control split between BME and White British

Once firms were allocated to a category, analysis was carried out to examine the effects of the new fee structure both, on a national basis and also within the three main scheme groupings of rural, urban and London.

Tables 1 to 4 below contain the results of the analysis; the tables show the impact of the new fees on suppliers in terms of both monetary impact and percentage impact. The fee levels for urban and London schemes have been reduced to ensure the 8 million pounds savings are achieved.

When examined on a national basis the new fee structure seems to benefit the firms that are white British majority controlled, while both split controlled and BME majority controlled firms seem to be worse off in terms of percentage impacts. This pattern of results is also reflected in the results for suppliers in rural schemes.

In schemes which have been classed as urban, the results indicate that while suppliers in all three categories are impacted by a percentage reduction due to the reduction being applied, the greatest impact falls on the split controlled suppliers, the percentage decrease for BME and white British suppliers is significantly less.

The data for London schemes again indicates that all suppliers in all categories are impacted by a percentage reduction due to the reduction being applied, the greatest impact falls on White British controlled suppliers, BME controlled suppliers are not impacted as much as White British controlled suppliers, while split controlled firms are significantly less impacted than the other two supplier categories.

**Table 1: Impacts of proposed new fees on BME suppliers (national)**

Ethnicity of majority managerial control	Claims	Costs	£ Impact	% Impact
White British Suppliers	265.29	63,914.26	461.81	5.47
BME Suppliers	250.61	68,717.82	-6,645.49	-5.01
Split	366.73	98,482.45	3,688.49	-3.08

**Table 2: Impacts of proposed new fees on BME suppliers (rural)**

Ethnicity of majority managerial control	Claims	Costs	£ Impact	% Impact
White British Suppliers	236.51	54,153.30	3,170.22	10.55
BME Suppliers	295.63	74,549.61	-1,396.74	-1.94
Split	271.10	61,385.35	1,537.30	3.10

**Table 3: Impacts of proposed new fees on BME suppliers (urban)**

Ethnicity of majority managerial control	Claims	Costs	£ Impact	% Impact
White British Suppliers	289.10	65,154.84	-2,424.21	-2.30
BME Suppliers	304.51	70,930.85	-6,656.93	-5.66
Split	429.25	98,671.01	-2,900.17	-8.48

**Table 4: Impacts of proposed new fees on BME suppliers (London)**

Ethnicity of majority managerial control	Claims	Costs	£ Impact	% Impact
White British Suppliers	400.18	128,931.25	-9,723.88	-6.46
BME Suppliers	202.31	65,451.95	-8,328.58	-5.60
Split	364.42	117,848.45	-7,103.53	-1.79

Following on from the impact analysis based on the total costs of suppliers further analysis was undertaken to compare the costs for the three categories of suppliers over the constituent components of profit costs, travel costs and waiting costs, which make up the new fee.

Tables 5 to 8 contain the results of this further analysis; again this analysis was carried out on a national basis and also within the three main scheme groupings of rural, urban and London.

When the travel and waiting costs for each category of supplier were examined on a national basis, BME suppliers had the highest average costs at £83.78, followed by split controlled suppliers at £72.78, while white British suppliers had the lowest average costs at £50.86. As travel and waiting costs are now combined within the fixed fees, suppliers with high average costs in these two categories are likely to incur a greater impact in terms of costs. This data supports the data in table 1 which indicates that BME suppliers are impacted by a greater percentage reduction than the other two categories of supplier.

The average travel and waiting costs for rural schemes mirror the results for the national data. Again BME suppliers have the highest average costs at £54.53, followed by split suppliers at £44.02, while white British suppliers had the lowest average costs at £40.20. This data supports the data in table 2, which indicates that BME suppliers are impacted by a greater percentage reduction than the other two categories of supplier.

The average travel and waiting costs for supplier in the urban and London schemes do not follow the same observed patterns in the national or rural scheme data. It seems that the reductions in fees applied in these two schemes affect the interaction between average travel and waiting costs and percentage impacts meaning that different interactions exist.

In urban schemes, BME suppliers have the highest average travel and waiting costs at £62.66, followed by split controlled suppliers at £49.64, while white British controlled suppliers have the lowest average cost at £47.97. However the data in table 3 indicates that split suppliers are impacted by the greatest percentage reduction. This illustrates the impact of reducing the fees in some urban schemes. It seems from this data these reductions are driving the impacts of the fees rather than travel and waiting costs.

In the London schemes, BME suppliers have the highest average travel and waiting costs at £117.85, followed by split controlled firms at £105.76 while white British controlled suppliers have the lowest average cost at £101.66. However the data in table 4 indicates that white British suppliers are impacted by the greatest percentage reduction. This illustrates the impact of reducing the fees in some urban schemes. It seems from this data these reductions are driving the impacts of the fees rather than travel and waiting costs.

**Table 5: Impact of total costs on BME suppliers (national)**

Ethnicity of majority managerial control	Profit Costs	Travel Costs	Waiting Costs	Total Costs
White British Suppliers	55,559.62	13,751.35	3,872.27	73,183.24
BME Suppliers	56,321.33	18,511.85	8,107.18	82,940.36
Split	79,622.54	24,813.23	8,944.89	113,380.66

**Table 6 Impact of total costs on BME suppliers (rural)**

Ethnicity of majority managerial control	Profit Costs	Travel Costs	Waiting Costs	Total Costs
White British Suppliers	47,495.99	10,122.81	2,305.92	59,924.73
BME Suppliers	61,644.39	15,353.61	5,071.13	82,069.13
Split	52,553.17	12,344.89	2,728.79	67,626.85

**Table 7: Impact of total costs on BME suppliers (urban)**

Ethnicity of majority managerial control	Profit Costs	Travel Costs	Waiting Costs	Total Costs
White British Suppliers	59,616.87	14,648.96	3,499.19	77,765.02
BME Suppliers	65,691.07	18,933.55	5,900.62	90,525.24
Split	85,739.57	21,124.59	5,241.73	112,105.89

**Table 8: Impact of total costs on BME suppliers (London)**

Ethnicity of majority managerial control	Profit Costs	Travel Costs	Waiting Costs	Total Costs
White British Suppliers	99,516.94	36,242.67	15,802.83	151,562.44
BME Suppliers	48,612.80	19,297.53	10,516.68	78,427.01
Split	88,718.40	34,481.47	15,334.98	138,535.11

### New Boundary Areas

The revised boundary areas of themselves do not impact on providers.

Legal Services Commission  
85 Gray's Inn Road  
London WC1X 8TX

[www.legalservices.gov.uk](http://www.legalservices.gov.uk)

Consultation responses or general  
enquiries can be emailed to:  
[cds.directorate@legalservices.gov.uk](mailto:cds.directorate@legalservices.gov.uk)