

Cumulative Impact Assessment: Legal Aid Reform Programme (Phase 1)

*Criminal
Defence Service*



*Community
Legal Service*



December 2007

Legal Services Commission

Cumulative Impact Assessment:

Legal Aid Reform Programme (Phase 1)

Foreword

Legal aid plays a central role in the justice system, helping to protect and safeguard the rights of over 2 million people every year, including some of the most vulnerable people in our society.

Legal aid practitioners - solicitors' firms, advocates and advisers – play a crucial role, working to deliver legal aid services to their clients and to deliver an effective justice system that the public can trust.

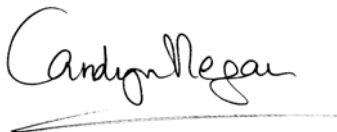
As the public body entrusted with managing the £2billion budget for legal aid, the Legal Services Commission has a special responsibility – to ensure that the system is fair to all: to clients, to legal aid providers and to the taxpayer.

This cumulative impact assessment outlines the possible financial and equalities impacts of the reform programme so far, considering:

- The combined impact of all crime reforms to date
- The combined impact of all civil reforms to date
- The combined impact of all crime and civil reforms combined

The impacts measured assume that providers will not change their working practices, whereas many have already begun to do so. For these providers the possible adverse impacts will be mitigated.

The assessment can be used by providers to understand the range of impacts that the reform programme can have, and the scope for providers to benefit financially under these schemes. It demonstrates that, provided services are delivered efficiently, legal aid work can continue to be profitable for providers prepared to adapt to the reforms.



Carolyn Regan,
Chief Executive, Legal Services Commission

10 December 2007

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Foreword by Carolyn Regan, Chief Executive

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1. Introduction

- 1.1 This Impact Assessment (IA) has been produced to show the cumulative impact of the Phase 1 Legal Aid Reform Programme across both the Criminal Defence Service (CDS) and the Community Legal Service (CLS).
- 1.2 The production of this IA was announced by Vera Baird in Parliament on 9 May 2007, when she stated 'I intend to ask the LSC to commit to a full retrospective regulatory impact assessment on the full reform programme in phase 1 so that we can see cumulatively the impact that it will have alongside the consultation on best value tendering'¹. The IA should be considered in its own right, and alongside the recently published best value tendering consultation paper² and impact assessment.
- 1.3 The scope of the IA includes assessments of the financial and equalities impacts of the reforms that have already been implemented and those that are due to be implemented before the end of 2007/8.
- 1.4 Many of the schemes that are the subject of this assessment are yet to be implemented or have been in place for a short time, meaning that there is insufficient claim data to allow for a retrospective analysis of actual impact. Therefore the analysis has been conducted by applying new rates to claims remunerated under the old systems. As a result, all impacts shown are notional only, in that they cannot reflect the changes in provider behaviour that the schemes are designed to encourage once implemented.
- 1.5 We would expect significant behavioural change as the drivers for remuneration have changed. These schemes represent a move from hourly rates to fixed fees, or in the case of TFF Replacement a fixed fee based on an individual provider's hourly claims to a fixed fee based on national averages. As such we would expect wholesale practice changes that will determine the real impacts of these schemes, which cannot be taken into account as part of this analysis.
- 1.6 However, despite the limitations of this form of analysis it can properly be used to illustrate the range of financial impacts that might be seen under the new fee schemes. This range of impacts, and therefore provider costs, shows that there is considerable scope for providers to influence the impact of the schemes through their delivery practices, and this analysis can help providers understand what is achievable under the new schemes.
- 1.7 The CDS reforms considered in this IA are those that were implemented in April 2007 (Magistrates' Court Revised Standard Fees and the Advocates Graduated Fee Scheme) and those due to be implemented in January 2008 (Police Station Fixed Fees, DSCC Expansion, CDS Direct and VHCC Best Value Panel).
- 1.8 The CLS reforms considered are the fee schemes that were implemented in October 2007 (TFF Replacement, Immigration and Asylum Standard Fee Scheme, Family Help Private Fee Scheme and Care Proceedings Graduated

¹ www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070509/halltext/70509h0009.htm

² Best Value Tendering of Criminal Defence Services: A Consultation Paper, December 2007

Fee Scheme) as well as the Mental Health Fee Scheme that will be introduced in January 2008.

- 1.9 The impacts of these reforms on CDS and CLS providers are considered both separately and collectively and are intended to allow both the Legal Services Commission (LSC) and its providers to assess the effect of the reforms on the legal aid market.
- 1.10 Summary findings are contained in the main body of the document with detailed analysis provided in the attached annexes.
- 1.11 It should not be thought that this IA represents the end of the process of monitoring and assessing the impacts of the schemes assessed here. The LSC will continue to monitor the impact of the reform programme, including those reforms due to be implemented in January 2008, and any later reforms. It will continue to publish its assessments as appropriate and, when consulting on any further stages of the reform programme, will invite representations on any further data gathered and analysis undertaken.

2. General Background

- 2.1. *'A Fairer Deal for Legal Aid' (July 2005)*, set out the Government's long-term strategy for legal aid, and announced that Lord Carter of Coles would be commissioned to conduct an independent review of legal aid procurement. The review's remit was to deliver a system that would achieve value for money, whilst ensuring quality and the fairness of the justice system.
- 2.2. Lord Carter published his final report on 13 July 2006 recommending a move towards competition to reward good quality, efficient practitioners by providing them with the opportunity to grow through access to increased volumes of work.
- 2.3. At the same time the Department for Constitutional Affairs (DCA, Ministry of Justice from 9 May 2007, MoJ) and LSC published a joint consultation paper on the proposals, *'Legal Aid: A Sustainable Future'*.
- 2.4. On 28 November 2006 the DCA and LSC published an analysis of responses to *'Legal Aid: A Sustainable Future'*, together with a paper setting out next steps, *'Legal Aid Reform: the Way Ahead'*.
- 2.5. The specific changes considered within this impact assessment represent the first steps towards achieving the Government's objectives. Taking a staged approach to implementation will give legal aid providers the opportunity to improve efficiency and restructure their businesses ahead of the potential move to competition, and the benefits this could offer. It will also help to ensure sustainability both in the transitional period and in the long term.
- 2.6. The reform programme represents a fundamental shift in government procurement policy for publicly funded legal services. However, these procurement reforms are part of system-wide reform, particularly in the case of the criminal justice system.
- 2.7. This IA confines its analysis to the impacts of the procurement reforms. It does not consider all recent government criminal and civil justice policy. There are key reforms that providers should take into account alongside the analysis contained in this IA, particularly those reforms that have an impact on the volume of work providers deliver. For example, the effect of the re-introduction of means testing for magistrates' court work is a relevant consideration in understanding the sector's future position, as is the move to conditional cautioning for a number of criminal offences. The impact of means testing in the Magistrates' Court can be considered by reference to the Post-Implementation Review, available at www.legalservices.gov.uk. Follow the links to Criminal Defence Service > Getting Criminal Legal Aid.

3. Aims of the Reform Programme

3.1. Legal Aid expenditure has increased from £1.5 billion in 1996/7 to over £2 billion in 2005/6. This is an increase of 35% - even adjusting to allow for constant prices legal aid expenditure has outstripped inflation by £184m, or 10%, over this period. This reform programme aims to:

- Deliver a diverse and competitive market of lawyers and others offering quality publicly funded advice and advocacy services
- Deliver cost control and avoid any further price inflation, securing a sustainable future for publicly funded legal services
- Develop a more open and responsive market, with risks shared between purchaser and provider
- Rebalance spending between civil and criminal legal aid
- Provide incentives for swift conclusions and minimal costs to other parties

4. 2005/6 Procurement System and Phase 1 Reforms

Criminal Defence Service (CDS)

- 4.1. Since 2001/2, solicitors' firms wishing to carry out publicly funded criminal defence services have been required to obtain a General Criminal Contract from the LSC. The General Criminal Contract specifies the scope of work provided for by the contract and details the means through which all defence work is funded up to disposal in the magistrates' court.

Police station scheme

- 4.2. Police station work includes all work undertaken for a client during the criminal investigation of a matter up until the client is charged or summonsed for the matter under investigation. Advice and assistance in police stations is paid for on an hourly basis, as is travel and waiting. All providers are paid the same basic remuneration rates (these are higher in London). They vary according to whether the solicitor is a duty solicitor or 'own' solicitor, at what hour they attend the police station, and the seriousness of the offence. The hourly rate therefore ranges from £52 up to £80. There are also separate hourly rates for travel and waiting, which again are subject to some variation but range from approximately £30 to £70.
- 4.3. The volume of police station advice rose from 616,366 in 2001/2 to 766,305 in 2005/6 – a 24% increase. Actual costs rose from £126.9 million to £171.2 million over the same period – a 35% increase. Over the same period travel and waiting increased from £55 million to £90 million – a 64% increase.
- 4.4. The remuneration system is based largely upon inputs and time spent and therefore does not provide the best incentive to be efficient or encourage providers to innovate in the way they develop and deliver services to clients.
- 4.5. A move to fixed pricing will help to introduce both greater control and certainty over the costs of police station advice and provide greater reward to the most efficient providers.
- 4.6. From 14 January 2008 the hourly rates for police station attendances will be replaced by fixed fees. These fixed fees will cover all of the advice and assistance provided to the client and will also cover travel and waiting. The fixed fees vary according to duty solicitor scheme and are based on the average case costs for each scheme in the period 2006/7. The fee that providers claim will be the one attached to the particular scheme in which the attendance takes place. The fixed fees vary from £400 for the Heathrow scheme to £163 for Blackpool and reflect the true historic costs of delivering work in the individual schemes. The fees include an escape mechanism to allow additional payment for the longest cases. Providers will record the costs of the case using the 2005/6 rates and when a case exceeds three times the value of the fixed fee any further work on the case will be remunerated at hourly rates.

4.7. The following schemes have been reduced by 9.5% in order to deliver a saving to the legal aid fund of £8m:

- all London schemes
- all Greater Manchester schemes
- all West Midlands schemes
- all Merseyside schemes
- Bradford
- Brighton
- Bristol
- Cardiff
- Derby / Swadlincote
- Gateshead
- Hull
- Leeds
- Leicester
- Newcastle
- North Tyneside
- Nottingham
- Portsmouth
- Sheffield
- South Tyneside
- South West Hampshire
- Sunderland / Houghton Le Spring.

4.8. These schemes have been identified as ‘major urban areas’ in which there is the greatest volume of both work and providers and where there is the greatest scope for providers to alter working practices to improve efficiency, for example by minimising the time spent travelling to local police stations and magistrates’ courts and serving multiple clients on site.

Magistrates’ court scheme

4.9. Magistrates’ court work undertaken by solicitors covers all work undertaken for a client during criminal proceedings in a matter or case from the date of charge or summons.

4.10. Solicitors are paid for this work in three categories according to standard fees. There are two levels of standard fee for each category of work. The level of fee is determined by the amount of work the solicitor carries out for the case. If a solicitor’s costs go above the limits set for the higher standard fee then their costs will be paid on an ex post facto basis. In addition to the standard fee, there are additional payments for travelling time, waiting time and disbursements such as translators.

4.11. The total cash cost of magistrates’ court work in 2005/6 was £324 million. The average increase in cost per case between 1997/8 and 2004/5 excluding travel and waiting has been 6% in cash terms. Travel and waiting made up approximately £50 million of expenditure in 2005/6. Solicitors working in magistrates’ courts generate around 607,300 claims for legal aid each year.

- 4.12. This scheme has worked well in containing cost, with relatively little increase in the cost per case in profit cost terms. However, there has been a substantial and disproportionate increase in travel and waiting costs. The system does not provide incentives for providers to minimise these costs.
- 4.13. Following Lord Carter's recommendation the LSC revised the Magistrates' Court Fee Scheme in April 2007 in urban areas. Under this scheme, the fees that are paid include travel and waiting but fee limits and the core costs of the case are unchanged. In urban areas no travel and waiting is paid for non-standard fee cases. In rural areas, travel and waiting are paid for all cases at £26.30 an hour on top of the fee.
- 4.14. The urban areas are:
- Brighton and Hove
 - Bristol
 - Cardiff
 - Derby & Erewash
 - Greater Manchester
 - Kingston upon Hull
 - Leeds & Bradford
 - Leicester
 - London
 - Merseyside
 - Newcastle upon Tyne, including Gateshead, Sunderland, North Tyneside, and South Tyneside
 - Nottingham
 - Portsmouth
 - Sheffield
 - Southampton
 - West Midlands.
- 4.15. Urban areas are either single local authority areas, or a grouping of these areas - including some that are CJS areas.
- 4.16. The urban fees apply to all cases completed at courts in these areas, and to any case completed by a firm located in an urban area irrespective of the location of the court.

Crown Court litigation

- 4.17. Most litigation services performed in the Crown Court are currently paid on an ex post facto basis where solicitors carry out work at an hourly rate, and then submit their bill for assessment at the end of the case.
- 4.18. Some cases are remunerated by a standard fee scheme that was introduced in 1988. It was intended to cover cases of one or two days trial and some guilty pleas. However, almost 50% of the eligible cases avail of an escape clause to ex post facto determination.

- 4.19. This system of remuneration has proved to be expensive. From 1997/8 to 2004/5 there had been an increase in real terms of 86% in the Crown Court. In addition, the current system does little to reward efficiency as firms are paid for inputs rather than outputs. There is, therefore, an incentive to work as many hours as possible on each case.
- 4.20. From 14 January 2008 this system will be replaced by the Litigator Graduated Fee Scheme. This is a graduated fee based on proxies (offence type, case type, length of trial, number of pages of prosecution evidence) and an uplift for the number of defendants represented. Fixed fees will be paid to providers for other hearings related to magistrates' court cases such as appeal against sentence, appeal against conviction, and committal for sentence. In addition, fixed fees will be paid for breaches of Crown Court orders and contempt.

Crown Court advocacy

- 4.21. Since October 2005, all advocacy work performed by barristers and solicitor-advocates on new cases committed, sent or transferred to the Crown Court (except very high cost cases) has been paid through a graduated fee scheme. The graduated fee scheme payment is calculated by applying a formula made up of a base fee that varies with advocate type and offence type, uplifts for number of pages of prosecution evidence and number of prosecution witnesses and a range of additional payments to cover smaller events (e.g. sentencing hearings) and preparation activities (e.g. viewing video tapes).
- 4.22. The total cash spending on advocates in all Crown Court cases has increased by 78% from 1997/8 to October 2005. This growth has arisen from cases paid under the old ex post facto system.
- 4.23. Lord Carter proposed the following amendments to the Advocates Graduated Fee Scheme:
- enhanced base fees that include payment for the first two days at trial and incorporate the majority of ancillary payments that are currently paid as ancillary fees
 - uplifts limited to pages of prosecution evidence, number of prosecution witnesses and length of trial – length of trial only begin to be paid where the case exceeds two days
 - each case fee payable to a single advocate as identified at the outset of the case
 - the introduction of revised case categories to allow different fees for those advocates undertaking the most challenging cases.
- 4.24. These amendments came into force on 30 April 2007.

Very High Cost Cases (VHCC)

- 4.25. A VHCC is defined as any case where:
- a) the trial is likely to last for 41 days or more; or
 - b) from 1 October 2007, the trial is likely to last between 25 and 40 days and meets certain criteria or has particular characteristics.
- 4.26. VHCCs are managed under contracts by the Complex Crime Unit at the LSC. The Complex Crime Unit was established in 2001 in response to the rapidly growing expenditure being incurred in long and complex cases.
- 4.27. Cases are managed through three monthly stage plans and paid on the basis of different hourly rates for team members (solicitors and barristers) with different levels of experience. The rates that are paid depend upon which of four categories of seriousness and complexity the case falls into.
- 4.28. As payment is on an hourly basis, defence teams can drive up costs through seeking to agree and claim for work that does not help progress the defence's case. As such, cost control is heavily dependent on the skill and experience of contract managers in negotiating unreasonable costs down.
- 4.29. At the present time, should the case in question meet the VHCC criteria, any firm that holds a General Criminal Contract with the LSC can be awarded a VHCC contract. Only those firms that have achieved Specialist Fraud Panel membership are permitted to undertake fraud VHCCs. There is currently no requirement for firms to be on a specific VHCC panel to carry out work on non-fraud VHCCs.
- 4.30. In response to Lord Carter's recommendation the LSC set out its intention to create a panel of VHCC providers by means of a competitive tendering exercise. Successful applicants will be appointed to a panel contracted to provide criminal defence work to clients on VHCCs and will be required to sign up to the Panel Members Contract. Applicants will be informed as to whether they have been successful in December 2007. The panel start date is 14 January 2008.

Community Legal Service (CLS)

- 4.31. Until April 2007 civil, family and immigration legal aid providers were awarded a General Civil Contract by the LSC, which was granted within specific categories of law. The General Civil Contract operates under two mechanisms: controlled work and licensed work. The General Civil Contract was replaced on 1 April 2007 by the Unified Contract.
- 4.32. Controlled work covers the provision of general legal advice from contracted solicitors or legal advisers. This includes legal help in civil, family and immigration, controlled legal representation which applies only in the areas of immigration and mental health, and Family Help Lower in family from 1 October 2007. The LSC sets out the number of cases the provider is authorised to start in a particular year and the number of hours of direct casework time for Not-for-Profit agencies (NfPs).

- 4.33. Legal help involves taking instructions and giving initial advice and assistance. Legal help cash costs rose from £143 million in 1997/8 to £182 million in 2005/6, an increase of 27%. This is despite the removal of a number of categories of work (including business cases and most personal injury claims) in 2000.
- 4.34. Most civil legal help provided by solicitors' firms was remunerated under the Tailored Fixed Fee (TFF) scheme. The scheme paid fixed amounts per case based on firms' average costs per case in the year 2003/4, plus an uplift of 2.5%.
- 4.35. The TFF scheme varied by firm and category and included disbursements and counsel's fees. Additional payments could be made for exceptional cases, which cost three times the tailored fixed fee or £2,500 (whichever is the lower) and were out of profile with previous claims.
- 4.36. There were exceptions to the TFF scheme for legal help. Firms doing mental health work could choose whether to include their work in the TFF scheme or work at hourly rates. The TFF scheme did not cover cases of patients subject to Part 3 of the Mental Health Act 1983. Work under immigration contracts was paid at hourly rates.
- 4.37. Legal help provided by NfPs was paid for a funded post, rather than through the TFF scheme. The model is based on a target of 1,100 hours controlled work per year for each funded post.
- 4.38. The contracting arrangements for legal help described above were successful in directing expenditure to priorities and improving quality. However, these schemes did not sufficiently reward efficient providers. The TFF scheme was successful in limiting cost increases but maintained price differentials that rewarded the most expensive providers. The NfP model, since it paid the same regardless of the number of cases started, did not always incentivise effective working.
- 4.39. Licensed work covers all other civil and family legal representation except for high cost civil cases. Theoretically there is no limit on the amount of casework that can be done under a single certificate however an initial cost ceiling is imposed and providers can apply to have this extended. Applications for funding must be made in each individual case. Funding is decided based on the client's financial eligibility and the merits of the case. Legal representation in civil categories, under licensed work, was paid entirely on a case-by-case basis using hourly and item rates.
- 4.40. Whilst the system of licensed work (particularly changes in scope and the criteria for granting legal aid set out in the funding code) kept overall costs down and ensured funding was directed towards priority cases, payment by hourly rates did not reward efficient working and the differential between controlled and licensed rates provided an incentive to move to litigation.

New CLS fee schemes

4.41. In accordance with the Community Legal Service (Funding) Order 2007 [SI No 2007/2441 new fee schemes for civil work were implemented on 1 October 2007 (except for mental health which comes in on 1 January 2008). The schemes are detailed below.

TFF Replacement (standard fees)

4.42. The TFF Replacement scheme is set out in '*Legal Aid Reform: the Way Ahead*'. The same fee levels apply nationally and include an exceptional case threshold of three times the standard fee. While travel and waiting form part of the fee, disbursements are paid separately. Other changes made to the scheme are:

- separate payments for initial advice removed
- tolerance paid at the historic average rate for those cases in each category
- NfPs are paid per case rather than for hours of work.

Family Public

4.43. Family Public fees now cover three levels of advice: legal help; family help (lower) – further negotiation for parents and legal representation, excluding advocacy. They include travel and waiting, excluding to and from the hearing at which advocacy is provided paid on hourly rates. Advocacy work is not claimable for work under levels 1 and 2. At level 3, hourly rates are paid for advocacy.

4.44. An exceptional case mechanism is also included in the scheme. Where the first two levels added together reach three times the fixed fee, the case will be exceptional and hourly rates will be claimable. Under level 3 work, a case can be classified as an exceptional case and paid at hourly rates after it reaches two times the fixed fee.

4.45. Level 1 work covers all public law family work, levels 2 and 3 cover care and supervision and related proceedings. All remaining public law family work is not covered by the scheme and continues to be paid at hourly rates.

Family Private

4.46. There are two levels of Family Private work. Level 1 covers initial advice and assistance and divorce proceedings, and then negotiation is level 2. A national rate across all areas for level 1 work is paid and for level 2 a London uplift is added. Travel and waiting is included in the fee, but not disbursements. Additionally, an exceptional case threshold applies to work exceeding three times the fee at level 2 (but also level 1 stand alone divorce issues, child abduction and domestic violence).

4.47. For level 1 work, a separate fee is paid for representation of a petitioner in an uncontested divorce. At level 2, a settlement payment is claimable for cases concluding at this level within the fee.

Family Mediation

4.48. The Family Mediation scheme consists of fees which are applied nationally. Separate payments are claimable for:

- willingness tests
- assessment meetings
- mediation sessions.

4.49. Disbursement payments can be claimed separately. Other changes made are:

- harmonised payments for Not-for-Profit and for-profit providers
- increased fee for Child Only multi-session cases to reflect additional work that may be carried out directly consulting with children.

Immigration and Asylum

4.50. Graduated fees apply to all immigration cases initially lodged with the Home Office from 1 October 2007. All immigration cases opened by providers and asylum cases initially lodged before that date are not subject to graduated fees but are funded through hourly rates.

4.51. Onwards appeals (application for review and reconsideration) are excluded from the graduated fee scheme and continue to be paid under the arrangements in place before 1 October 2007. Not-for-Profit providers are able to claim solicitor payment rates for this type of work carried out on or after April 2007.

4.52. The graduated fee scheme consists of two stages: Legal Help and Controlled Legal Representation (CLR).

4.53. There is a single fee for work done under legal help in connection with the initial application. At the appeal stage providers make the decision to grant CLR and then claim one fee for a case that concludes before the substantive hearing or a different, higher fee if representation is also provided at the substantive hearing.

4.54. Advocacy services, for example representation at the Home Office interview (when an interview is conducted in an asylum or immigration case and attendance at the interview is within the scope of the funding) or at the Asylum and Immigration Tribunal, will attract additional payments. These will be paid on top of the appropriate standard fee.

4.55. An allowance for travel and waiting has been included within the graduated fees. There is no separate payment for travel and waiting time.

4.56. The cost of all disbursements including interpreter and translation costs are excluded from the fee and claimed as separate payments.

Mental Health

- 4.57. Implementation of the Mental Health Fixed Fee scheme was scheduled for 1 October 2007. However, following consultation, discussion with representative bodies and analysis of our data it was decided to delay implementation until 1 January 2008.
- 4.58. The scheme will apply to all providers with a contract in mental health on or after 1 January 2008, regardless of whether they are currently paid under the Tailored Fixed Fee scheme or at hourly rates.
- 4.59. The scheme will apply to all controlled work in mental health, including advice in relation to the Mental Capacity Act 2005 and cases involving clients affected by the *Bournemouth* decision. It will apply to matters opened on or after 1 January 2008. Where the client is already receiving Legal Help on a matter at that date, that matter will continue to be paid under the previous arrangements (including those relating to CLR) until the end of the matter.

5. Methodology

- 5.1. The analysis in this impact assessment has been conducted by comparing providers' actual claims in 2005/6 with what we would expect them to receive if the same work had been paid under the reform programme fee schemes. Please note that all provider impacts are summed to firm level rather than individual offices.
- 5.2. This approach has been adopted because it is not possible to assess the real impacts of those reforms that are due to be implemented in January 2008 (Police Station Fixed Fees, CDS Direct, DSCC Expansion, VHCC Best Value Panel and the Mental Health Fee Scheme). Also there is insufficient data to assess the real impacts of the reforms that were implemented in October 2007 (TFF Replacement, Immigration and Asylum Standard Fee Scheme, Family Help Private Fee Scheme and Care Proceedings Graduated Fee Scheme).
- 5.3. The analysis has been conducted by comparing providers' actual claims for those cases covered by the fixed fee schemes in 2005/6 to what we would expect providers to receive under the schemes if their behaviour and case mix remained consistent, and if all of our modelling assumptions are correct. We have used 2005/6 as a baseline – matching the approach in the published Regulatory Impact Assessments and the fee calculations.
- 5.4. This approach allows a coherent analysis of the impact of the reform programme as a whole to be produced, taking account of reforms already implemented and those due for implementation in 2008. The exceptions to this are the analyses of the impacts of Police Station Fixed Fees on CDS providers and the impacts of the CLS reforms on NfP agencies (please see paragraphs 5.7 and 5.8 below).
- 5.5. Whilst this method does allow a comprehensive assessment, it should be stressed that it does have its limitations. In simply comparing new rates to old, it cannot take account of provider practice changes under new fee systems, as well as wider behaviour in the market, such as consolidation, rationalisation and sub-contracting, as this activity has not yet taken place. As such the impacts shown are notional only, and would only represent the actual impact of these proposals were there to be no change whatsoever within the market. The LSC believes that the market will adapt to the new schemes. The fees are designed to encourage changes in behaviour, this being a key aim of moving to a system that pays on the basis of the 'output' of a completed case rather than the 'inputs' that occur during the life of that case.
- 5.6. Despite the limitations of this form of analysis it is invaluable in illustrating the range of financial impacts that might be seen under the new fee schemes. This range of impacts, and therefore provider costs, shows that there is considerable scope for providers to influence the impact of the schemes through their delivery practices, and this analysis can help providers understand their relative position.

Police Station Fixed Fees

- 5.7. These fees were calculated for individual Police Station Duty Solicitor Schemes on the basis of 2006/7 attendance claims within those schemes and the financial impact on providers has been assessed against the same period. This approach is preferable to analysis against 2005/6 claims as average claim costs and volumes within schemes can fluctuate within twelve months resulting in a distorted financial impact.

Not-for-Profit agencies

- 5.8. In order to assess the likely impacts on NfP agencies, each NfP case was assigned a cost based on the reported advice time multiplied by a notional hourly rate, unique to each agency for each category of law. The notional hourly rates were calculated by dividing the allocated scheduled payment limit for each agency by the number of allocated hours. In the case of tolerance work, the average hourly rate for the category was used. In all cases, the hourly rates varied little between agencies and, overall, between NfP agencies and solicitors.
- 5.9. A summary of the financial and equalities impacts of the reform programme on providers is set out below:
- CDS reforms – Section 7
 - CLS reforms – Section 8
 - combined CDS and CLS – Section 9
- 5.10. Detailed analysis and data can be found in:
- CDS reforms – Annex A
 - CLS reforms – Annex B
 - combined CDS and CLS – Annex C
- 5.11. The analysis provides a summary of possible impacts. How the reforms impact in practice on providers will be affected by a number of factors such as changes in their case mix or numbers of clients once the schemes take effect, or alterations that providers make in their business practices to achieve more efficiency in a fixed fee regime. It will be key for the LSC to monitor the actual impact on providers and clients as the fee schemes bed in.

Analysis of real impacts

- 5.12. The LSC has claim data for three months submitted since the implementation of the Revised Magistrates' Court Standard Fees in April 2007. This is the only scheme for which it is possible to produce a limited analysis of the real impacts. The analysis is contained in Annex D and should be considered separately from the analysis of the reform programme as a whole. It is not possible to compare this analysis to the overall crime impact analysis, as the methodologies applied are different. In addition, the real impacts data covers a limited period and as such does not lend itself to comparisons with full year data. Further, much of the claim data submitted under the revised Magistrates' scheme does not record travel and waiting costs, again weakening any comparative analysis.

6. Equalities Impact Assessment - Background

- 6.1. Summaries of the equalities impacts are set out in the following sections:
- CDS in Section 7
 - CLS in Section 8
 - Combined in Section 9
- 6.2. The detailed equalities impacts and analyses of the Phase 1 reforms can be found in the following annexes:
- CDS in Annex A
 - CLS in Annex B
 - Combined in Annex C
- 6.3. This section sets out the LSC's duties as a public body in relation to equality, and explains the data on which the analyses are based.

LSC equalities data

- 6.4. The Legal Services Research Centre (LSRC) collects ethnicity, gender, and disability information on an annual basis using standard equal opportunities monitoring forms, which request information on ownership/managerial control and employees (solicitor and non-solicitor). Information on client ethnicity is collected on the CDS6 form.
- 6.5. Provider equalities data has previously been collected by the Resource Information Service (RIS) on behalf of the LSC and supplied by providers on a voluntary basis. The return rate for the latest survey is expected to be around 50%. This data is then used by the LSRC to inform an annual diversity report.
- 6.6. The LSC's new IT platform, Supplier Management System (SMS), will hold provider equalities information starting from October 2007, and providers will be obliged to supply that information direct to SMS under current contract terms.
- 6.7. It was considered an unacceptable burden on providers to require them to supply equalities data separately for the purposes of this IA shortly after having been asked to do so by RIS and shortly in advance of being asked to do so in SMS.
- 6.8. In addition, the MoJ and LSC will take a number of steps to ensure that diversity issues continue to be addressed in the development of future proposals. The LSC has expanded its internal resource and expertise in this area so that it can better monitor, assess and promote diversity in providers. The LSC has set up a provider diversity reference group that includes a wide range of representative and practitioner based groups, including the Equality and Human Rights Commission, Bar Council and Law Society. The aim of the reference group is to help, advise and act as a critical friend to the LSC. This will be invaluable as it develops its vision and strategy for the promotion of diversity in all its forms amongst the providers of legally aided services and in meeting its statutory

duties by setting up a diversity reference group to inform the LSC's vision and strategy for diversity.

- 6.9. The Unified Contract and General Criminal Contract include Equality and Diversity Annexes setting out specific requirements for contractors and the LSC has provided guidance to support providers in complying with the requirements.

Race and disability equality duties

- 6.10. 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.

- 6.11. The MoJ and LSC are also under a specific duty to conduct race equality impact assessments of their policies in relation to the public duty to promote race equality and within this to identify whether there is a differential and adverse impact on particular racial groups.

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

- 6.13. 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.

- 6.14. From 4 December 2006, the MoJ and LSC are also under a specific duty to conduct disability equality impact assessments of their 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.

Further research

- 6.15. The CDS has a particular interest in how different categories of client, such as clients in different ethnic categories, make decisions. It has been argued, for example, that changes to the structure of the provider base will have an adverse impact on BME clients by removing a disproportionate number of firms owned and controlled by BME lawyers. Much fuller information on the extent to which factors such as ethnicity, language, age, and gender influence decision-making

will be of great policy value and will assist in ensuring that any policy proposals are consistent with the LSC's duties under applicable equalities legislation.

- 6.16. The LSRC will be undertaking a study into suspected and accused persons' choices concerning advisers and representatives. A report will be delivered in the spring of 2008.
- 6.17. On the civil side, LSRC is currently undertaking research into the relationship between clients and legal aid providers, and whether ethnicity is a factor that clients take into account when choosing an adviser. However, historically, ethnicity data has been collected for civil legal aid clients so we have been able to undertake a much more detailed examination of the impacts of the civil reforms by ethnicity of clients. This is set out in section 8 and Annex A of this document.

Gender equality duties

- 6.18. The Equality Act 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
- 6.19. This general duty came into effect on 6 April 2007.
- 6.20. From 6 April 2007, the MoJ and LSC are also under a specific duty to conduct gender equality impact assessments of its policies in relation to the public duty to promote gender equality and within this, to identify whether there is a differential and adverse impact on people of different genders.

Rural proofing

- 6.21. 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.
- 6.22. Where appropriate, the LSC also considers the rural impacts of its policies to identify whether there is a differential and adverse impact on rural areas.

7. Criminal Defence Service Reforms: Summary Impact Analysis

- 7.1. The analysis takes account of the impact of Police Station Fixed Fees, Magistrates' Court Revised Standard Fees, and Duty Solicitor Call Centre (DSCC) expansion.
- 7.2. The purpose of this analysis is to give an indication of the possible impact of the schemes, and identify any variations in impact that might indicate particular challenges for providers.

Financial impacts: CDS reforms

Table 1: CDS Reforms Financial Impact

Element	Date of Effect	Comment	Expected Annual Financial Impact on Legal Aid Spend ³
Advocates Graduated Fee	1 Apr 2007		£29m
Magistrates' Court Revised Standard Fee	16 Apr 2007		-£8.5m
Police Station Fixed Fee	14 Jan 2008		-£8.9m
DSCC/CDS Direct Expansion	21 Jan 2008	Phased implementation of CDS Direct	-£5.9m
Litigators' Graduated Fee	14 Jan 2008		-£11.8m
VHCC Best Value Panel ⁴	14 Jan 2008		-£9.4m
Crime Total			-£15.5m

- 7.3. £23 million less would have been spent on work delivered in the police station and magistrates' court, reducing the total amount spent on criminal legal aid from £1.1968 billion to £1.1738 billion.
- 7.4. When the impact of changes in the Crown Court are taken into account the total reduction in spending is reduced to £15.5 million. This represents an overall reduction of 1.3% against expenditure on CDS in 2006/7.
- 7.5. The reduction in spending has been targeted so that the greatest proportion of the savings has been taken from the main urban areas where there is over-

³ The expected financial impact is the impact that there would have been on 2005/06 actual expenditure (with the exception of police station impacts - please refer to Methodology section) assuming that the reforms were in place in at that time. It is not a forecast of future financial impact because of a combination of forecast volume changes and expected changes in provider behaviours.

⁴ This is the midpoint of the expected range of £6.2m to £12.5m and the actual saving will depend on the results from the tender exercise.

supply and where there is greater scope for providers to improve their efficiency by altering their working practices to, for example, minimise the amount of time they spend travelling and waiting. This is also consistent with encouraging providers to localise delivery, again allowing efficiency savings in delivery.

- 7.6. The reduction in rural areas, where there are fewer providers and less opportunity to alter working practices, is less severe in order to ensure that rural populations can continue to access local criminal defence service professionals.
- 7.7. Despite the overall reduction in spending, 35% of providers would have seen either no change or an increase in income. 34% of providers would have seen a reduction in income of more than 10%. These figures seem stark when considered against the overall 1.3% reduction against total expenditure, which serves to illustrate the scope for behavioural change and the limitations of analysing by overlaying old claims with new rates.

Equalities impacts: CDS reforms

Ethnicity – clients

- 7.8. As set out in Annex A, while BME clients are more likely than White British clients to use solicitors from firms with BME majority 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.
- 7.9. The LSC's view is that the changes should have no material impact on clients, provided that all firms continue to deliver a quality service. The LSC considers that reforms (and other measures such as peer review) will provide the necessary mechanisms and incentives to ensure quality is maintained. The LSC also considers that supply will be maintained and that clients will continue to have a wide choice of advice and representation.
- 7.10. However the LSC recognises that there are limitations to the client-base analysis it can conduct where the CDS reforms are concerned. Whilst some client data is held, and client ethnicity information is collected as part of the reporting requirements, many clients are reported as 'ethnicity unknown', and as such making assumptions about client choice are difficult, particularly on the context of criminal matters where instructing a representative will often be via the duty solicitor service, where client choice is not relevant. The LSC, through engagement with the LSRC, is commissioning further research in this area to improve understanding around choice in the context of criminal clients (please see para 6.15 above).

Ethnicity – providers

- 7.11. The targeted reduction of spending in London and urban areas has a consequent impact on BME providers (in terms of both management and fee earners). BME owned and managed providers and BME fee earners are disproportionately more likely to be based in London and urban areas (80% of BME owned and controlled providers are based in these areas compared with 38% of White British owned and controlled providers) they are therefore more

likely to be subject to a reduction in income than the White British provider base, which is more evenly distributed between rural and urban areas. The LSC believes that the focus on achieving savings in major urban areas is justified on the basis that providers in these areas typically see higher volumes than their rural counterparts. That being so, they have a greater opportunity to make efficiency savings. The focus on achieving savings in major urban areas is also justified on the basis that it encourages local delivery, which in turn protects the more fragile rural markets for those providers that serve them, rather than providing incentives for major urban providers to annex those markets and take up the available volumes.

- 7.12. The LSC does not believe that the current data shows that the reforms will force a substantial number of providers out of the market, even in urban areas. The figures suggest that, even within urban areas and even without any change in behaviour, some providers would benefit financially. For example, modelling for the police station fixed fees demonstrates that in London 28% of providers would have seen income increase under the fixed fees. This suggests that there is scope for providers to respond positively to the reforms by changing their behaviour to adopt more efficient working practices. Providers that do this will have every opportunity to prosper under the reformed regime.

Gender

- 7.13. In contrast to the ethnicity impact assessment there is no significant difference in impact depending on the gender of ownership or managerial control or the gender of fee earners. This is because there is no correlation between a provider's location (urban or rural) and the gender of either its ownership or its fee earners, supporting the conclusions regarding location in relation to the impacts on BME owned and controlled providers.

Long-term illness and disability – clients

- 7.14. As with ethnicity, there is lack of client data in this area and as such it is not possible to determine with accuracy the effect of these proposals on clients with long-term illness or disabilities. However, we do know anecdotally that mental health issues are often a feature within the CDS client base, perhaps featuring in as many as half of all cases. If this view is accurate, the LSC would not expect there to be any disproportionate impact on these clients, as the costs of providing services to this particular group of disabled clients will have been taken into account within the fixed fee calculation.

Long-term illness and disability – providers

- 7.15. Data is very limited with regard to long-term illness/disability of providers; only 8 of 2,153 firms responding to the survey have long-term ill or disabled ownership or managerial control. However, the analysis indicated that any negative impact was lower where the firm had long-term ill or disabled ownership or managerial control, but this impact is not statistically significant given the low number in the sample. What this means is it would not be reasonable to conclude that negative financial impacts are likely to be less significant where ownership and control is held by the long term ill or disabled.

Rural Proofing

- 7.16. There have been no savings taken from areas defined as rural, therefore any disproportionate impact in these areas will be positive when compared to urban providers. We have protected these markets on the basis that there is less supply in these areas, and that the scope for making efficiency savings is reduced as a result of lower volumes.

8. Community Legal Service Reforms: Summary Impact Analysis

8.1. The following summarises the combined impacts of the civil fee schemes listed below that were implemented on 1 October 2007 as well as the Mental Health Fee Scheme that will be introduced on 1 January 2008.

- TFF Replacement
- Immigration and Asylum Standard Fee Scheme
- Family Help - Private Fee Scheme
- Care Proceedings Graduated Fee Scheme
- Mental Health Standard Fee Schemes

Financial impacts: CLS reforms

Table 2: CLS Reforms Financial Impact

Element	Date of Effect	Comment	Expected Annual Financial Impact on Legal Aid Spend ⁵
Standard Fee Scheme (Tailored Fixed Fee Replacement)	1 Oct 2007		£4.5m
Immigration & Asylum Graduated Fee	1 Oct 2007		£3.1m
Family Help – Private Fee	1 Oct 2007	Levels 1 & 2 only	£0.2m
Public Law Care Proceedings Graduated Fee	1 Oct 2007	Levels 1, 2 & 3 only	£2.9m
Family Mediation Fee	1 Oct 2007		£0.0m
Mental Health Standard Fee	1 Jan 2008		£0.8m
Civil Total⁶			£11.5m

8.2. All of the civil fee schemes have been designed to be cost neutral against all providers' claims from the financial year 2005/6, with the exception of the Immigration and Asylum Fee scheme, which has been modelled to be cost neutral against forecasted spend for the financial year 2007/8.

⁵ The expected financial impact is the impact that there would have been on 2005/06 actual expenditure (with the exception of police station impacts - please refer to Methodology section) assuming that the reforms were in place in at that time. It is not a forecast of future financial impact because of a combination of forecast volume changes and expected changes in provider behaviours.

⁶ All of the civil fee schemes listed have been designed to be cost neutral against spend for the financial year 2005/06, with the exception of the immigration fee scheme, which has been modeled to be cost neutral against forecast spend for the financial year 2007/08. However, as it not possible to predict the effect exactly we have allowed a margin of 2.5% in our assumptions. This, along with the fact that only those providers who have signed the new Unified Civil Contract have been included in this analysis, accounts for the increase in expected expenditure.

- 8.3. In all regions, bar London, Cambridge and Manchester, a majority of providers in each region would see an increase in income.
- 8.4. A majority of cases in all regions are conducted by providers whose income would have increased under the new schemes. Nationally, 56% of providers, collectively responsible for 75% of cases, would increase their income.
- 8.5. London and Cambridge are the only LSC regions in which we expect to see a decrease in funding. However in both regions the reduction is only in the order of 1% and we do not consider that this will therefore have unacceptable impacts on access. In London this is primarily as a result of cases in most categories being more expensive historically and the fact that a London uplift has not been introduced for a number of the schemes. However, we believe the impacts on London providers remains acceptable given that there is more competition here and we are confident that we can secure sufficient services in those areas at the levels set by the fees. In Cambridge the decrease in expenditure is largely as a result of private family cases historically being more expensive here.
- 8.6. Although a minority of providers can expect their income to increase in London, Cambridge and Manchester, the majority of cases in all three regions are carried out by providers whose incomes we expect to increase.

Equalities Impacts: CLS Reforms

Ethnicity – clients

- 8.7. Nationally a higher proportion of BME than white clients are currently served by providers who would see a decrease in income
- 8.8. There are, however, eight regions – Birmingham, Bristol, Cambridge, Cardiff, Leeds, Liverpool, Manchester and most notably London in which the opposite is true. The BME clients served in London account for more than half of the total volume of BME clients, meaning that the impacts on London clients are a huge factor in the national disparity between BME and white clients.
- 8.9. In London a higher proportion of BME than white clients are served by providers who would see an increase in income. Equally, taking all the areas outside London together, there is a slightly higher proportion of BME than white clients served by providers that are expected to gain.
- 8.10. The overall position is therefore a reflection of the impact of the fee schemes on London providers, rather than those that act for BME clients in particular. This further analysis therefore does not indicate any relevant potential discriminatory effect on BME clients, as BME clients, nor does it indicate any disparate impact within the areas where they access services.

Ethnicity – providers

- 8.11. There are no significant differences in ethnicity of majority managerial control between providers whose income would have increased and those whose income would have decreased.

Gender

8.12. There are statistically significant differences in gender of majority managerial control between providers whose income is expected to increase and those whose income is expected to decrease. Male controlled firms are more likely to increase their income (61%) than female controlled firms (50%). Whilst this demonstrates a disproportionate impact, the LSC believes that this is justified in the context of the aims of the fee schemes. These are designed to drive provider behaviour to work more effectively within the remuneration available. The analysis shows that within the gender control groups, there is a distribution against the range of positive and negative financial impacts, which in turn supports the contention that the driver for impact is not gender of ownership and control but the average case costs and case mix of individual providers.

Long-term illness and disability – clients

8.13. The LSC does not believe that there will be any disproportionate impact on long-term ill or disabled clients as a result of the fee schemes on the basis of the analysis below.

8.14. Analysis of all civil categories controlled work claims shows that the proportion of cases that fall between the fee level and the exceptional case threshold is 35% for clients featuring a long-term illness or disability, as compared with 32% for clients that do not. Whilst statistically significant, this indicates that there is no disproportionate impact on clients that feature a long-term illness or disability.

Long-term illness and disability – providers

8.15. There are no significant differences in disability of majority managerial control between providers whose income is expected to increase and those whose income is expected to decrease.

Rural proofing

8.16. The impact on rural providers varies very little from that on urban providers. An analysis of the impacts on cases historically undertaken by rural and urban providers shows that 62% of clients in rural areas are served by providers whose income is expected to increase, compared to 61% in urban areas.

9. CDS and CLS Reforms – Summary of Combined Impact Analysis

- 9.1. This section considers the overall impact of the reforms for providers who may face particular challenges as a result of their involvement with both civil and criminal legal aid. Clients are not considered as part of this summary section. This analysis describes the impact on those providers that have both crime and civil contracts. The analogous analysis for clients would consider a client that uses both the criminal and civil advice services, but the LSC does not hold data that would allow this analysis to be undertaken.
- 9.2. Some providers work on both civil and criminal legal aid matters and it is important to assess the aggregated impact on them. They may benefit from the civil reforms but may be detrimentally affected by the crime reforms; this section illustrates the net position.

Financial impacts: CLS/CDS combined

Table 3: CDS and CLS Reforms Combined Financial Impacts

Element	Date of Effect	Comment	Expected Annual Financial Impact on Legal Aid Spend
Crime			
Advocates Graduated Fee	1 Apr 2007		£29m
Magistrates' Court Revised Standard Fee	16 Apr 2007		-£8.5m
Police Station Fixed Fee	14 Jan 2008		-£8.9m
DSCC/CDS Direct Expansion	21 Jan 2008	Phased implementation of CDS Direct	-£5.9m
Litigators Graduated Fee	14 Jan 2008		-£11.8m
VHCC Best Value Panel	14 Jan 2008		-£9.4m
Crime Total			-£15.5m
Civil			
Standard Fee Scheme (Tailored Fixed Fee Replacement)	1 Oct 2007		£4.5m
Immigration & Asylum Graduated Fee	1 Oct 2007		£3.1m
Family Help – Private Fee	1 Oct 2007	Levels 1 & 2 only	£0.2m
Public Law Care Proceedings Graduated Fee	1 Oct 2007	Levels 1, 2 & 3 only	£2.9m

Element	Date of Effect	Comment	Expected Annual Financial Impact on Legal Aid Spend
Family Mediation Fee	1 Oct 2007		£0
Mental Health Standard Fee	1 Jan 2008		£0.8m
Civil Total⁷			£11.5m
Combined Total			-£4.0m

- 9.3. Overall spending is expected to have spent about the same overall (to within £4m) in 2005/6 had the fee schemes been in place at the start of that period.
- 9.4. Nationally 45% of providers would not see any reduction in their income. Nationally 31% of providers would have seen their income reduce by 5% or more. However, in London 21% of providers would have seen a reduction in income of 5% or more. It should be noted that this analysis has been conducted at provider level i.e. aggregating all financial information for all the contracted offices of a given provider.
- 9.5. In seven regions there would be a net increase in funding.
- 9.6. In the other five regions there would be a net reduction in funding of up to a maximum of 7% in London in Manchester. The primary drivers for this are the reductions made in certain areas under the crime fee schemes. London and Manchester see the greatest impacts, as these are high volume areas that are experiencing a percentage reduction on the available remuneration.
- 9.7. In Bristol, Newcastle, Leeds and Nottingham regions a majority of providers would increase their income.
- 9.8. In London 68% of providers are expected to see a decrease in their income. Again this is explained by the reductions made in crime and is not a reflection of the civil schemes.

Equalities impacts

Ethnicity

- 9.9. In London BME owned and controlled providers see an average reduction in income of 3%, with 32% of providers seeing an increase and 67% seeing a decrease. White owned and controlled providers see a slightly greater reduction in income of 4%, with 23% of providers seeing an increase and 76% seeing a decrease. What this does show is that the differential impact between white and BME owned and controlled providers is not extensive in terms of the average percentage reduction in income, and as such we are not seeing a

⁷ All of the civil fee schemes listed have been designed to be cost neutral against spend for the financial year 2005/06, with the exception of the immigration fee scheme, which has been modeled to be cost neutral against forecast spend for the financial year 2007/08. However, as it not possible to predict the effect exactly we have allowed a margin of 2.5% in our assumptions. This, along with the fact that only those providers who have signed the new Unified Civil Contract have been included in this analysis, accounts for the increase in expected expenditure.

disproportionate impact between providers in local markets that are subject to the same conditions.

- 9.10. Outside London, in contrast, BME owned and controlled providers would, on average see no change in overall income as a collective group. Within that group, 30% of providers see an increase in their individual income and 70% seeing a decrease. White owned and controlled providers would see their income increase on average by 2%, with 47% of providers increasing their income and 53% seeing a reduction. This demonstrates that the fee schemes do not have a disproportionate impact between the groups in terms of overall income, but within each group the extent of the impact on individual providers is different. This effect is explained by the individual average case costs between providers, and the LSC believes that this effect is justified in the context of the aims of the reform programme.

Gender

- 9.11. In London, there is a greater disproportionate negative financial impact on firms where the gender of majority managerial control is male. The driver for this is likely to be the far higher number of male owned and controlled providers within the sample size, meaning that the analysis considered a broader range of impacts within that group. However, any disproportionate impact that cannot be attributed to the statistical significance of the sample size is justified by the fact that the fees are designed to drive changes in provider behaviour, and that the impacts shown are notional only as they do not take account of any such changes.

Long-term illness and disability

- 9.12. Data is very limited with regard to long-term illness and disability of providers; only 8 of 2,153 firms have confirmed that the major managerial control rests with a person who is long-term ill or has a disability. However, the analysis indicates that the negative impact is less pronounced where the major managerial control rests with a person who is long-term ill or has a disability. However, these findings are not statistically significant due to the limitations on sample size.

10. Competition Assessment

- 10.1. The market affected by the fee schemes is the market in publicly funded legal services under the CLS and CDS. Criminal legal aid services are provided by private solicitors' firms, and civil services by a mix of private firms and NfP agencies.
- 10.2. These services are provided locally by firms and agencies under contract, and there are consequently regional markets in publicly funded legal services. The table below illustrates that there are many contracts in each region, and for all regions other than Newcastle no one firm accounts for more than 5% of all expenditure.

Table 4: CDS and CLS contracts by region, spend by region, and fund take of largest provider by region

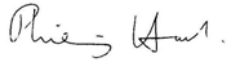
LSC region	No.Contracts	Total spend	Maximum % of spend accounted for by 1 firm
Birmingham	353	£78m	3%
Brighton	228	£43m	2%
Bristol	336	£65m	3%
Cambridge	299	£65m	3%
Cardiff	282	£47m	2%
Leeds	334	£75m	5%
Liverpool	99	£26m	5%
London	791	£218m	3%
Manchester	402	£85m	4%
Newcastle	183	£42m	7%
Nottingham	213	£58m	5%
Reading	199	£40m	3%
National	3719	£841m	1%

- 10.3. Overall we do not consider that the reforms will have a significant affect on competition.
- 10.4. The new fee schemes do not directly limit the number or range of suppliers, beyond the extent that this already occurs through the use of quality and service standards in legal aid contracts. However, as can be seen by the withdrawal of civil suppliers from the market following the introduction of the Unified Contract, the reforms may indirectly limit the number of suppliers as firms with higher costs leave the market rather than work under the new fee schemes.
- 10.5. The reforms control the amount suppliers may charge for their services. However, as there is currently no competition on price for publicly funded legal services, this will not limit suppliers' ability to compete. Indeed, by standardising the payment for a case, the schemes may stimulate competition on other service characteristics as firms attempt to maximise the number of cases that they complete.

11. Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the analysis and conclusions drawn are robust.

Signed:



Date: 4 December 2007

Minister's name, title & department: Lord Hunt, Parliamentary Under-Secretary of State, Ministry of Justice

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Annex A

CDS Fee Schemes – Financial and Equalities Impact Assessments

The analysis includes:

- Police Station Fixed Fees
- Magistrates' Court Revised Standard Fees
- Duty Solicitor Call Centre (DSCC)
- CDS Direct
- Advocate Graduated Fee Scheme
- Litigator Graduated Fee Scheme

The analysis showed:

Expenditure would have been £23 million less on lower crime in 2005/6 with the reforms in place from the start of the year.

When the impacts of changes in the Crown Court (Advocate Graduated Fee Scheme and Litigator Graduated Fee) are taken into account the overall level of saving is reduced to £15.5 million.

All LSC regions saw a decrease in funding, with the most marked reductions in those regions that contain the main urban areas in which we aim to secure the savings. These areas are subject to savings as they feature over-supply and present providers with the greatest opportunity to achieve efficiency savings through proximity to police stations and courts, and access to the volumes that provide the opportunity to make efficiency gains through changes in service delivery.

The majority of providers (65%) saw their income decrease, and 34% experienced a reduction of more than 10%, while 35% of providers saw their income either unchanged or increased. This impact is justified by the need to rebalance spending between criminal and civil legal aid. The fact that 35% of providers see an increase in income demonstrates that it is possible for providers to continue to be successful under the new schemes, but that it is necessary to operate most efficiently within the remuneration available.

At a national level, there was a greater negative impact on firms with BME or mixed ethnicity of ownership or managerial control than on firms with White British ethnicity of ownership or managerial control. However this was due to the concentration of firms with BME ownership or managerial control in areas with fee reductions, and as such national analysis does not accurately demonstrate the position.

London-only analysis demonstrates that there is not a statistically significant difference in impact between the BME and White owned and controlled provider groups, with the former experiencing on average a 9% reduction and the latter an 8% reduction. In terms of those London providers seeing an overall increase in their income, 6% of BME owned and controlled providers feature within this group, whilst white British owned and

controlled providers do not feature. This is not to say that no white owned and controlled providers see an increase in income, but that the number that do is statistically insignificant.

There was a greater negative impact on fee earners with BME or mixed ethnicity than on fee earners with White British ethnicity working for non-London providers, and although statistically significant these differences are not substantial. The reasons for these differences are not apparent. However one possible explanation is the increased likelihood of BME fee earners working for providers that are based in the major urban areas, who are subject to fee reductions under the criminal schemes.

In London, between 96% and 100% of fee earners are employed at firms that see a negative impact under the schemes, regardless of ethnicity. This simply represents the notional financial impact of all providers in London.

Financial impact assessment – CDS fee schemes

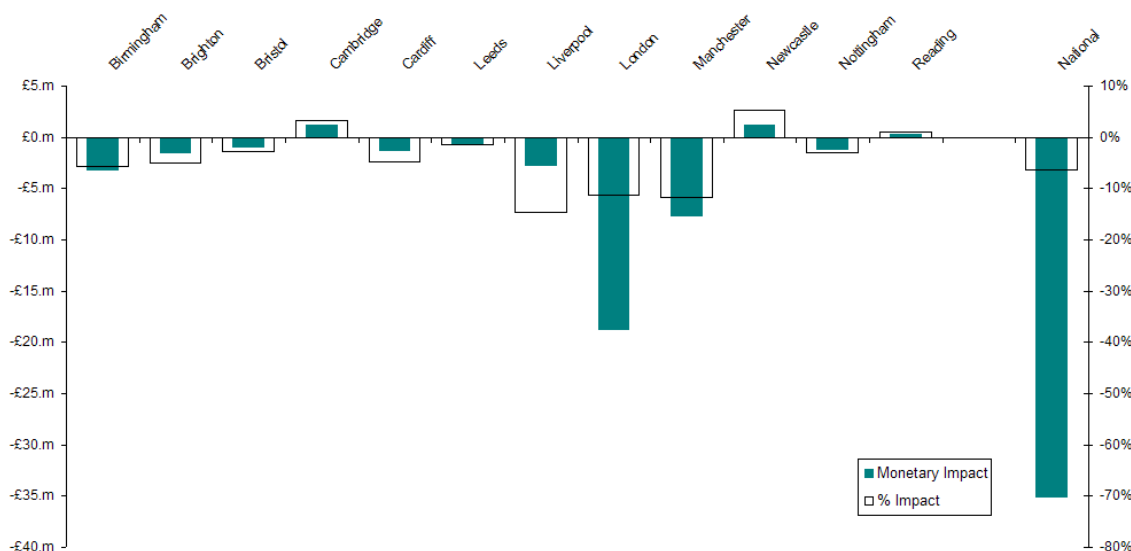
Regional changes in funding

All LSC regions saw a reduction in funding, with the greatest reduction occurring in London, and the smallest in Cambridge. Generally, the greater reductions in expenditure fell in regions that are largely covered by the main urban areas, where the fees have been calculated to make savings. These areas are subject to savings as they feature over-supply and present providers with the greatest opportunity to achieve efficiency savings through proximity to police stations and courts, and access to the volumes that provide the opportunity to make efficiency gains through changes in service delivery. The LSC believes that this focus is justified as it helps rebalance spending between civil and criminal legal aid and treats all providers within the savings areas equally.

Table 5: Changes in regional funding under the revised Police Station, Magistrates’ Courts, DSCC and the Litigators Graduated Fee Schemes

	2005/06 Spend on Cases Covered by the Fee Schemes	Estimated Spend Under the Fee Schemes	Difference	%
Birmingham	£56.8m	£53.6m	-£3.2m	-6%
Brighton	£30.7m	£29.2m	-£1.5m	-5%
Bristol	£31.9m	£31.0m	-£0.9m	-3%
Cambridge	£36.2m	£37.3m	£1.1m	3%
Cardiff	£26.8m	£25.5m	£1.3m	-5%
Leeds	£44.9m	£44.3m	-£0.6m	-1%
Liverpool	£18.4m	£15.7m	-£2.7m	-15%
London	£165.1m	£146.3m	-£18.8m	-11%
Manchester	£64.8m	£57.1m	-£7.7m	-12%
Newcastle	£22.7m	£23.9m	-£1.2m	5%
Nottingham	£37.8m	£36.7m	-£1.1m	-3%
Reading	£24.8m	£25.1m	-£0.3m	1%
National	£561m	£526m	-£35m	-6%

Figure 1: Changes in regional funding under the revised Police Station, Magistrates’ Courts, DSCC and the Litigators Graduated Fee Schemes



Regional provider impacts

The majority of crime providers in all regions saw a reduction in their income under the new schemes. As with total expenditure, these reductions were generally greatest in those regions that are largely covered by the main urban areas. The proportion of firms that experienced a reduction in income was highest in London (78%), and lowest in Cambridge (45%). This is to be expected as London, whilst subject to the same percentage reduction as the other urban areas, experiences a far higher volume and therefore the extent of the actual cash reduction is greater. The LSC believes that the approach taken to savings is justified by the need to rebalance spending between criminal and civil legal aid.

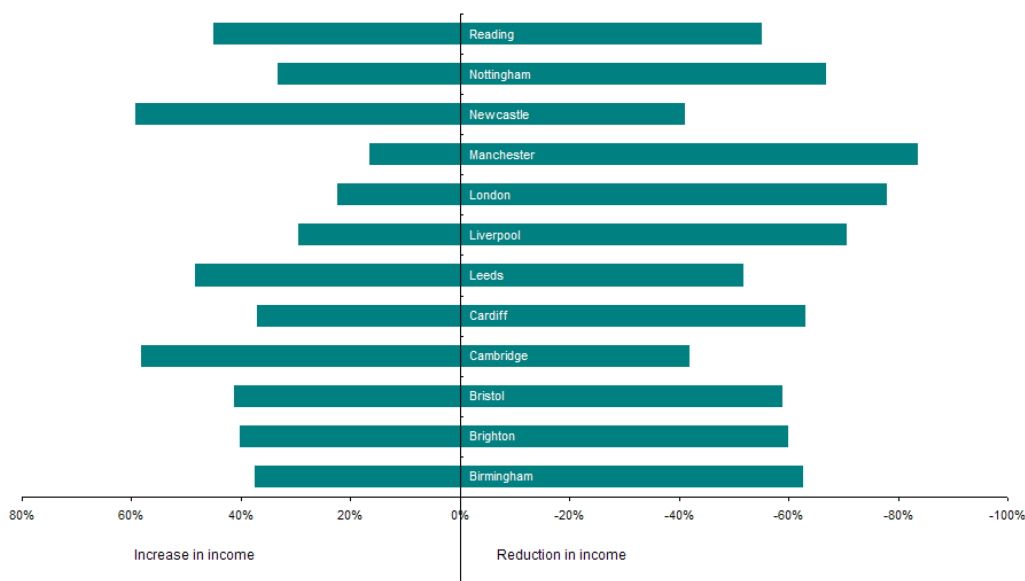
At a national level, there was not a great disparity between the proportion of providers experiencing an increase or decrease in income from the fee schemes, and the proportion of cases carried out by each group. This indicates that there is not a significant relationship between the number of cases a firm completed and whether their income would increase or decrease under the fee schemes.

Table 6: The proportion of providers whom we expect to see an increase or reduction in their funding, and the proportion of cases that they currently conduct

	Proportion of Firms whose Income Would Increase/Decrease		Proportion of Cases Undertaken by Firms whose Income Would Increase/Decrease	
	Increase	Decrease	Increase	Decrease
Birmingham	36%	64%	37%	63%
Brighton	42%	58%	40%	60%
Bristol	34%	66%	41%	59%
Cambridge	55%	45%	58%	42%
Cardiff	32%	68%	37%	63%
Leeds	41%	59%	48%	52%
Liverpool	33%	67%	30%	70%
London	22%	78%	22%	78%
Manchester	26%	74%	17%	83%
Newcastle	52%	48%	59%	41%
Nottingham	37%	63%	33%	67%
Reading	47%	53%	45%	55%
National	35%	65%	36%	64%

Table 6 demonstrates that there is not a significant relationship between the size of the provider and their likelihood of benefiting under the fee schemes. If there were such a relationship, we would expect to see those experiencing an increase in income under the fee schemes to be completing a far higher proportion of cases within their region. In those areas where reductions have been made a distorted effect should be assumed, but analysis of those areas where no reductions have been made does not show a linear relationship between positive financial impact and volumes delivered.

Figure 2: Cases completed by providers that saw an increase or decrease in income



Variations in impact between providers

Table 6 demonstrates that overall, 65% of providers were paid less, and 35% of providers were paid more. Table 7 and Figure 3 demonstrate that half of providers (50%) saw their income change by 10% or less, while 24% of providers saw their income change by more than 20%. This indicates that a majority of providers experienced a relatively small change in income under the fee schemes.

Table 7: Proportion of providers in each region whose income will remain unchanged to within +/-5% and +/-10% of their current income

	% of Firms with Income Unchanged	
	Within +/-5%	Within +/-10%
Birmingham	33%	54%
Brighton	39%	61%
Bristol	34%	57%
Cambridge	40%	64%
Cardiff	31%	54%
Leeds	31%	51%
Liverpool	24%	50%
London	16%	30%
Manchester	24%	44%
Newcastle	39%	56%
Nottingham	36%	63%
Reading	37%	63%
National	29%	50%

Figure 3: Variations in impact by provider



Table 8: Variations in impact by provider by region

		Birmingham	Brighton	Bristol	Cambridge	Cardiff	Leeds	Liverpool	London	Manchester	Newcastle	Nottingham	Reading	National
Increase in income	≥ 50%	3%	2%	2%	5%	2%	5%	3%	4%	3%	8%	4%	6%	4%
	>40% <50%	0%	0%	1%	1%	1%	1%	3%	1%	0%	1%	2%	1%	1%
	>30% <40%	1%	1%	1%	5%	2%	1%	2%	1%	1%	3%	1%	2%	1%
	>20% <30%	5%	3%	2%	5%	2%	3%	0%	2%	3%	7%	1%	2%	3%
	>10% <20%	6%	9%	7%	5%	5%	14%	5%	5%	5%	5%	7%	9%	7%
	>5% <10%	7%	10%	8%	12%	8%	8%	9%	2%	5%	6%	9%	9%	7%
	≥0% <5%	13%	17%	12%	21%	14%	9%	10%	8%	9%	22%	14%	17%	13%
Reduction in income	<0% >-5%	19%	23%	22%	19%	17%	22%	14%	8%	15%	17%	22%	20%	17%
	<-5% >-10%	15%	12%	14%	11%	15%	13%	17%	12%	15%	11%	18%	16%	14%
	<-10% >-20%	17%	14%	19%	11%	21%	15%	16%	27%	25%	15%	16%	12%	19%
	<-20% >-30%	6%	4%	8%	1%	7%	1%	5%	15%	10%	2%	3%	2%	7%
	<-30% >-40%	4%	5%	1%	1%	4%	5%	3%	7%	4%	4%	2%	2%	4%
	<-40% >-50%	2%	1%	1%	0%	1%	2%	5%	4%	2%	0%	1%	2%	2%
	≤ -50%	1%	0%	1%	1%	3%	1%	7%	6%	3%	0%	1%	1%	2%

Table 8 shows the distribution of impacts varied by region, with Cambridge having the highest proportion of providers whose income would increase, and the highest proportion of providers whose income would increase by more than 5%. This reflects the fact that none of the urban areas where savings are sought are located in that region.

Figure 4 demonstrates that nationally, 54% of providers saw income change by £10k or less, with 32% experiencing a change of more than £20k. Table 9 shows that again, impacts varied by region, with providers in Cambridge more likely to gain by more than £5k than providers in any other region. Providers in London were more likely to experience larger reductions in income, with 38% seeing a reduction of more than £20k. This can be explained, at least to some extent, by the fee reductions in urban areas, which the LSC believes to be justified in the context of rebalancing civil and criminal legal aid.

Figure 4: Proportion of providers, by income change

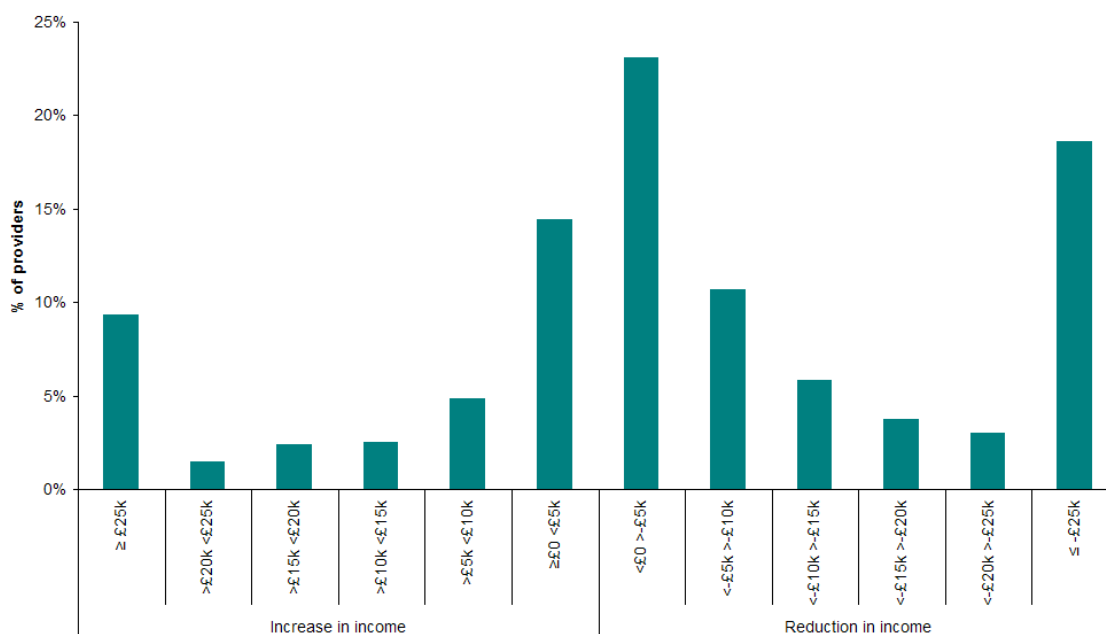


Table 9: Proportion of providers, by income change, by region

		Birmingham	Brighton	Bristol	Cambridge	Cardiff	Leeds	Liverpool	London	Manchester	Newcastle	Nottingham	Reading	National
Increase in income	≥ £25k	9%	10%	7%	15%	5%	14%	7%	9%	3%	15%	10%	13%	9%
	>£20k <£25k	2%	1%	2%	2%	2%	3%	2%	0%	2%	3%	0%	2%	1%
	>£15k <£20k	2%	3%	4%	2%	3%	4%	2%	1%	2%	1%	1%	5%	2%
	>£10k <£15k	3%	2%	2%	3%	2%	4%	7%	1%	3%	3%	3%	2%	3%
	>£5k <£10k	6%	4%	4%	8%	5%	6%	3%	3%	3%	7%	7%	6%	5%
	≥£0 <£5k	15%	20%	15%	24%	17%	11%	12%	7%	13%	23%	17%	19%	14%
Reduction in income	<£0 >-£5k	21%	23%	25%	19%	27%	27%	16%	22%	24%	26%	22%	23%	23%
	<-£5k >-£10k	10%	7%	16%	7%	18%	12%	12%	9%	9%	7%	12%	9%	11%
	<-£10k >-£15k	9%	5%	8%	5%	8%	2%	3%	4%	8%	6%	6%	4%	6%
	<-£15k >-£20k	2%	2%	3%	3%	3%	4%	7%	4%	4%	2%	8%	5%	4%
	<-£20k >-£25k	2%	2%	4%	2%	3%	2%	3%	4%	3%	3%	1%	5%	3%
	≤ -£25k	19%	18%	10%	10%	10%	12%	26%	34%	26%	4%	14%	8%	19%

Rural/urban providers

In this analysis urban refers to providers based in the areas identified as urban for the purpose of the Magistrates' Court Revised Standard Fees and the Police Station Fixed Fees. Rural refers to providers based in all other areas.

Urban firms completed 51% of cases. Of those cases completed by urban firms, 28% were completed by firms that saw an increase in income, and 53% by firms that saw a reduction in income. Of those cases completed by rural firms, 47% were completed by firms that saw an increase in income and 53% by firms that experienced a reduction in income. This demonstrates the effect of targeting savings in the major urban areas, which the LSC believes is justified in the context of the aims of the reform programme.

Table 10: Proportion of cases, by provider type, by area type

	Number of Cases Undertaken			% of Cases Served by Providers whose Income would Increase		% of Cases Served by Providers whose Income would Decrease	
	Rural	Urban	Unmatched	Rural	Urban	Rural	Urban
Birmingham	38%	58%	4%	52%	29%	48%	71%
Brighton	85%	12%	3%	44%	0%	56%	100%
Bristol	79%	19%	2%	44%	33%	56%	67%
Cambridge	98%	0%	2%	59%	0%	41%	0%
Cardiff	75%	24%	1%	45%	11%	55%	89%
Leeds	48%	51%	2%	53%	45%	47%	55%
Liverpool	0%	100%	0%	100%	29%	0%	71%
London	0%	98%	2%	0%	22%	0%	78%
Manchester	44%	54%	2%	17%	16%	83%	84%
Newcastle	48%	50%	2%	56%	64%	44%	36%
Nottingham	45%	53%	2%	50%	19%	50%	81%
Reading	75%	23%	2%	45%	47%	55%	53%
National	47%	51%	2%	47%	28%	53%	72%

Equalities impact assessment – CDS fee schemes

Equalities data

The LSRC collects ethnicity, gender, and disability information on an annual basis using standard equal opportunities monitoring forms, which request information on ownership/managerial control and employees (solicitor and non-solicitor). Information on client ethnicity is collected on the CDS6⁸ form.

⁸ Firms use the CDS6 Contract Work Report form to claim for police station and magistrates' court work on a monthly basis. Client ethnicity information has been collected since October 2006.

Ethnicity data

Clients

Client equalities data has been collected systematically since October 2006, and this data has been used to inform the impact assessment of the crime reforms.

Equalities data has been reported for c. 950,000 claims for work at the police station and magistrates' courts since October. In 38% of claims, client ethnicity was reported as 'unknown' (34%) or 'other' (4%).

Of the remaining 62% of claims, 84% of clients were White British and 16% were BME. These figures coincide with the ethnicity of people entering the Criminal Justice System.

The LSRC conducted a preliminary analysis of the relationship between client and supplier ethnicity. Although BME clients are more likely than White British clients to use solicitors from firms with BME majority ownership or 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 suggests that ethnicity of ownership or managerial control may not be a key determinant of BME client choice, and that other factors (such as geography) may play a role.

However, the LSC recognises that the extent of client data in the context of the CDS is limited. Whilst some client data is held, and client ethnicity information is collected as part of the reporting requirements, many clients are reported as 'ethnicity unknown', and as such making assumptions about client choice are difficult, particularly on the context of criminal matters where instructing a representative will often be via the duty solicitor service, where client choice is not relevant. The LSC, through engagement with the LSRC, is commissioning further research in this area to improve understanding around choice in the context of criminal clients and this will be taken into account for future impact assessments once the research is completed.

Solicitor fee earners

In 2006, 16% of solicitor fee earners in offices holding a crime contract were BME, and 41% of offices holding crime contracts, had one or more BME fee earner.

Majority managerial control

In 2006 76% of offices that held a General Criminal Contract (but no civil contract) were under White British managerial control, 18% under Black or Minority Ethnic (BME) managerial control and 6% under split control⁹.

For offices that hold both a criminal and civil contracts 89% of offices were under White British managerial control, 8% under BME managerial control and 4% under split control.

⁹ All figures are from the LSRC Sixth Annual Diversity Report, available from www.lsrc.org.uk

Table 11: Client Ethnicity by Ethnicity of Majority Managerial Control of Provider

Client ethnicity	Ethnicity of majority managerial control						Total
	White British Firm	%	BME Firm	%	Split Firm	%	
White British	52,000	89%	4,000	6%	3,000	5%	58,000
BME	10,000	64%	4,000	23%	2,000	13%	15,000
Unknown	46,000	82%	7,000	13%	3,000	5%	56,000

Gender data

Majority managerial control

In 2006 74% of offices that hold a General Criminal Contract (but no civil contract) were under male majority control, 12% under female control and 15% under split control.

For offices that hold both criminal and civil contracts the 13% of offices were under female managerial control, 72% of offices were under male control, and 15% of offices were under split control.

Solicitor fee earners

In 2006 38% of fee earners in offices that held a criminal contract were female. In offices that held both a criminal and civil contract, 46% of solicitor fee earners were female.

Long-term illness or disability

In 2006, offices holding criminal contracts only reported 10 long-term ill or disabled solicitor employees and 14 long-term ill or disabled non-solicitor employees in total. Offices holding civil and criminal contracts reported 26 long-term ill or disabled solicitor employees and 59 long-term or disabled non-solicitor fee earners.

Equalities impact assessment

For the purposes of analysis by ethnicity, gender, and long-term illness or disability, the country was split into London/non-London. This split between London and non-London providers is based on the low number of observations outside London meaning it was not possible to analyse the data at levels such as CJS Area or LSC region. London providers are particularly affected by the reform programme due to the large number of providers delivering services in the area and the policy decisions to reduce spending in London in the police station and magistrates' court fee schemes.

Clients

Assessing the impact of change on clients is difficult. As discussed below, while BME clients are more likely than White British clients to use solicitors from firms with BME majority 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.

The LSC's view is that there will be no material impact on clients from the changes provided that all firms continue to deliver a quality service. The LSC considers that reforms (and other measures such as peer review) will provide the necessary mechanisms and incentives to ensure quality is maintained. The LSC also considers that supply will be maintained and that clients will continue to have a wide choice of advice and representation.

Ethnicity, gender and disability of majority managerial control

Ethnicity – London

Table 12: Ethnicity impacts of fee schemes on London providers

	Firms	Negative Impact	Positive Impact	Average Impact	%
White British	83	100%	0%	–£57,000	–8%
BME	102	94%	6%	–£42,000	–9%
Split	27	100%	0%	–£32,000	–7%
Male	140	96%	4%	–£51,000	–8%
Female	45	98%	2%	–£39,000	–15%
Split	31	97%	3%	–£20,000	0%
Ill/disabled	-	-	-	-	-
Non-ill/disabled	218	97%	3%	–£43,000	–8%
Split	1	-	-	-	-

All providers with White British and 94% of providers with BME ethnicity of ownership or control experienced a reduction in income under the fee schemes. All providers with split ethnicity of ownership or control also saw a reduction in income under the schemes. London-only analysis demonstrates that there is not a statistically significant difference in impact between the BME and White owned and controlled provider groups, with the former experiencing on average a 9% reduction and the latter an 8% reduction. In terms of those London providers seeing an overall increase in their income, 6% of BME owned and controlled providers feature within this group, whilst white British owned and controlled providers do not feature. This is not to say that no white owned and controlled providers see an increase in income, but that the number that do is statistically insignificant. This indicates that in London the fee schemes do not have a disproportionate effect on providers by ethnicity of ownership and control.

Ethnicity – non-London

Table 13: Ethnicity impacts of fee schemes on non-London providers

	Firms	Negative Impact	Positive Impact	Average Impact	%
White British	809	77%	24%	–£4,000	–1%
BME	71	87%	13%	–£39,000	–11%
Split	41	76%	24%	–£29,000	–5%
Male	694	77%	23%	–£9,000	–1%
Female	91	77%	23%	–£8,000	–7%
Split	138	79%	21%	–£6,000	–1%
Ill/disabled	8	75%	25%	–£7,000	–15%
Non-ill/disabled	916	77%	22%	–£9,000	–2%
Split	9	-	-	-	-

Outside London 77% of White British owned or controlled providers saw a reduction in income from the schemes, compared to 87% of BME owned or controlled providers. BME owned or controlled providers saw an average impact of –11% of their contract value, compared with an average impact of –1% for White British owned or controlled providers. However, this was due to the concentration of firms with BME ownership or managerial control in areas with fee reductions, and as such national analysis does not accurately demonstrate the effect of the introduction of the schemes.

Table 14: Ethnicity split of ownership and control by London, Urban and Rural

	White British	%	BME	%	Split	%
London	87	9%	103	56%	30	41%
Urban	279	29%	44	24%	26	35%
Rural	605	62%	37	20%	18	24%
Total	971		184		74	

The table above accounts for the disparity in impact between White British (77% see a reduction) and BME (87% see a reduction) owned and controlled providers. BME owned and controlled providers are disproportionately more likely to be based in either London or an urban area. In total 80% of BME providers are based in London or urban areas where fee levels have been reduced in order to deliver savings. This compares with 38% of White British providers. 62% of the White British owned provider base is located in the rural areas where no reductions in fees have been made compared to only 20% of BME owned and controlled providers. This supports the view that a national analysis distorts the picture and we see a far more accurate description of the impacts of the reforms where analysis is conducted on a localised basis.

Gender – London

Providers with majority female ownership or managerial control were slightly more likely to experience a reduction in income as those with male ownership or managerial control (by 2 percentage points), and also experienced a slightly greater average negative impact (again, by 2 percentage points). The difference in impact is not extensive, and in any event does not take account of changes in provider behaviour that would influence the impact of these schemes when introduced.

Gender – non-London

Providers with female majority ownership or managerial control were as likely to experience a reduction in income than firms with male ownership or managerial control, with 77% of both groups seeing a negative impact from the schemes. The average impact for female owned or controlled firms (-7%) was 6 percentage points higher than that for male owned or controlled firms (-1%).

Long-term illness or disability – London

There was an insufficient number of firms with long-term ill or disabled majority ownership or control to allow for a meaningful analysis.

Long-term illness and disability – non-London

There is insufficient data on which to base firm conclusions on the impact of the reforms on providers owned and controlled by solicitors with long-term illness or disability.

Fee Earners – London

Table 15: Equalities impacts of fee schemes on London fee earners

	Negative		Positive	
	No.	%	No.	%
Managers				
White British	328	100%	1	0%
BME	279	96%	12	4%
Solicitor Fee Earners				
White British	711	99%	7	1%
BME	728	97%	25	3%
Non-Solicitor Fee earners				
White British	549	99%	7	1%
BME	512	96%	22	4%
Total Fee Earners				
White British	1,260	99%	14	1%
BME	1,240	96%	47	4%

Between 96% and 100% of fee earners by status and ethnicity are employed at firms that see a negative impact under the schemes. This purely represents the vast majority notional financial impact of all providers in London. BME fee earners see less of an impact, but this is not significant.

Fee Earners – non-London

Table 16: Equalities impacts of fee schemes on non-London fee earners by ethnicity

	Negative		Positive	
	No.	%	No.	%
Managers				
White British	2,772	81%	657	19%
BME	247	86%	41	14%
Solicitor Fee Earners				
White British	4,280	80%	1,059	20%
BME	506	84%	98	16%
Non-Solicitor Fee earners				
White British	3,778	80%	920	20%
BME	394	86%	63	14%
Total Fee Earners				
White British	8,058	80%	1,979	20%
BME	900	85%	161	15%

BME employees at all levels are more likely to be employed at firms that experience a reduction in income from the fee schemes than White British employees, although these differences are not extensive. The reasons for these differences are not

apparent, however one possible explanation is the increased likelihood of BME fee earners working for providers that are based in the major urban areas, who are subject to fee reductions under the criminal schemes. To the extent that this demonstrates a disparate impact on BME fee earners, the LSC considers the impact justified in view of the need to secure savings and the ability of providers in urban areas to adapt their working practices so as to avoid losing financially.

Annex B

CLS Fee Schemes – Financial and Equalities Impact Assessments

The following presents the combined impacts of the civil fee schemes listed below that were implemented on 1 October 2007 as well as the Mental Health Fee Scheme that will be introduced on 1 January 2008.

- TFF Replacement
- Immigration and Asylum Standard Fee Scheme
- Family Help - Private Fee Scheme
- Care Proceedings Graduated Fee Scheme.

All but one of the civil fee schemes have been designed to be cost neutral against all providers' claims from the financial year 2005/6. The exception is the Immigration and Asylum Fee scheme, which has been modelled to be cost neutral against forecast spend for the financial year 2007/8. However, as it is not possible to predict the effect exactly we have allowed a margin of 2.5% in our assumptions. This, along with the fact that only those providers who have signed the new Unified Contract have been included in the analysis, accounts for an £11.5m potential increase in expenditure against the £463m claimed in 2005/6 by providers that signed the Unified Contract.

- London and Cambridge are the only LSC regions in which we expect to see a decrease in funding. However in both regions the reduction is only in the order of 1% and we do not consider that this will therefore have unacceptable impacts on access. In London this is primarily as a result of cases in most categories being more expensive historically and the fact that a London uplift has not been introduced for a number of the schemes. However, we believe the impacts on London providers remains acceptable given that there is more competition here and we are confident that we can secure sufficient services in those areas at the levels set by the fees. In Cambridge the decrease in expenditure is largely as a result of private family cases historically being more expensive here.
- A majority of firms in all regions bar London, Cambridge and Manchester are expected to increase their income under the new schemes.
- A majority of cases in all regions bar London is conducted by providers whose income is expected to increase under the new schemes. Nationally, we expect 56% of providers to increase their income.

Financial impact assessment – CLS fee schemes

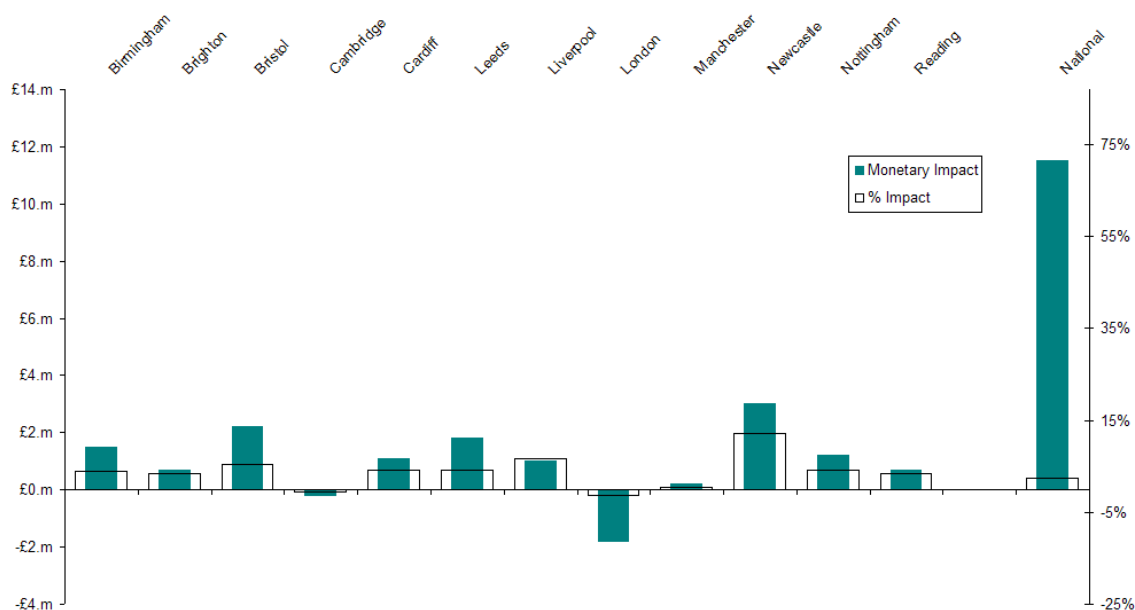
Provider impacts

The table and chart below show the expected variations in regional funding under the schemes.

Table 17: Regional Changes in Funding

	2005/06 Spend on Cases Covered by the Fee Schemes	Estimated Spend Under the Fee Schemes	Difference	%
Birmingham	£37.1m	£38.6m	£1.5m	4%
Brighton	£20.4m	£21.1m	£0.7m	3%
Bristol	£39.6m	£41.8m	£2.2m	6%
Cambridge	£36.0m	£35.8m	-£0.2m	-1%
Cardiff	£25.8m	£26.9m	£1.1m	4%
Leeds	£41.9m	£43.7m	£1.8m	4%
Liverpool	£14.8m	£15.8m	£1m	7%
London	£128.4m	£126.7m	-£1.8m	-1%
Manchester	£44.5m	£44.7m	£0.2m	0%
Newcastle	£24.9m	£27.9m	£3m	12%
Nottingham	£28.3m	£29.5m	£1.2m	4%
Reading	£20.7m	£21.5m	£0.7m	3%
National	£462.4m	£474m	£11.5m	2%

Figure 5: Regional monetary impact as a proportion of current spend



It can be seen that if nothing changed, and all our assumptions are accurate, we would expect to have spent around £11.5 million more under the fee schemes than we did in 05/6. This represents a 2.5% margin of tolerance as a result of assumptions made during modelling of the schemes. London and Cambridge are the only LSC regions in which we expect to see a decrease in funding (see explanation in summary on page 50).

Regional provider impacts

The proportion of providers whom we expect to see an increase in their funding, and the proportion of cases that they currently conduct, are shown below.

Table 18: Proportions of providers seeing an increase or decrease, proportions of cases undertaken by providers

	Proportion of Firms whose Income Would Increase/Decrease		Proportion of Cases Undertaken by Firms whose Income Would Increase/Decrease	
	Increase	Decrease	Increase	Decrease
Birmingham	61%	39%	57%	43%
Brighton	51%	49%	52%	48%
Bristol	67%	33%	92%	8%
Cambridge	45%	55%	60%	40%
Cardiff	62%	38%	76%	24%
Leeds	65%	35%	79%	21%
Liverpool	58%	42%	76%	24%
London	43%	57%	70%	30%
Manchester	45%	55%	59%	41%
Newcastle	84%	16%	95%	5%
Nottingham	69%	31%	74%	26%
Reading	56%	44%	74%	26%
National	56%	44%	75%	25%

A majority of providers in all regions except for Cambridge, London and Manchester are expected to increase their income under the new schemes.

However, a majority of cases in all regions are conducted by providers whose income is expected to increase under the new schemes.

Magnitude of variations in income

The magnitudes of the expected variations in income are shown in the figure below.

Figure 6: National impact of civil fee schemes as percentage of income

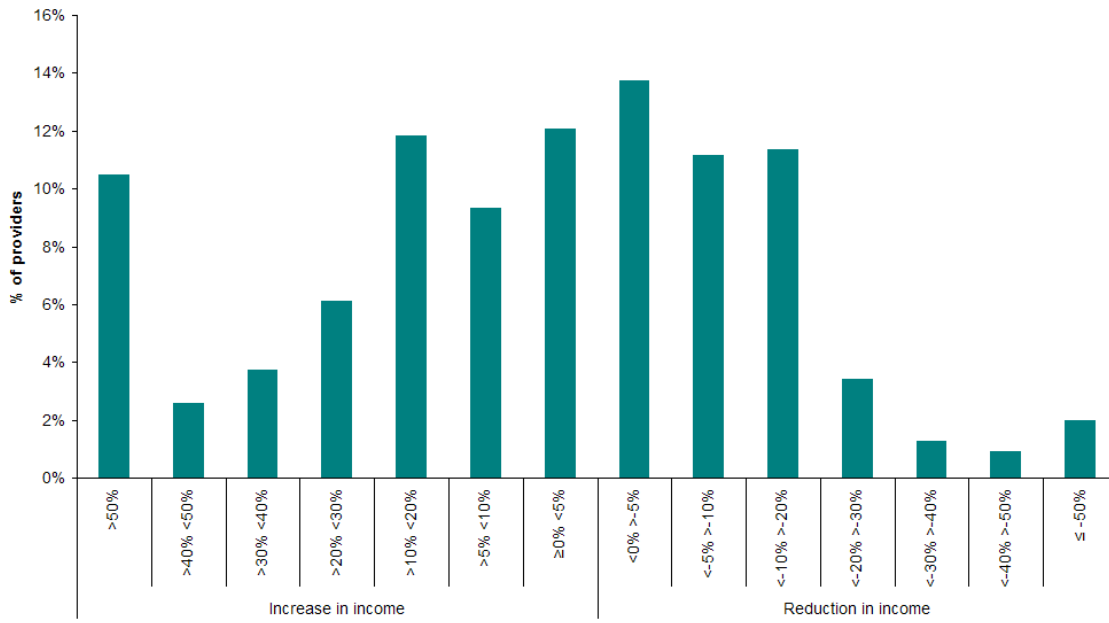


Table 19: Proportion of providers, by income change, by region

		Birmingham	Brighton	Bristol	Cambridge	Cardiff	Leeds	Liverpool	London	Manchester	Newcastle	Nottingham	Reading	National
Increase in income	>50%	11%	9%	15%	7%	12%	10%	17%	4%	6%	32%	17%	9%	10%
	>40% <50%	2%	5%	3%	2%	2%	3%	5%	2%	2%	4%	1%	1%	3%
	>30% <40%	4%	1%	4%	2%	6%	5%	4%	2%	3%	6%	6%	4%	4%
	>20% <30%	7%	8%	7%	4%	5%	7%	5%	5%	5%	12%	7%	6%	6%
	>10% <20%	12%	10%	19%	8%	14%	15%	6%	11%	8%	14%	12%	11%	12%
	>5% <10%	10%	9%	8%	9%	8%	14%	8%	8%	7%	9%	14%	13%	9%
	≥0% <5%	16%	10%	11%	15%	13%	11%	13%	11%	13%	7%	12%	11%	12%
Reduction in income	<0% >-5%	11%	18%	12%	20%	12%	14%	13%	15%	14%	7%	12%	13%	14%
	<-5% >-10%	15%	12%	8%	14%	12%	10%	12%	15%	12%	1%	6%	10%	11%
	<-10% >-20%	7%	12%	6%	12%	11%	7%	10%	19%	15%	7%	7%	13%	11%
	<-20% >-30%	2%	4%	3%	5%	2%	3%	4%	4%	5%	1%	2%	2%	3%
	<-30% >-40%	0%	1%	1%	2%	1%	0%	1%	2%	2%	1%	1%	3%	1%
	<-40% >-50%	2%	1%	1%	0%	0%	0%	1%	1%	1%	0%	0%	1%	1%
	≤ -50%	1%	1%	3%	2%	0%	1%	1%	2%	5%	0%	2%	2%	2%

Table 20: Proportion of providers in each region whose income will remain unchanged to within +/- 5% and +/- 10% of their current income.

	% of Firms with Income Unchanged	
	Within +/-5%	Within +/-10%
Birmingham	27%	52%
Brighton	28%	49%
Bristol	23%	39%
Cambridge	35%	57%
Cardiff	25%	45%
Leeds	25%	49%
Liverpool	26%	45%
London	26%	48%
Manchester	28%	46%
Newcastle	13%	24%
Nottingham	24%	44%
Reading	24%	47%
National	26%	46%

The following figure puts this in context of monetary gain/loss.

Figure 7: National monetary impact of civil fee schemes

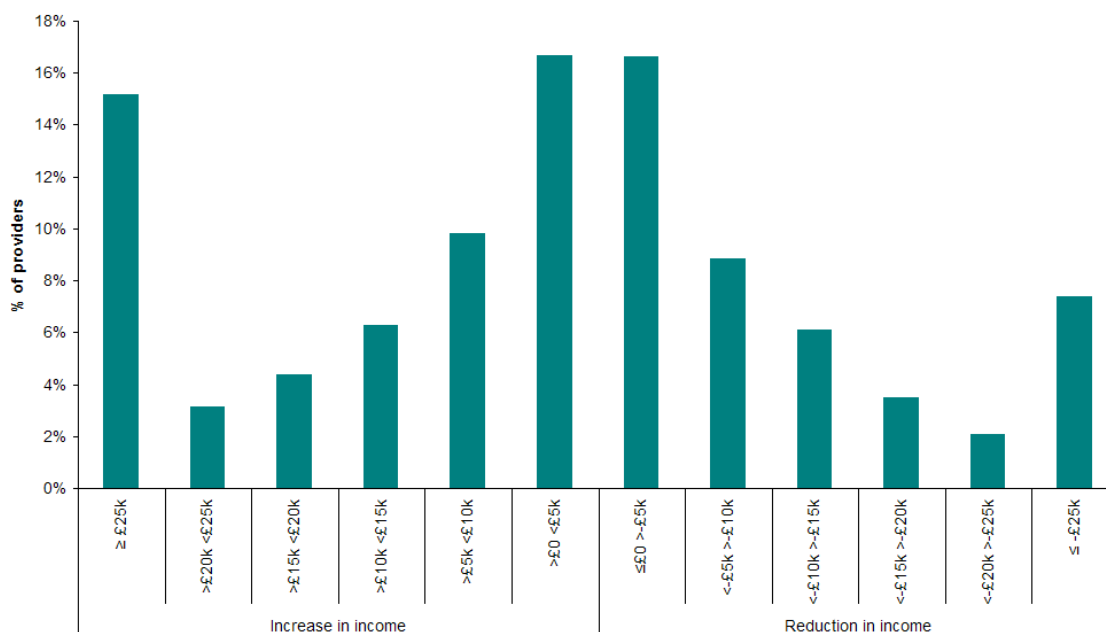
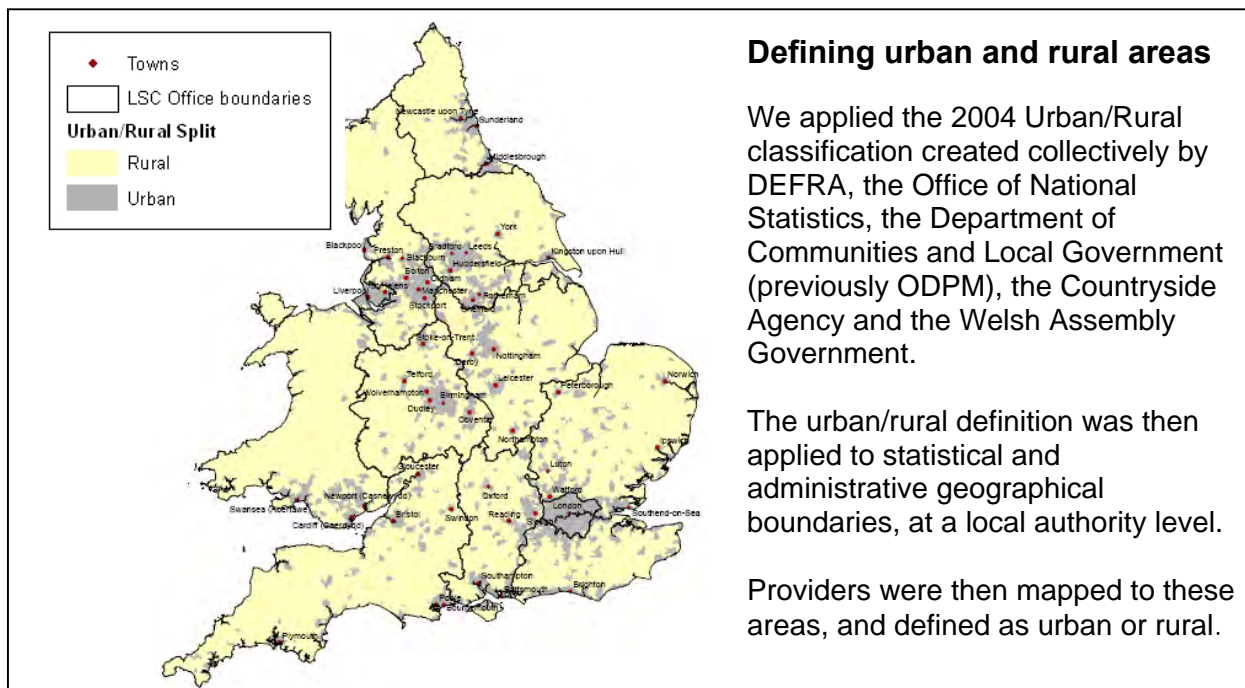


Table 21: Distribution of expected monetary gains and losses under the schemes for providers in each region

		Birmingham	Brighton	Bristol	Cambridge	Cardiff	Leeds	Liverpool	London	Manchester	Newcastle	Nottingham	Reading	National
Increase in income	≥ £25k	18%	12%	20%	7%	13%	15%	23%	10%	10%	42%	22%	12%	15%
	>£20k <£25k	5%	3%	4%	2%	4%	4%	1%	2%	2%	3%	6%	2%	3%
	>£15k <£20k	5%	5%	4%	3%	2%	5%	4%	5%	4%	7%	6%	4%	4%
	>£10k <£15k	6%	5%	9%	5%	6%	7%	4%	5%	2%	9%	7%	14%	6%
	>£5k <£10k	10%	12%	11%	9%	11%	13%	9%	7%	8%	11%	9%	11%	10%
	>£0 <£5k	19%	16%	16%	16%	23%	20%	17%	14%	18%	12%	19%	12%	17%
Reduction in income	≤£0 >-£5k	15%	15%	16%	19%	21%	16%	15%	18%	18%	8%	12%	22%	17%
	<-£5k >-£10k	7%	16%	9%	15%	4%	5%	9%	11%	11%	3%	7%	5%	9%
	<-£10k >-£15k	3%	8%	5%	10%	7%	4%	5%	8%	8%	1%	4%	6%	6%
	<-£15k >-£20k	5%	3%	1%	2%	3%	2%	5%	6%	5%	1%	2%	6%	4%
	<-£20k >-£25k	3%	1%	1%	4%	2%	1%	4%	3%	2%	1%	1%	2%	2%
	≤ -£25k	6%	5%	4%	7%	4%	8%	4%	13%	11%	1%	6%	4%	7%

Rural/urban providers



The following table shows the expected impacts on providers in rural areas against those in urban areas.

Table 22: Proportion of cases, by provider type, by area type

	Number of Cases Undertaken		% of cases Served by Providers whose Income would Increase		% of cases Served by Providers whose Income would Decrease	
	Rural	Urban	Rural	Urban	Rural	Urban
Birmingham	19%	81%	58%	62%	42%	38%
Brighton	39%	61%	44%	62%	56%	38%
Bristol	47%	53%	69%	70%	31%	30%
Cambridge	44%	56%	51%	45%	49%	55%
Cardiff	23%	77%	50%	72%	50%	28%
Leeds	23%	77%	71%	65%	29%	35%
Liverpool	0%	100%	N/A	74%	N/A	26%
London	0%	100%	N/A	48%	N/A	52%
Manchester	17%	83%	57%	59%	43%	41%
Newcastle	20%	80%	93%	79%	7%	21%
Nottingham	26%	74%	66%	68%	34%	32%
Reading	27%	73%	57%	64%	43%	36%
National	20%	80%	62%	61%	38%	39%

All client level analysis is at office level as firm level would result in clients being counted against the lead account number – this would remove the geographic link between firm and client and undermine the analysis.

The table shows that the impact on rural providers varies very little from that on urban. In rural areas 62% of clients are served by providers whose income is expected to increase, compared to 61% in urban areas.

Equalities Impact Assessment – CLS fee schemes

Ethnicity, gender and disability of majority managerial control

Client impacts

It is important to stress that the schemes do not impact directly on clients – the fees are paid to providers not to the clients. The most direct impact will be the decision to exempt standard fee cases from the statutory charge in Family Help (Lower) cases, which will significantly benefit clients that settle at that level. However, clients will be impacted indirectly if services become more, or less, available to them as a result of the fee schemes. That is why this section concentrates on providers serving particular client groups.

Ethnicity: Client

Table 23: Impacts of the fee schemes by client ethnicity

Region	Number of Cases Undertaken			% of Clients Served by Providers Whose Income would Increase			% of Clients Served by Providers Whose Income would Decrease		
	White	BME	Unknown	White	BME	Unknown	White	BME	Unknown
BIRMINGHAM	42054	20498	6856	59%	66%	59%	41%	34%	41%
BRIGHTON	23431	4593	3806	58%	41%	54%	42%	59%	46%
BRISTOL	45545	5265	7552	69%	77%	66%	31%	23%	34%
CAMBRIDGE	36059	5850	10126	47%	57%	43%	53%	43%	57%
CARDIFF	37715	4176	8511	65%	86%	66%	35%	14%	34%
LEEDS	50589	14749	5978	65%	72%	66%	35%	28%	34%
LIVERPOOL	28189	4142	2174	75%	78%	55%	25%	22%	45%
LONDON	44176	111321	11834	46%	49%	39%	54%	51%	61%
MANCHESTER	52373	15363	12010	57%	80%	39%	43%	20%	61%
NEWCASTLE	41574	7080	5048	85%	50%	93%	15%	50%	7%
NOTTINGHAM	36428	8830	6634	68%	67%	66%	32%	33%	34%
READING	23180	6630	3581	64%	57%	57%	36%	43%	43%
Total	461313	208497	84110	63%	58%	55%	37%	42%	45%

All client level analysis is at office level as firm level would result in clients being counted against the lead account number – this would remove the geographic link between firm and client and undermine the analysis.

From the LSRC survey, there appears to be a strong relationship between ethnicity of managerial control and client ethnicity. Amongst civil BME clients 30% were assisted by BME majority managed providers. White British managed providers' assisted 93% of civil white British clients. The percentage of BME clients using BME providers was however considerably lower for NfPs than for solicitors.

It is unclear at this stage how much of the relationship between client and provider ethnicity is a function of client choice and how much is explained by geographical factors.

If only the national figures are looked at overall under the new fee schemes, it can be seen that a higher proportion of BME than white clients are currently served by providers who might expect to see a decrease in their income.

There are, however, eight regions – Birmingham, Bristol, Cambridge, Cardiff, Leeds, Liverpool, Manchester and most notably London - in which the opposite is true. The BME clients served in London account for more than half of the total volume of BME clients, meaning that the impacts on London clients are a huge factor in the national disparity between BME and white clients. It must be stressed, however, that within London a higher proportion of BME than white clients are served by providers who might expect to see an increase in their income. Equally, taking all the areas outside London together, there is a slightly higher proportion of BME than white clients served by providers that are expected to gain. The overall position is a reflection of the impact of the fee schemes on London providers, rather than those that act for BME clients in particular. This further analysis does not therefore indicate any potential discriminatory effect on BME clients as BME clients, or within the areas where they access services. If and to the extent that it is relevant to consider the disparate impact on BME clients nationally, the impact is justified in light of the conclusions that can be drawn from the more nuanced localised analysis and the general aims of the reform programme.

Age: Client

Table 24: Impacts of the fee schemes by client age

Region	Number of Cases Undertaken							% of Clients Served by Providers Whose Income would Increase							% of Clients Served by Providers Whose Income would Decrease						
	0-16	17-24	25-34	35-49	50-64	65+	Unknown	0-16	17-24	25-34	35-49	50-64	65+	Unknown	0-16	17-24	25-34	35-49	50-64	65+	Unknown
BIRMINGHAM	1574	9698	22184	25915	7959	2050	28	63%	67%	65%	60%	54%	52%	79%	37%	33%	35%	40%	46%	48%	21%
BRIGHTON	693	4535	9547	12471	3732	829	24	46%	53%	54%	57%	56%	59%	96%	54%	47%	46%	43%	44%	41%	4%
BRISTOL	1364	7278	17192	23764	7133	1587	44	62%	72%	69%	69%	69%	72%	70%	38%	28%	31%	31%	31%	28%	30%
CAMBRIDGE	1286	6840	16344	20501	5687	1350	27	43%	47%	47%	47%	50%	54%	33%	57%	53%	53%	53%	50%	46%	67%
CARDIFF	1068	7110	14815	18651	6967	1642	148	59%	70%	66%	66%	67%	70%	74%	41%	30%	34%	34%	33%	30%	26%
LEEDS	1673	10897	23853	26023	7134	1706	32	70%	66%	66%	66%	67%	65%	81%	30%	34%	34%	34%	33%	35%	19%
LIVERPOOL	846	3963	8441	13191	6467	1561	34	61%	77%	71%	73%	77%	80%	94%	39%	23%	29%	27%	23%	20%	6%
LONDON	2303	26468	56286	60754	16255	5162	104	33%	50%	49%	46%	46%	47%	16%	67%	50%	51%	54%	54%	53%	84%
MANCHESTER	1806	11220	24698	29911	9853	2221	37	32%	64%	58%	57%	64%	67%	73%	68%	36%	42%	43%	36%	33%	27%
NEWCASTLE	1175	8669	17086	18818	6419	1508	26	91%	78%	80%	83%	83%	84%	88%	9%	22%	20%	17%	17%	16%	12%
NOTTINGHAM	1170	6820	16431	19996	5986	1446	45	68%	65%	68%	68%	67%	70%	67%	32%	35%	32%	32%	33%	30%	33%
READING	801	4355	10424	13406	3541	852	12	72%	61%	62%	61%	63%	64%	42%	28%	39%	38%	39%	37%	36%	58%
Total	15759	107853	237301	283401	87133	21914	561	56%	62%	61%	60%	62%	63%	63%	44%	38%	39%	40%	36%	37%	37%

All client level analysis is at office level as firm level would result in clients being counted against the lead account number – this would remove the geographic link between firm and client and undermine the analysis.

The fee schemes have a more negative impact on providers who act for a higher proportion of clients aged 16 and under, although overall a majority of clients in this age group are represented by providers that will benefit.

It is also true that a majority of contract holders whom we expect to experience an increase in income represent a majority of clients in all age groups across all areas of law covered by the schemes.

The volumes of clients aged 16 and under served in the majority of areas of law covered by the fee schemes are too low to draw any significant conclusions.

Those categories where a significant proportion of clients are aged 16 and under are Education, Welfare Benefits, Care and Supervision and Family Help- Private.

The combined effect of all of the fee schemes on those providers with contracts in both Education and Welfare Benefits do not lead to any adverse impact on providers with higher proportions of clients in this age group, in fact the opposite is true of those providers practising in Education.

However, providers with higher proportions of clients in this age group with Family contracts are more adversely affected. The differences in impact between different client age groups are not large, and it is important to remember that the Family schemes themselves do not show a significant adverse impact on providers acting for these groups – i.e. there is nothing in the Family fees which would lead a provider to, for example, act for fewer children.

Long-term illness and disability: Client

The LSC does not believe that there will be disproportionate impact on long-term ill or disabled clients as a result of the fee schemes.

Analysis of controlled work claims shows that the proportion of cases that fall between the fee level and the exceptional case threshold is 35% for clients featuring a long-term illness or disability, as compared with 32% for clients that do not (please see table 26 below). This indicates that there is no disproportionate impact on clients that feature a long-term illness or disability.

Table 25: Analysis of Controlled Work claims against fee levels by disability

			Between Fee and			
			Exceptional	Less Than Fee	Exceptional Limit	Total
Client disability status	No	Count	10,613	102,551	53,215	166,379
		%	6%	62%	32%	100%
	Yes	Count	5,326	41,405	25,435	72,166
		%	7%	57%	35%	100%
	Unknown	Count	7,666	56,482	29,530	93,678
		%	8%	60%	32%	100%
	Total	Count	23,605	200,438	108,180	332,223
		%	7%	60%	33%	100%

Ethnicity, gender and disability of majority managerial control

Table 26: Equalities impacts of fee schemes on providers

	Firms	Negative Impact	Positive Impact
White British	1,737	41%	59%
BME	185	48%	52%
Split	72	43%	57%
Male	860	39%	61%
Female	302	50%	50%
Split	238	41%	59%
Ill/disabled	8	38%	63%
Non-ill/disabled	1403	42%	58%
Split	18	44%	56%

Ethnicity: provider

Tests showed that on a national analysis there was no significant difference in provider impacts by ethnicity of majority managerial control between providers whose income is expected to increase and those whose is expected to decrease.

Gender: provider

Tests of provider impacts by gender of majority managerial control showed that there were significant differences in gender of majority managerial control between providers whose income is expected to increase and those whose income is expected to decrease. Male controlled firms are more likely to increase their income than female controlled firms.

Long-term illness or disability: Provider

Tests of provider impacts by disability of majority managerial control showed that there were no significant differences in disability of majority managerial control between providers whose income is expected to increase and those whose income is expected to decrease. However, as there are only a very small number of ill or disabled controlled firms, such findings should be viewed with caution.

Annex C

CDS & CLS Fee Schemes – Combined Financial and Equalities Impact Assessments

This section of the IA considers the overall impact of phase 1 of the reform programme for sectors and groups who may be impacted differently as a result of involvement in both civil and criminal legal aid.

Some providers work on both civil and criminal legal aid matters and the aggregated impact on them is important to assess. They may benefit from the civil reforms but may be detrimentally affected by the crime reforms; this section illustrates the net position.

Financial impacts – civil and crime fee schemes

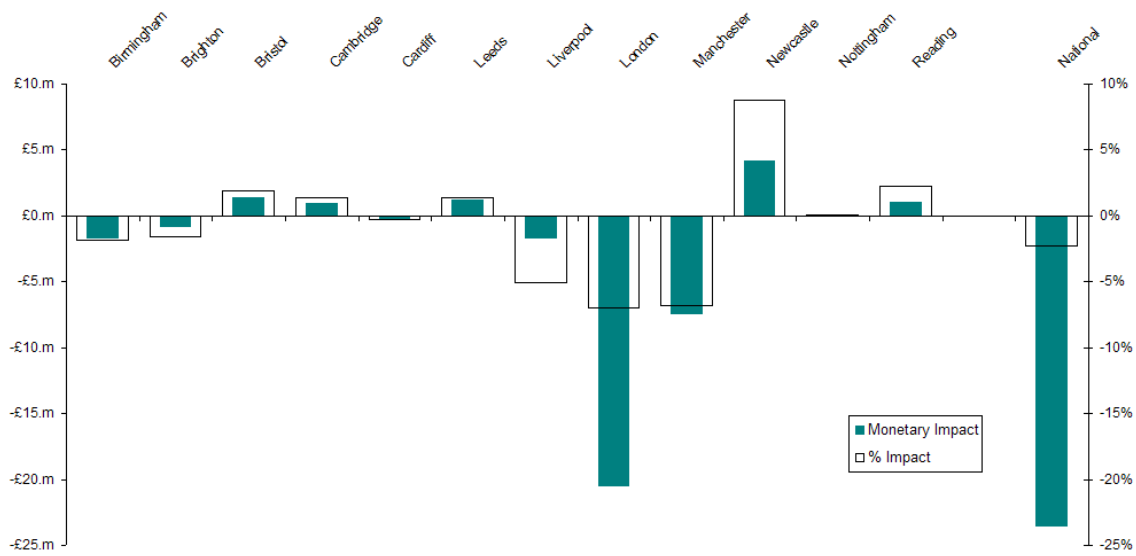
Regional changes in funding

Table 27: Variations in regional funding under the schemes

	2005/06 Spend on Cases Covered by the Fee Schemes	Estimated Spend Under the Fee Schemes	Difference	%
Birmingham	£94.0m	£92.3m	-£1.7m	-2%
Brighton	£51.1m	£50.3m	-£0.8m	-2%
Bristol	£71.5m	£72.9m	£1.4m	2%
Cambridge	£72.1m	£73.1m	£1m	1%
Cardiff	£52.6m	£52.4m	-£0.2m	0%
Leeds	£86.8m	£88.0m	£1.2m	1%
Liverpool	£33.1m	£31.5m	-£1.6m	-5%
London	£293.5m	£273.0m	-£20.5m	-7%
Manchester	£10.9m	£10.1m	-£0.8m	-7%
Newcastle	£47.6m	£51.8m	£4.2m	9%
Nottingham	£66.1m	£66.2m	£0.1m	0%
Reading	£45.5m	£46.6m	£1.1m	2%
National	£1,023m	£1,000m	-£23m	-2%

Table 27 demonstrates that seven regions will experience no change or an increase in their overall funding under these schemes. The reduction of £23m reflects the savings taken from crime. Those regions that see the largest reductions in expenditure are London, Liverpool and Manchester. This is consistent with their status as reduction areas that feature high volumes. The LSC believes this is justified in the context of seeking to rebalance expenditure between civil and criminal legal aid.

Figure 8: Monetary impact of combined fee schemes as a proportion of current spend



The combined impact of the schemes is a net reduction in income of £23m representing 2% of total income under the schemes. In six regions we expect to see an increase in funding. In the other six regions we expect to see a reduction in funding up to a maximum of 7% in London and Manchester. The primary drivers for this are the reductions made in certain areas under the crime fee schemes. London and Manchester see the greatest impacts, as these are high volume areas that are experiencing a percentage reduction on the available remuneration.

Regional provider impacts

Table 28: Proportion of providers who see an increase or decrease in income and the proportion of cases that they currently conduct

	Proportion of Firms whose Income Would Increase/Decrease		Proportion of Cases Undertaken by Firms whose Income Would Increase/Decrease	
	Increase	Decrease	Increase	Decrease
Birmingham	47%	53%	44%	56%
Brighton	47%	53%	44%	56%
Bristol	54%	46%	60%	40%
Cambridge	49%	51%	58%	42%
Cardiff	46%	54%	50%	50%
Leeds	54%	46%	64%	36%
Liverpool	44%	56%	50%	50%
London	32%	68%	31%	69%
Manchester	35%	65%	27%	73%
Newcastle	73%	27%	84%	16%
Nottingham	55%	45%	48%	52%
Reading	49%	51%	51%	49%
National	45%	55%	47%	53%

In Bristol, Newcastle, Leeds and Nottingham regions a majority of firms are expected to increase their income under the new schemes. Amongst London providers 68% are expected to see a decrease in their income. Again, the LSC believes that this impact is justified in the context of the overall aims of the reform programme, as it is a product of focussing crime savings on those areas that are most likely to offer providers the opportunity to make efficiency savings in delivery practices.

Figure 9: Proportion of cases undertaken by providers likely to experience a reduction or increase in income



Magnitude of variations in income

Figure 10: National impact of fee schemes as percentage of provider income

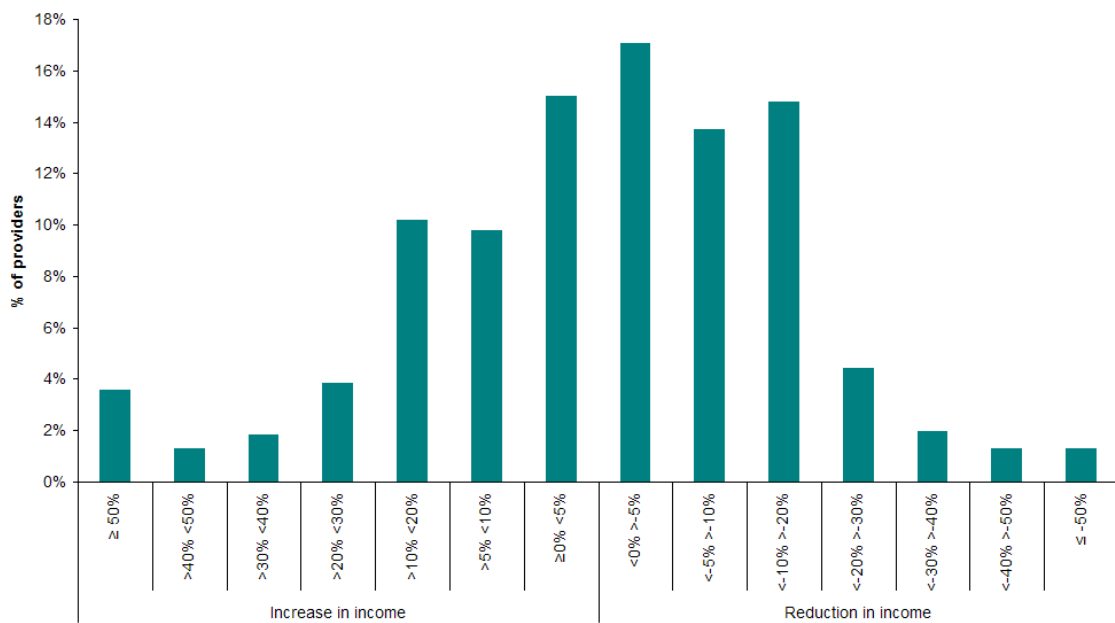


Table 29: Proportion of providers, by income change, by region

		Birmingham	Brighton	Bristol	Cambridge	Cardiff	Leeds	Liverpool	London	Manchester	Newcastle	Nottingham	Reading	National
Increase in income	≥ 50%	3%	3%	3%	4%	2%	3%	7%	3%	4%	6%	4%	2%	4%
	>40% <50%	1%	1%	2%	1%	1%	1%	3%	1%	1%	1%	1%	2%	1%
	>30% <40%	1%	0%	2%	2%	1%	3%	3%	1%	1%	5%	2%	3%	2%
	>20% <30%	6%	4%	3%	4%	4%	4%	3%	3%	3%	11%	3%	2%	4%
	>10% <20%	11%	13%	14%	7%	12%	13%	5%	8%	5%	18%	11%	11%	10%
	>5% <10%	9%	9%	12%	12%	9%	13%	8%	5%	7%	17%	16%	12%	10%
	≥0% <5%	16%	15%	18%	20%	17%	15%	16%	10%	14%	16%	19%	16%	15%
Reduction in income	<0% >-5%	17%	24%	18%	24%	19%	19%	17%	12%	16%	7%	19%	20%	17%
	<-5% >-10%	16%	10%	12%	14%	15%	11%	13%	14%	18%	7%	13%	14%	14%
	<-10% >-20%	14%	12%	11%	12%	12%	9%	12%	22%	20%	10%	8%	13%	15%
	<-20% >-30%	3%	4%	3%	1%	5%	2%	5%	10%	5%	1%	2%	1%	4%
	<-30% >-40%	1%	2%	1%	1%	1%	2%	2%	4%	3%	1%	1%	1%	2%
	<-40% >-50%	1%	0%	1%	0%	1%	1%	4%	3%	1%	0%	1%	1%	1%
	≤ -50%	1%	0%	1%	0%	1%	1%	4%	3%	2%	0%	1%	0%	1%

Figures 9 and 10, and table 29, illustrate that 45% of providers would not see any reduction in their income. Nationally 37% of providers would see their income reduce by more than 5%. In London 56% of providers would see a reduction in income of more than 5%. It should be noted that this analysis has been conducted at firm level i.e. aggregating all financial information for all the contracted offices of a given provider.

Table 30: Proportion of providers in each region whose income will remain unchanged to within +/- 5% and +/- 10% of their current income

	% of Firms with Income Unchanged	
	Within +/-5%	Within +/-10%
Birmingham	33%	57%
Brighton	39%	59%
Bristol	36%	60%
Cambridge	44%	69%
Cardiff	36%	60%
Leeds	35%	60%
Liverpool	33%	54%
London	22%	42%
Manchester	30%	55%
Newcastle	23%	47%
Nottingham	37%	67%
Reading	36%	62%
National	32%	56%

Table 28 demonstrates that 45% of providers would not have seen a reduction in income under these schemes. This is the kind of effect the analysis should show when the fees have been pitched at an average level. The following figure puts this in context of monetary gain/loss. The table shows the distribution of expected monetary gains and losses under the schemes for providers in each region. Again the distribution demonstrated suggests that the fees have been pitched at the right level, as we see a clear concentration of distribution at the neutral impact mid-point, along with the outliers that the schemes are designed to draw in to the mid-point.

Figure 11: National monetary impact of combined fee schemes

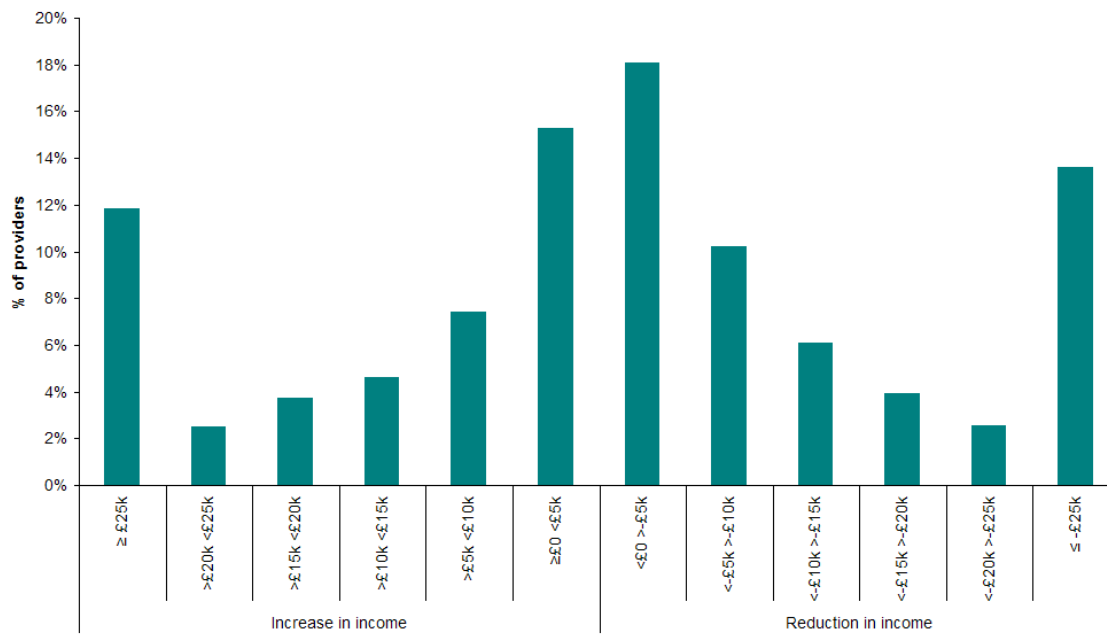


Table 31: Distribution of expected monetary gains and losses under the schemes for providers in each region

		Birmingham	Brighton	Bristol	Cambridge	Cardiff	Leeds	Liverpool	London	Manchester	Newcastle	Nottingham	Reading	National
Increase in income	≥ £25k	13%	9%	12%	10%	10%	15%	15%	10%	6%	29%	13%	13%	12%
	>£20k <£25k	2%	3%	2%	3%	2%	3%	2%	2%	2%	4%	4%	2%	3%
	>£15k <£20k	4%	4%	6%	5%	3%	3%	5%	2%	2%	8%	4%	3%	4%
	>£10k <£15k	5%	5%	7%	4%	3%	7%	5%	3%	2%	7%	6%	7%	5%
	>£5k <£10k	7%	7%	10%	8%	8%	11%	3%	5%	7%	8%	9%	9%	7%
	≥£0 <£5k	16%	18%	17%	19%	19%	15%	15%	10%	15%	16%	18%	14%	15%
Reduction in income	<£0 >£5k	18%	19%	18%	21%	20%	20%	16%	18%	16%	12%	14%	23%	18%
	<£5k >£10k	9%	12%	12%	11%	13%	7%	8%	10%	13%	6%	10%	9%	10%
	<£10k >£15k	5%	6%	5%	8%	9%	4%	7%	6%	7%	3%	7%	5%	6%
	<£15k >£20k	3%	3%	3%	2%	4%	3%	7%	5%	5%	2%	4%	5%	4%
	<£20k >£25k	2%	2%	2%	1%	2%	2%	3%	4%	4%	2%	0%	4%	3%
	≤ -£25k	16%	11%	6%	9%	6%	9%	16%	25%	20%	3%	9%	6%	14%

Table 31 again supports the contention that the fees have been pitched at the appropriate level. There is a clear concentration of distribution around the mid-point in all regions, with a dropping off in the middle ranges, and an increase in concentration of the outlying ranges. This is precisely the effect the analysis should so where fees are set at average levels.

Equalities impact assessment – CDS and CLS fee schemes

Ethnicity, gender and disability impacts

Majority managerial control

Table 32: Equalities impacts of fee schemes on London providers by managerial control

	Firms	Negative Impact	Positive Impact	Average Impact	%
White British	164	76%	24%	–£36,000	–3%
BME	175	67%	33%	–£24,000	–1%
Split	39	87%	13%	–£23,000	–9%
Male	208	79%	21%	–£36,000	–3%
Female	107	65%	35%	–£20,000	–2%
Split	66	70%	30%	–£15,000	–1%
Ill/disabled	2	-	-	-	-
Non-ill/disabled	385	73%	27%	–£27,000	–3%
Split	2	-	-	-	-

Ethnicity

Analysis of the combined impact of the fee schemes on London based White British and BME owned and controlled providers demonstrates that whilst a majority of both groups of providers would expect to see a decrease in income the effect is slightly more pronounced for White British providers. Amongst White British owned and controlled providers 76% could expect to see a decrease (of –3% on average) compared with 67% of BME owned and controlled providers (–1% on average). The extent of the reductions featured is a product of the savings being taken from London across the fee schemes. The LSC believes that these impacts are justified on the basis of the aims of the reform programme i.e. to secure the long-term future of the system by placing it on a sustainable footing, and to rebalance spending between civil and criminal legal aid.

Gender

A greater majority of London based male owned and controlled providers would expect to see a reduction in income in comparison to female owned and controlled providers. Amongst of male owned and controlled providers 79% would expect to see a decrease in income. The average impact on all male owned and controlled providers would be –3%. Amongst female owned and controlled providers 65% would expect to see a decrease. The average impact on all female owned and controlled providers would be –1%. The driver for this is likely to be the far higher number of male owned and controlled providers within the sample size, meaning that the analysis considered a broader range of impacts within that group. However, any disproportionate impact that cannot be attributed to the statistical significance of the sample size is justified by the fact that the fees are designed to drive changes in provider behaviour, and that the impacts shown are notional only as they do not take account of any such changes.

Long-term illness or disability

Data is very limited with regard to long-term illness/disability of providers; only 8 of 2153 firms have confirmed that the major managerial control rests with a person who is long-term ill or has a disability. However, the analysis indicates that the negative impact is less pronounced where the major managerial control rests with a person who is long-term ill or has a disability. However, these findings are not statistically significant due to the limitations on sample size.

Table 33: Equalities impacts of fee schemes on non-London providers by managerial control

	Firms	Negative Impact	Positive Impact	Average Impact	%
White British	1,443	54%	47%	£2,500	4%
BME	105	70%	31%	-£25,000	-4%
Split	58	60%	43%	-£15,000	3%
Male	1,048	55%	46%	-£1,400	3%
Female	285	54%	46%	£3,000	4%
Split	277	55%	45%	£2,000	4%
Ill/disabled	13	46%	54%	£4,900	5%
Non-ill/disabled	1,591	54%	46%	-£200	3%
Split	23	87%	13%	£200	1%

Ethnicity

Outside London a greater majority of BME owned and controlled providers would expect to see a decrease in income in comparison to White British owned and controlled providers. The average impact of the fee schemes on non-London BME providers is expected to be -4%. White British providers outside London would expect to see an average increase in income of 4%. This effect is explained by the fact that the vast majority of BME provision is based in major urban areas, and as such these providers are more likely to experience a reduction in income under the criminal schemes, which has a knock-on effect to the overall combined financial position. As stated elsewhere in this IA, the LSC believes this approach is justified as the urban areas feature both over-supply and afford providers the best opportunities to achieve efficiency savings through delivery practice and volume access.

Gender

There are no significant differences between the impact of the fee schemes on non-London male owned and controlled providers when compared with female owned and controlled providers.

Long-term illness or disability

A majority of ill/disabled owned providers would expect to see an increase in income under the fee schemes. This is in contrast with non-ill/disabled owned providers where a small majority (54%) would expect to see a decrease. However, within the dataset there is an insufficient number of providers across the range of civil and criminal

providers with long term ill or disabled majority ownership or control to allow for a meaningful analysis.

Fee Earners

Table 34: Equalities impacts of fee schemes on London fee earners

	Negative		Positive	
	No.	%	No.	%
Managers				
White British	484	81%	111	19%
BME	377	73%	142	27%
Solicitor Fee Earners				
White British	850	85%	147	15%
BME	800	81%	183	19%
Non-Solicitor Fee earners				
White British	630	87%	92	13%
BME	567	80%	143	20%
Total Fee Earners				
White British	1,480	86%	239	14%
BME	1,367	81%	326	19%
Paid employees (NfPs)				
White British	205	78%	58	22%
BME	170	58%	124	42%
Volunteers (NfPs)				
White British	538	96%	20	4%
BME	116	65%	63	35%

In London and across all sectors and levels of employment White British fee earners are slightly more likely than BME fee earners to be employed by a provider that would experience a negative impact under the fee schemes. However, in the context of NfP agencies the positive impacts are heavily weighted in favour of BME employees and volunteers. It is not clear from the analysis why this is the case.

Table 35: Equalities impacts of fee schemes on non-London fee earners

	Negative		Positive	
	No.	%	No.	%
Managers				
White British	3,091	52%	2,874	48%
BME	293	62%	179	38%
Solicitor Fee Earners				
White British	4,474	54%	3,803	46%
BME	558	64%	308	36%
Non-Solicitor Fee earners				
White British	3,546	52%	3,327	48%
BME	414	67%	206	33%
Total Fee Earners				
White British	8,020	53%	7,130	47%
BME	972	65%	514	35%
Paid employees (NfPs)				
White British	1,233	49%	1,274	51%
BME	171	45%	213	55%
Volunteers (NfPs)				
White British	2,246	61%	1,440	39%
BME	323	56%	256	44%

With the exception of NfP employees, outside London BME fee earners are slightly more likely to be employed by a provider that would see a negative impact in income under the fee schemes. Interestingly, the analysis shows a levelling of the position in relation to NfP employees and volunteers in comparison to the London position. Again the analysis does not provide a clear explanation of why this effect is seen. Again, if and to the extent that the small disparities in impact are relevant, they are considered justified in the light of the conclusions drawn from the analysis set out above and in the light of the general aims of the reform programme.

Annex D

Magistrates' Court Revised Standard Fee Scheme

Impact from implementation to date

The Magistrates' Court Revised Standard Fee scheme was implemented in 16 main urban areas in April 2007. The revised fees now include a standard element of travel and waiting time, which are no longer separately payable, although providers must still report time spent travelling and waiting when they report cases. Travel and waiting information is required to enable the LSC to effectively monitor the effects of the new fees and their impact on travel and waiting, this information will be used to inform future policy making.

An assessment of the revised impacts of the new fee scheme has been included in the figures for the combined impact of the criminal fee schemes. The analysis details the effects of the new fee scheme may have had on providers had it been implemented in 2005/6.

In contrast to the other fee schemes considered in this exercise, the magistrates' court revised fees have been in operation for several months, making it possible to tentatively assess actual impact on providers. We have examined the claims made by providers under the new scheme, and compared the payments made under the revised fees to the amount that would have been paid for the same claim if the previous system of standard fees were still in effect. This analysis should be treated with some caution as it relies on less than a full years' data and as such may not fully reflect the range of cases that would come through the Magistrates' Court in a full financial year. A full assessment of the impact on providers of the new fees in urban and rural areas and a full equality analysis has been undertaken.

Table 36: Impact of new fee structure on providers in urban areas

	Claims	Value	Difference to old scheme	%	Value Apr to Sept 06	Year on Year Change	%
Brighton and Hove	1,600	£1,299,000	£15,000	1%	£1,458,000	−£159,000	−11%
Bristol	3,700	£1,768,000	£55,000	3%	£1,891,000	−£123,000	−7%
Cardiff	3,000	£1,434,000	£20,000	1%	£1,583,000	−£149,000	−9%
Derby & Erewash	2,300	£1,393,000	£23,000	2%	£1,538,000	−£145,000	−9%
Greater Manchester	19,600	£9,001,000	£296,000	3%	£10,056,000	−£1,055,000	−10%
Kingston upon Hull	2,000	£894,000	£48,000	6%	£1,004,000	−£110,000	−11%
Leeds & Bradford	8,100	£3,626,000	£137,000	4%	£3,784,000	−£158,000	−4%
Leicester	2,900	£2,019,000	£30,000	2%	£2,356,000	−£337,000	−14%
London	35,700	£23,677,000	−£283,000	−1%	£29,923,000	−£6,246,000	−21%
Merseyside	8,900	£4,347,000	£119,000	3%	£4,521,000	−£174,000	−4%
Newcastle upon Tyne	9,500	£3,661,000	£163,000	5%	£3,845,000	−£184,000	−5%
Nottingham	4,300	£3,033,000	£63,000	2%	£2,943,000	£90,000	3%
Portsmouth	2,000	£893,000	£18,000	2%	£935,000	−£42,000	−4%
Sheffield	2,700	£1,191,000	£38,000	3%	£1,342,000	−£151,000	−11%
Southampton	1,600	£719,000	£26,000	4%	£945,000	−£226,000	−24%
West Midlands	18,400	£9,033,000	£259,000	3%	£10,524,000	−£1,491,000	−14%
Urban Total	126,100	£67,987,000	£1,028,000	2%	£78,646,000	−£10,659,000	−14%

The new fee structure has succeeded in reducing the cost of claims by £10,659,000 in the period April to September 2007 when compared to the same period in the previous year. This reduction is mainly due to a slight reduction in overall case numbers rather than reduced payments to providers, although it should be noted that 17% of magistrates' court claims in the period April to September 2007 had no travel and waiting costs, compared to 8% of claims for the same period in 2006.

Overall the impact on individual urban areas has been minimal with most areas showing a slight percentage increase. Providers working in Kingston upon Hull show the highest increase in income of 6% whereas providers working within London show a slight reduction of 1%.

Table 37: Impact of new fee structure on providers in rural and urban areas

	Claims	Value	Difference to old scheme	%	Value Apr to Sept 06	Year on Year Change	%
Rural	123,000	£57,734,000	-£34,000	0%	£64,805,000	-£7,071,000	-11%
Urban	126,000	£67,987,000	£1,028,000	2%	£78,646,000	-£10,659,000	-14%
Total	249,000	£125,721,000	£994,000	1%	£143,450,000	-£17,729,000	-12%

The new fee structure has not had a negative impact on either rural or urban providers. Providers based in rural areas have seen a slight decrease in their fees, but overall the new scheme has not had an effect on their income compared to the system previously in place. Providers in urban areas have seen a slight increase in their income of 2% overall. The cost of claims submitted between April and September 2007 was reduced by £17,729,000 compared to the same period in the previous year.

Table 38: Equalities impact of new fee structure on London providers

	Number of firms	Average Impact	Average percentage impact
White British	87	-£641	-2%
BME	103	-£986	-3%
Split	30	-£344	-2%
Male	142	-£822	-2%
Female	49	-£456	-2%
Split	32	-£621	-2%
Ill/disabled	-	-	-
Non-ill/disabled	226	-£690	-2%
Split	-	-	-

The equalities impact indicates that the percentage reduction in income for London providers under the new fee structure has no disproportionate impact, affecting all provider groups uniformly.

Table 39: Equalities impact of new fee structure on providers in other urban areas.

	Number of firms	Average Impact	Average percentage impact
White British	279	£1,778	2%
BME	44	£1,170	1%
Split	26	£1,757	2%
Male	267	£1,995	2%
Female	36	£843	2%
Split	49	£1,147	1%
Ill/disabled	-	-	-
Non-ill/disabled	349	£1,748	2%
Split	-	-	-

The equalities impact indicates that providers in other urban areas have experienced a slight increase in their income under the new fee structure. The percentage increases are uniform and show no disproportionate effect on any supplier group. There is some variability in the average monetary impact on providers, the largest increase is experienced by male majority owned providers £1,995 and the smallest increase is experienced by female majority owned providers £843. BME owned firms experience a slightly lower increase £1,170 than white British owned firms £1,778.

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