

Police Station Reforms:
Boundaries, Fixed Fees and New Working
Arrangements
Regulatory Impact Assessment

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1. Introduction

- 1.1. This document is a final regulatory impact assessment and is based on the proposals outlined in the consultation paper “Police Station Reforms: Boundaries, Fixed Fees, and New Working Arrangements” which was published on 12th February 2007. The proposals outlined in that paper were the subject of a public consultation that closed on 10th April 2007. The recommendations contained within this document are based on the responses received during the consultation period.

2. Title of Proposals

- 2.1. Police Station Reforms: Boundaries, Fixed Fees, and New Working Arrangements.

3. Purpose and Intended Effect

Objective

3.1. To introduce a fixed fee payment system for legal service providers for the provision of advice at police stations from October 2007. The introduction of fixed fees will –

- Control future growth in the average cost of these cases, enabling the Commission to predict cost more effectively and to manage the provision of these services within the overall legal aid budget so as to protect services to clients
- Enable a reduction in expenditure in this area of £8m a year, by bearing down on travel and waiting costs in urban areas, to enable the Commission to deliver services within the budget available and so protect services to clients
- Demonstrate greater value for money, a statutory obligation for the Commission, by ceasing to pay higher average costs to some providers for services than can be achieved by other providers delivering the same services at the same locations
- Reward the most efficient providers
- Enable providers to examine the way they provide services and change their practices so as to operate more efficiently
- Put all providers delivering services at the same police station on an equal footing in terms of payments, well ahead of the proposed introduction of best value tendering, enabling firms to prepare for its possible introduction and not leaving firms with higher average costs at a disadvantage at that point in time
- To put in place a fee structure that can provide the basis for any potential future introduction of best value tendering.

3.2. In addition we aim to rationalise the structure of the individual police station duty schemes to provide a more effective match to the way in which the wider criminal justice system has developed, revise a number of anomalies that have arisen in the structure of the schemes and provide a more coherent and sustainable basis for these services.

3.3. To ensure the successful delivery of this objective supporting objectives, which address specific themes, have been developed. These five supporting objectives will ensure efficient legal service providers remain profitable and continue to provide quality advice to clients, whilst at the same time safeguarding the provision of criminal defence services by making expenditure more sustainable. The secondary objectives are set out below:

- Ensure the sustainability of the provider base of legal service providers
- Provide greater certainty as to the volumes of work available to providers
- Control expenditure in police station attendance cases
- Rationalise police station schemes and promote efficiencies for providers delivering within those schemes
- Enable providers to commence the restructuring process and thereby compete in the market more effectively

Background

- 3.4. The command paper, 'A Fairer Deal for Legal Aid', set the terms of reference for Lord Carter's Review of Legal Aid Procurement, which began in July 2005 and published its findings in July 2006. The review was tasked with setting out a plan to deliver fundamental reform that would ensure access to justice, deliver greater value for money and a sustainable provider base.
- 3.5. In his final report entitled 'Legal Aid: A market-based approach to reform' Lord Carter recommended a number of changes to the way publicly funded legal services are structured and remunerated. The LSC and the Ministry of Justice (MoJ) issued a joint consultation paper 'Legal Aid: A Sustainable Future' in response to this final report. A further consultation was undertaken on these proposals and on 12th October 2006, a joint response to the consultation, "Legal Aid: the Way Forward" was published by the Commission and the MoJ on 28th November 2006.
- 3.6. In February 2007 the LSC published a further consultation entitled, "Police station reforms: Boundaries, Fixed Fees and New Working Arrangements." This consultation set out in detail the proposals for establishing fixed fees for work undertaken at the police station by legal service providers, the redrawing of current boundary (scheme) areas and outlined proposals for new working arrangements for access to, and the delivery of work within the new boundary areas.

Rationale for government intervention

- 3.7. Criminal legal aid expenditure has increased significantly in recent years. By introducing fixed fees for police station and related attendances following this consultation there will be more stringent control of the budget to ensure that the legal aid scheme is sustainable into the future.
- 3.8. A reduction in the overall number of boundary areas by increasing their size would serve to increase the volume of work available in each scheme. Currently there are high numbers of providers in many areas competing for access to police station work. The consultation is designed to address that issue by setting out options to limit the number of providers operating within a given area, promoting efficiency by limiting the amount of 'out of area' work a provider can deliver and awarding duty rota slots based on historical volumes of work.

4. Consultation

Public Consultation

- 4.1. An extensive public consultation took place between 12 February 2007 and 10 April 2007. The consultation paper was sent to all providers with a legal aid contract, representative bodies and other stakeholders, and was also published on the internet. A total of 358 responses to the consultation were received. Of these, the vast majority (327) were responses from solicitors. Responses were received from all of the major representative bodies; these included the Law Society, and the Legal Aid Practitioners Group as well as from the judiciary, police and a Member of Parliament.

5. Options

- 5.1. A number of options were presented in the consultation paper; these options are set out below together with the costs and benefits of each proposal. The options are grouped under the main headings of fixed fees, new working arrangements, boundary areas and minimum contract threshold.

Fixed Fees

- 5.2. The Carter report recommended that the Legal Services Commission introduce a new police station procurement scheme based on fixed fees per case that include travel and waiting.

Option 1

- 5.3. The first option is to base fees on the new boundary areas, having calculated the average costs for the revised area and applied a 6.8% reduction to meet savings requirements. Where the value of a case exceeds 3 times the fixed fee, any work carried out beyond that threshold, excluding travel and waiting, would be paid at an hourly rate.

Option 2

- 5.4. As option 1 but with fees based on existing schemes. This option assumes that there has been no change to current boundary areas.

Option 3

- 5.5. In this instance fees would be based on CJS areas, with the same calculation methodology as options 1 and 2.

Boundaries

- 5.6. The effect of these proposals on providers would be that greater volumes of duty work would be available to those eligible for contracts under the proposed new rules. The boundaries are also designed to promote travel efficiencies that will allow providers to benefit under a fixed fee regime.

Option 1 – New Boundaries, London Boundaries Merging 3 Schemes

- 5.7. The Carter report recommended that the Legal Services Commission should construct new General Criminal Contract boundary areas for all of England and Wales, for introduction in October 2007. This option proposes to merge schemes where appropriate outside of London, and group London schemes by merging 3 existing schemes to create the new boundaries.

Option 2 – New Boundaries, London Boundaries Merging 4 Schemes

- 5.8. This option proposes to merge schemes where appropriate outside of London, and group London schemes by merging 4 existing schemes to create the new boundaries.

Option 3 – New Boundaries, London boundaries created to reflect proposed HMCS boundaries

- 5.9. This option proposes to merge schemes where appropriate outside of London, and group London schemes to reflect HMCS boundaries.

Option 4 – Do nothing

New Working Arrangements

- 5.10. The Carter report recommended that new working arrangements providing for access to own solicitor within and outside of contract areas and access to duty slots be introduced in October 2007.

Option 1

- 5.11. Under this proposal access to own solicitor work would be unlimited within the boundary area in which the firm are based, whilst providers would be allowed to carry out a maximum of 20% of the value of their contract in serving own clients from outside the boundary area. In terms of duty slot allocation, slots would be allocated based on the historical volumes delivered by providers in the previous financial year.

Option 2 – Do nothing

Minimum Contract threshold

- 5.12. Recommendation 4.6 of the Carter review states that the Commission should introduce a minimum contract threshold that varies according to area and market conditions for introduction in October 2007.

Option 1

- 5.13. The proposal is to introduce a minimum contract size of £50k per office in all areas from October 2007.

Option 2

- 5.14. The proposal is to introduce a minimum contract size of £50k (police station and Magistrates' Court work) per office in most areas, with this being lowered in areas where this threshold could lead to a shortage of supply.

Option 3– Do nothing

6. Costs, Benefits and Risks

6.1. Sectors and groups affected:

- Client users of legal aid services
- Providers of legal aid services
- Employees of providers of legal aid services
- Counsel
- The LSC and MoJ
- Partners in the wider justice system.

Fixed Fees

6.2. The Carter report recommended that the Legal Services Commission introduce a new police station procurement scheme based on fixed fees per case that include travel and waiting.

Option 1

Costs, disbenefits and risks:

6.3. There would be minimal transition costs for the LSC and providers. Risks to providers are driven by volume, case mix and efficiency. It is necessary for providers to have sufficient volume and a broad case mix to limit their risk through the swings and roundabouts principle

Benefits:

6.4. The introduction of fixed fees that include travel and waiting will give providers greater certainty over the payments they receive and provide greater reward for the most efficient providers. If the fees are introduced as proposed they will deliver the required £8m per annum saving.

Option 2

6.5. As option 1 but with fees based on existing schemes. This option assumes that there has been no change to current boundary areas.

Costs, disbenefits and risks:

6.6. As above in option 1 however, if new boundaries are not introduced the benefits associated with them will not be realised.

Benefits

6.7. As above.

Option 3

- 6.8. In this instance fees would be based on CJS areas. The same calculation methodology would be employed as options 1 and 2, but with the CJS area being treated as a scheme in its own right.

Costs, disbenefits and risks:

- 6.9. The key risk with this proposal concerns the sensitivity of the fee to local conditions. An aggregated CJS area fee involves a very broad geographical spread, with both rural and urban areas included. Because there are different implications for different types of area, not least around travel times, these would not necessarily be reflected in the fees, which would potentially impact on the profit levels available to providers.

Benefits

- 6.10. As above. There is the potential for greater simplicity due to the existence of fewer fees.

Boundaries

Option 1 – New Boundaries, London Boundaries Merging 3 Schemes

Costs, disbenefits and risks:

- 6.11. There would be minimal transition costs for the LSC. Providers may potentially be disadvantaged depending on their office location within the new boundary area. The combined effect of the proposed limitation on out of area work and the office location in relation to police stations may mean that, under the fixed fee, one provider may not be able to work as efficiently as another provider in a like for like case.

Benefits:

- 6.12. The proposed new boundaries will promote efficiencies in terms of travel allowing providers to obtain greater profit from the fixed fee. This proposal, in combination with the related proposals on new working arrangements, would offer some providers greater market share of an increased available volume where boundary size has been increased allowing providers to take advantage of increased economies of scale. The proposal would also offer some providers greater certainty as to the volumes they could expect to deliver within a given financial year, facilitating business planning.

Option 2 – New Boundaries, London Boundaries Merging 4 Schemes

Costs, disbenefits and risks:

- 6.13. As above, but with a greater risk to efficiency obtained from the travel element of the fixed fees in London as a result of the increased geographic area that the schemes would cover.

Benefits

6.14. As above at option 1.

Option 3 – As option 1 but London boundaries created to reflect proposed HMCS boundaries

Costs, disbenefits and risks:

6.15. As option 1, but with a greater risk to efficiency obtained from the travel element of the fixed fees in London as a result of the increased geographic area that the schemes would cover.

Benefits

6.16. As above at option 1.

Option 4 – Do nothing

Costs, disbenefits and risks

6.17. The main consideration here is that it would not be possible to structure boundaries in a way that allows providers to secure greater volume and take advantage of economies of scale in keeping with the Carter proposals. Additionally, if there were no changes to the way in which boundaries are drawn this would not help prepare the market prior to competition as providers would have little familiarity with the areas in which they are expected to bid.

Benefits

6.18. Providers would not have to adjust to new scheme boundaries.

New Working Arrangements

Option 1

Costs, disbenefits and risks:

6.19. There are no inherent costs to these proposals. In terms of provider impact, the proposed out of area limitation means that a given provider may not be able to carry out the same volumes of own client work as they have done previously. However, this would be counteracted by the securing of greater volumes of work within the area in which the provider is based. This is predicated on moving volumes between providers depending on the areas in which they are contracted to work.

Benefits:

6.20. This proposal would enable providers to concentrate the majority of their work in a specific locality, leading to travel efficiency savings and consequently greater profit. Those providers delivering larger volumes of publicly funded work would benefit from the proposals on duty slot allocation, as they would receive more slots than under the current allocation system.

Option 2 – Do nothing

Costs, disbenefits and risks:

- 6.21. These proposals form a key part of the overall reform programme. If new working arrangements are not introduced it will not be possible to secure greater volume for providers within their respective areas or encourage localisation of delivery, which would in turn make it more difficult for providers to run at a profit within a fixed fee regime.

Benefits

- 6.22. If the new working arrangements are not introduced the system will continue as at present.

Minimum Contract threshold

Option 1

Costs, disbenefits and risks:

- 6.23. This option would exclude all providers delivering less than the required threshold in the previous financial year from carrying out publicly funded criminal work from October 2007.
- 6.24. It is likely that this may have a disparate impact on BME majority owned providers in some areas, as these providers are over represented in this group of providers. There is also a risk that, if the threshold is not sensitive to local factors, coverage may be affected in some areas. This might have an impact on the Commission's ability to run an effective competition.

Benefits:

- 6.25. This option will enable providers who have delivered the requisite volumes to secure greater market share in the area in which they have historically undertaken work, allowing them to benefit from any economies of scale that may be available. This increase in volume could also offset the proposed limitation on out of area own client work.

Option 2

Costs, disbenefits and risks:

- 6.26. This option would serve to exclude providers in larger areas that had delivered less than the required threshold in the previous financial year, from carrying out publicly funded criminal work from October 2007. As in para 7.6.4, this may have a disparate impact on BME majority owned providers in some areas.
- 6.27. The risk to client coverage in this proposal would be limited by varying the minimum contract threshold, allowing the LSC to ensure that adequate coverage is maintained within each area. This will also allow the LSC to manage the

number of providers in each area in order to operate an effective competition process.

Benefits:

- 6.28. This option could enable those providers that have delivered the requisite volumes to secure greater market share in the area in which they have historically undertaken work, allowing them to benefit from any economies of scale that may be available. However, this would be limited in this instance to those areas where the LSC felt that a threshold would not affect either coverage or, ultimately, an effective competition. This increase in volume could also offset the proposed limitation on out of area own client work for these areas. This proposal would also allow the LSC to reduce some of its administrative costs, although by less than would be offered by implementing option 1.

Option 3– Do nothing

Costs, disbenefits and risks:

- 6.29. Lord Carter suggested that - in addition to volume released by providers leaving the market an administrative minimum threshold should be introduced to help larger providers gain access to greater volumes of work and take advantage of any available economies of scale. Without the introduction of a minimum contract size, larger providers would be limited in their ability to access greater volumes.
- 6.30. Arguably, and within particular geographic markets, the smallest providers may not be best placed to compete effectively within a competition. This is likely to be an issue where a provider is competing in a market where bids are for high volumes and competitors can offer a lower price as a result of efficiencies of scale.

Benefits:

- 6.31. If a minimum contract size is not introduced, there would be no risk in terms of a disparate impact on BME providers in some areas. It would also ensure that all providers that currently provide defence services to clients in the police station would be offered the opportunity to restructure in advance of competition, whilst retaining the maximum number of providers in the market for the LSC prior to tendering work, which may lower prices in some areas at this stage.

7. Competition Assessment

- 7.1. The proposals affect about £173m of the total legal aid spend, or 16% of the total criminal legal aid expenditure. These proposals will remain in place for a minimum of 12 months depending on area, with best value tendering proposed for introduction from October 2008. The possible introduction of best value tendering will be the subject of further consultation later this year.
- 7.2. We anticipate that there would be some impact on competition if these proposals were implemented. The proposals that most affect competition are those for the introduction of a minimum contract size for contract eligibility and requiring providers to focus their delivery in the area in which they are based.
- 7.3. With regard to the introduction of a minimum contract size, the proposed introduction would serve to reduce the number of providers delivering advice within a given area. However, were it to be introduced the actual level of the threshold would be varied to ensure that a sufficient number of providers remain in each area to ensure a competitive market.
- 7.4. In respect of the proposal requiring providers to deliver the majority of their work in a specific area, this is likely to promote competition. By ensuring that there are a sufficient number of providers delivering within the area, and being required to focus delivery within that area, there would be less scope for fragmentation of the market than is seen under current delivery arrangements.

8. Enforcement, Sanctions and Monitoring

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

9. Implementation and Delivery Plans

- 9.1 The new fixed fees will be operational as of 1 October 2007. The LSC's systems will be set up to pay providers the relevant fixed fee dependent on their area of claim from this date. Further guidance will be issued on the operation of the fees prior to their introduction.

10. Post Implementation Review

- 10.1. The impact of the proposals will be monitored and evaluated post implementation and any findings will be reported on in accordance with our statutory duties and the LSC Equality Scheme.

11. Recommendations

Fixed Fees

11.1. Option 1 as set out in section five above will be adopted. The new fixed fee will replace hourly rates and encompass all work undertaken under INVC, INVD and INVJ claim codes for police station attendances. Any work undertaken in respect of telephone advice, post charge work and warrants for further detention are out of scope as regards the fixed fee and will be paid under current arrangements. None of the current scheme fee rates will remain at their present level. However, it is important to note that the £8m savings will be derived from the same designated areas that are now subject to the revised Magistrates' Court standard fee schemes. This equates to a reduction of 9.5% from the averages in those 16 designated areas to arrive at the fees.

Boundaries

11.2. Boundary areas have been left largely unchanged from their current position. Where changes have been made, these represent a rationalisation of existing schemes, for example where two schemes have effectively been treated as a single rota locally for some time these have now been formally changed to reflect current practice. There are also some changes that reflect a rationalisation based on existing supply patterns. This means that where the same group of providers is serving individual schemes, these schemes have now been merged into a single scheme. This merging is also a feature where police station closures have effectively rendered a scheme redundant as a result of having no operational custody suite and work is being transferred to a custody suite in a neighbouring scheme.

11.3. We have also merged schemes where delivery is focused around a central 'hub' custody suite serving several schemes. This has allowed us to arrive at an accurate fixed fee for delivery in these particular areas.

11.4. However, we have tried to ensure that we have not merged schemes in a way that will lead to increased real costs in delivery as a result of increased travel and waiting, and in any instances where the boundary areas has been expanded in a way that might increase real delivery costs, individual rotas within the expanded boundary area have been retained.

New Working Arrangements

Slot allocation

11.5. The LSC will publish a further consultation paper, which will contain proposals for taking forward the allocation of slots on duty solicitor rotas.

Minimum Contract threshold

- 11.6. A decision regarding the minimum contract threshold and niche provider provisions will be postponed until the conclusion of the duty solicitor slot allocation consultation. Closely related to the minimum contract size principle is the out of area rule under which providers would be allowed to carry out a maximum of 20% of the value of their contract in serving own clients from outside the boundary area. As with the minimum contract threshold, we are delaying making a decision on this point.

12. Small Firms Impact Test

- 12.1. Cabinet office guidelines for the SFIT suggest that any organisation with fewer than 250 full time employees is considered small. Therefore almost all providers that are affected by these proposals would fall within the definition.

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

Our Duties:

Race Equality

- 13.1. Public authorities have a legal duty to promote race equality. This means that they must have due regard to the need to:
- Eliminate unlawful racial discrimination
 - Promote equal opportunities
 - Promote good relations between people from different groups.
- 13.2. To further this obligation the MoJ and LSC conduct a race equality impact assessment 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.

Disability Equality

- 13.3. The Disability Equality Duty came into force on 4th December 2006. The LSC has already published its Disability Equality Scheme and this is available on the LSC website www.legalservices.gov.uk. This sets out the actions that we will be taking to promote disability equality for legal service providers and the clients they serve, and our staff.
- 13.4. When carrying out our functions, we must have due regard to the duties placed upon us by the Disability Discrimination Act 2005. These are to have due regard to the need 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
 - Take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 13.5. The MoJ and LSC also conduct disability equality impact assessments of its policies in relation to the public duty to promote disability equality and within this,

to identify whether there is a differential and adverse impact on disabled people and other people.

Gender Equality

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

- To eliminate unlawful discrimination and harassment
- To promote equality of opportunity between men and women
- This general duty will come into effect on 6th April 2007.

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

Rural Proofing

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

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

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

Current Position

13.10. Black and minority ethnic (BME) groups, the disabled, people of different genders, and people living and/or working in rural communities have a direct interest in any changes to the legal aid scheme, as the owners and/or managers of solicitor providers providing legal aid services, as employees of those organisations, as barristers and experts providing services to contracted organisations and as clients of legal aid services.

13.11. Research conducted by the Legal Services Research Centre (LSRC) in 2006, to be published in a forthcoming report has provided information on the ethnicity, gender, age and disability profile of providers of legal aid services, their employees and their clients based on the results of diversity monitoring forms

completed by 44.7% of providers with legal aid contracts, and data from the LSC corporate information system.

Nature of Impact Analysis

- 13.12. The following analyses compares payments to firms under the current hourly rate payment system to the fees that would be generated by those firms under the new system on a like for like basis. Therefore, the identified impacts are, to a large extent, notional. They assume that firms do nothing to change their structures and work practices in response to the new fee scheme. We neither wish, nor expect, that to be the case. Indeed the objectives for the scheme are specifically that firms should adapt and change their working practices in response to the scheme so as to become more efficient, to reduce the cost “wasted” in the system through non-productive travel and waiting and to enable firms to prepare for, and enter, the proposed system of best value tendering on a more equal footing. We do however recognise that not all unproductive time is within the control of providers and the LSC is working closely with Criminal Justice System (CJS) partners to ensure that whole system efficiencies are achieved and that providers can benefit from these. Therefore, in practice, the impact on firms will differ from the snapshot set out in this section, although as the real impact will depend on how firms adapt and change, it is not possible to model this at this point.
- 13.13. Overall it is clear from the range of levels of potential impact set out in this section that the current system of hourly payments with after the event assessment is not effective in providing consistency of payment for the delivery of the same services at the same locations or value for money. The achievement of value for money in the delivery of criminal defence services by the Commission is an express requirement of the Access to Justice Act 1999. The current system clearly does not enable the Commission to meet this obligation as we are currently paying quite significantly different average costs to providers delivering the same range of services at the same police stations.
- 13.14. The move to fixed fees, set on a very local basis, removes the disparities of the current system and sets the same payment levels for all firms delivering services at the same police stations. These fees are based on historical average payments at those police stations (with some reductions from those historical averages in those areas designated as urban for the purposes of the revised Magistrates’ Court standard fees) and we are therefore confident that those firms with average costs currently higher than the fixed fees we are setting can adapt their working practices, if they wish to do so, because we can see from the data that there are firms already delivering services at the same locations at average prices lower than the new fixed fees.
- 13.15. All firms with average case costs currently higher than the new fixed fees will have the management information and the time to make adjustments to the way in which they are working. Under the General Criminal Contract, which all providers are required to meet, providers must have computerised time recording systems. Data from this and other sources will provide them with the information they need to analyse and understand their current patterns of work and cost, and therefore enable them to judge how to adapt their practices to work under the new fee system. In practice the Commission will respond actively

to requests for their own payment data from firms to help them with any such analysis.

- 13.16. Additionally, firms will have time to adapt their practices before actual payments to them from the Commission are changed. We are publishing the new fee levels in June 2007. They will come into operation for all new cases started after 1 October 2007. The Commission pays providers for this work through standard monthly payments with adjustments made to the level of payments on a rolling basis looking at the previous 12 months claims. We would not be expecting to receive significant proportions of claims for cases started from October 2007 until February or March 2008 at the earliest. If the level of claims being made by firms reduces as a result of these changes we would not expect to reduce standard monthly payments until April or May 2008 and only then on a gradual basis. Therefore, firms will have a significant period of time to analyse and understand their work practices and adapt them before there is any necessary reduction in payments to them.

Race Equality Impact Assessment

BME Clients

- 13.17. The impact on BME clients from the introduction of fixed fees is largely the same as the impact on any client. The client risk associated with fixed fees is that providers will change their working practices to the detriment of the client in order to maximise margins. The LSC will continue to monitor work profiles of providers to ensure that service standards are maintained.
- 13.18. Another concern raised in the context of BME clients is that those whose first language is not English will suffer under fixed fees. However, the LSC will continue to pay disbursement costs, including those of an interpreter, ensuring that such clients are properly catered for and that remuneration structures do not serve to weaken the service they receive.

BME Fee Earners

- 13.19. In providers that are white controlled, 470 of 4861 solicitor fee-earners were BME (9.7%). In providers that are BME controlled, 324 of 456 solicitor fee-earners were BME (71.1%). Of 1476 BME fee-earners (solicitor of non-solicitor), 54.5% were in white British controlled providers, 37.9% in BME controlled providers and the remainder in 'split' controlled providers. Of 8554 white British fee-earners, 93.9% were in white British controlled providers, 3.3% in BME controlled providers and 2.8% in 'split' controlled providers. This essentially means that, given the impacts of fees illustrated below, BME fee earners are more likely to work for providers that experience a negative impact under fixed fees.

BME Owned and Controlled Providers

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

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

13.21. Once providers were allocated to a category, analysis was carried out to examine the effects of the new fee structure on a national basis and also within the three main scheme groupings of rural, urban and London. The rural/urban distinction is the same as that used to denote designated urban areas in the context of Magistrates' Court revised standard fees. The fee levels for urban and London schemes have been reduced in order to deliver the £8m savings.

13.22. Tables 1 to 4 below contain the results of the initial analysis; the tables show, the average number of cases per supplier type, the average total cost of these cases, the impact of the new fees on providers in terms of both total monetary impact, percentage impact and cash impact per supplier.

Table 1: Impacts of proposed new fees on providers nationally

Ethnicity of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
White British Providers	265.29	63,452.46	63,914.26	461.81	0.73
BME Providers	250.61	75,363.30	68,717.82	-6,645.49	-8.82
Split	366.73	102,171.27	98,482.45	3,688.49	3.61

13.23. When examined on a national basis the new fee structure seems to have less of an impact on providers that are white majority controlled, while both split controlled and BME majority controlled providers incur greater percentage impacts. This pattern of results is also reflected in the results for providers in rural schemes (see below). However, by summing to this level, it creates a slightly artificial picture. This is because the vast majority of BME providers are based in urban areas, and in particular London. This is borne out by examining the impacts on a London and urban basis.

Table 2: Impacts of proposed new fees on London providers

Ethnicity of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
White British Providers	400.18	138,655.13	128,931.25	-9,723.88	-7.01
BME Providers	202.31	73,780.53	65,451.95	-8,328.58	-11.29
Split	364.42	124,951.98	117,848.45	-7,103.53	-5.69

13.24. The data for London schemes indicates that all providers in all categories are impacted by a percentage reduction because of the savings taken from the fees. The greatest impact falls on BME controlled providers, whilst white controlled providers are not impacted as much, and split controlled providers are less

impacted than the other two provider categories. This provides a far more accurate comparison of the effect between the two control groups as the sample sizes are similar, 76 white controlled providers and 59 BME controlled providers. It is no coincidence that on this analysis we see a more even impact than where we analyse to a higher level.

Table 3: Impacts of proposed new fees on urban providers

Ethnicity of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
White British Providers	289.10	67,579.05	65,154.84	-2,424.21	-3.59
BME Providers	304.51	77,587.78	70,930.85	-6,656.93	-8.58
Split	429.25	101,571.18	98,671.01	-2,900.17	-2.86

13.25. In schemes which have been classed as urban, the results indicate that while providers in all three categories are impacted by a percentage reduction due to the reduction being applied in travel and waiting, the greatest impact falls on the BME controlled providers, with a narrowing of the range of impacts when compared to either the national or rural position. Again this is more representative of the impacts, but not as sensitive as the London only analysis as there is a greater disparity in sample size for the urban analysis, 221 white controlled providers and 37 BME.

Table 4: Impacts of proposed new fees on rural providers

Ethnicity of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
White British Providers	236.51	50,983.08	54,153.30	3,170.22	6.22
BME Providers	295.63	75,946.35	74,549.61	-1,396.74	-1.84
Split	271.10	59,848.06	61,385.35	1,537.30	2.57

13.26. The impact on BME providers when considered in a rural setting shows a significant difference in impact. However, the sample sizes will have a dramatic impact on these figures as in a rural setting we are comparing 522 white controlled providers against 19 BME owned providers. What this means is that we do not see a valid distribution of costs that allows a true assessment of the impacts, meaning that analysis on the urban and London groups is far more meaningful as the sample sizes are larger and therefore more illustrative of the distribution of costs against the control groups.

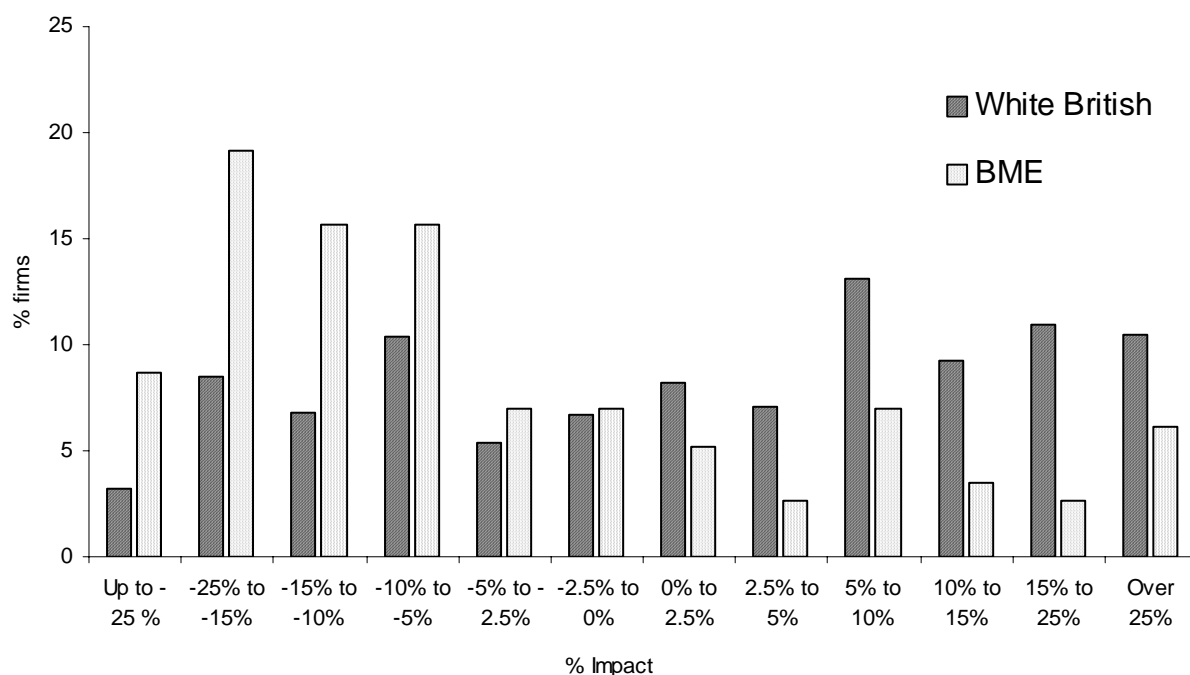
Further Analysis

13.27. Having produced this analysis, we then investigated further to establish whether we could build a more detailed picture of what was going on behind the figures in the tables above. The stark analysis based on averages produced high-level impacts but masked the complexity of provider positions within those numbers.

13.28. We then conducted analysis of the distribution of providers across the range of gaining and losing percentages. The purpose of this was to gain a greater understanding of the impacts of the fees for individual providers rather than summing to a higher, less sensitive level.

13.29. The chart below shows the impacts of the new fees for providers on a national breakdown, with the distribution against both positive and negative impacts split shown for BME and White controlled providers. What this demonstrates, as against the tables above, is that there is a greater distribution of providers across the range of negative and positive impacts than previously thought. That is to say, both BME and White controlled providers are represented either side of the cost neutral centre point of the horizontal axis.

Chart A: National distribution



13.30. Table 5 shows the extent of this distribution. This means that whilst BME providers have a greater representation on the negative impact range, there is also significant BME provider representation on the positive impact range. This suggests that there are a range of average historical costs, some which fall below the levels of the new fixed fees, and some above. An explicit aim of the introduction of fixed fees is to give providers the opportunity to change their working patterns to increase efficiency so that their costs are more in line with the remuneration available.

Table 5: National distribution

% Impact	White British	BME
Up to -25 %	3%	9%
-25% to -15%	9%	19%
-15% to -10%	7%	16%
-10% to -5%	10%	16%
-5% to -2.5%	5%	7%
-2.5% to 0%	7%	7%
0% to 2.5%	8%	5%
2.5% to 5%	7%	3%
5% to 10%	13%	7%
10% to 15%	9%	3%
15% to 25%	11%	3%
Over 25%	10%	6%

13.31. The following graphs and tables show the London, Urban and Rural classifications when analysed in the same way.

Chart B: London distribution

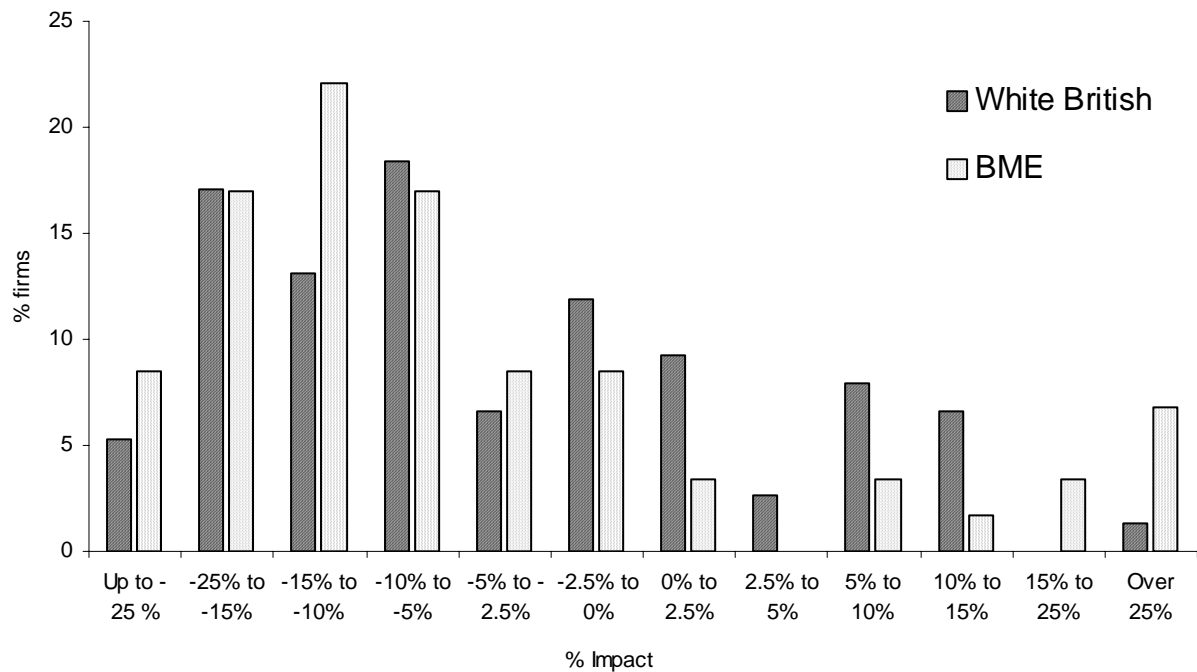


Table 6: London distribution

% Impact	White British	BME
Up to -25 %	5%	8%
-25% to -15%	17%	17%
-15% to -10%	13%	22%
-10% to -5%	18%	17%
-5% to -2.5%	7%	8%
-2.5% to 0%	12%	8%
0% to 2.5%	9%	3%
2.5% to 5%	3%	0%
5% to 10%	8%	3%
10% to 15%	7%	2%
15% to 25%	0%	3%
Over 25%	1%	7%

Chart C: Urban distribution

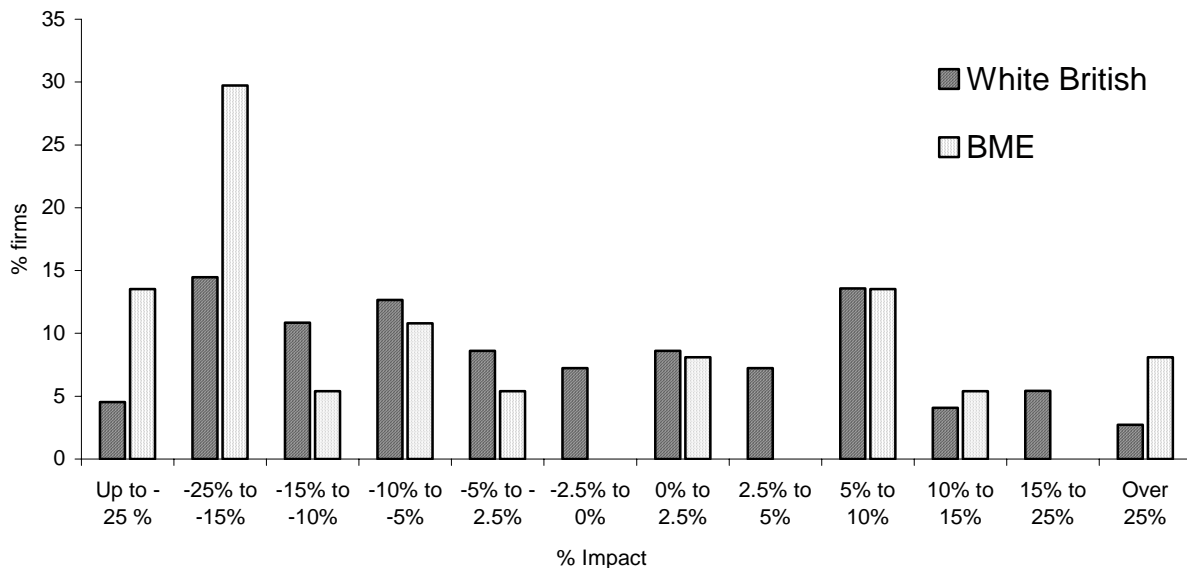


Table 7: Urban distribution

% Impact	White British	BME
Up to -25 %	5%	14%
-25% to -15%	14%	30%
-15% to -10%	11%	5%
-10% to -5%	13%	11%
-5% to -2.5%	9%	5%
-2.5% to 0%	7%	0%
0% to 2.5%	9%	8%
2.5% to 5%	7%	0%
5% to 10%	14%	14%
10% to 15%	4%	5%
15% to 25%	5%	0%
Over 25%	3%	8%

Chart D: Rural distribution

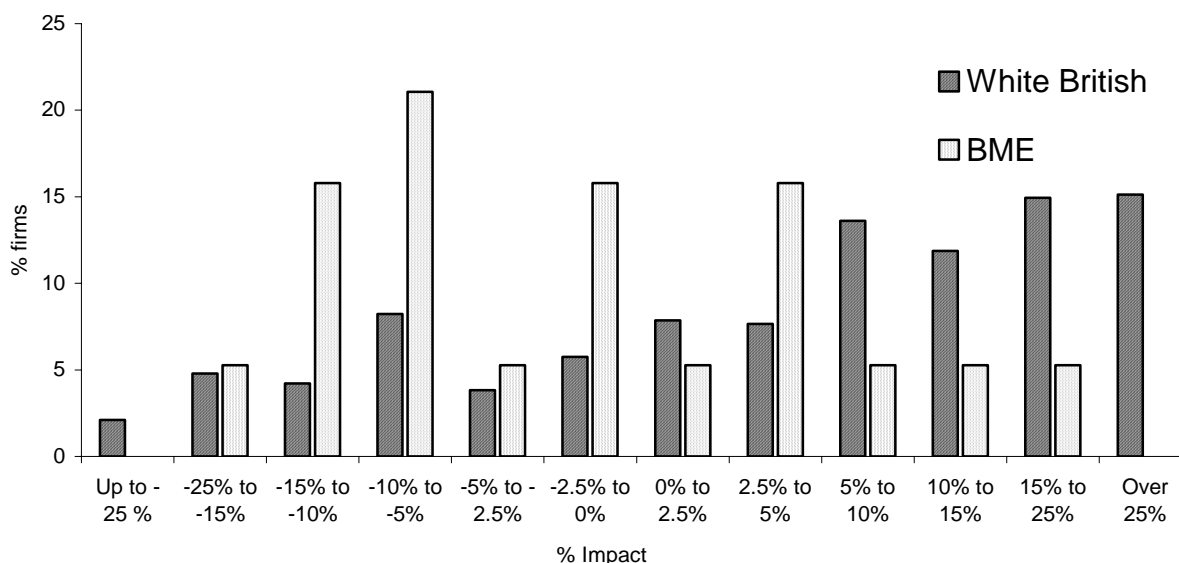


Table 8: Rural distribution

% Impact	White British	BME
Up to -25 %	2%	0%
-25% to -15%	5%	5%
-15% to -10%	4%	16%
-10% to -5%	8%	21%
-5% to -2.5%	4%	5%
-2.5% to 0%	6%	16%
0% to 2.5%	8%	5%
2.5% to 5%	8%	16%
5% to 10%	14%	5%
10% to 15%	12%	5%
15% to 25%	15%	5%
Over 25%	15%	0%

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

13.33. Tables 9 to 12 contain the results of this further analysis; again this analysis was carried out on a national basis and also within the three main scheme groupings of rural, urban and London.

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

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

13.36. In urban schemes, BME providers have the highest average travel and waiting costs at £62.66, followed by split controlled providers at £49.64, while white controlled providers have the lowest average cost at £47.97. The data in table 3 indicates that BME providers are impacted by the greatest percentage reduction. This illustrates the fact that across the range of costs BME controlled providers are more likely to have higher travel and waiting averages and therefore see a greater impact under fixed fees where an element for travel and waiting, based on the averages, is paid.

13.37. In the London schemes, BME providers have the highest average travel and waiting costs at £117.85, followed by split-controlled providers at £105.76 while white controlled providers have the lowest average cost at £101.66. This is reflected in the fact that BME controlled providers are impacted by the greatest percentage reduction. This again illustrates the fact that across the range of costs BME controlled providers are more likely to have higher travel and waiting averages and therefore see a greater impact under fixed fees where an element for travel and waiting, based on the averages, is paid.

13.38. The disparity in costs for each element cannot be easily explained. Of all the elements, the data suggests that waiting time claims are by far the biggest driver for disproportionate impact between BME and white owned providers. The LSC has as a major priority tackling excessive waiting time in collaboration with the Association of Chief Police Officers. However, what this does tell us is that profit costs are not the major driver for disparity in average case costs, and therefore the time spent in attendance with clients is not driving the difference in the averages between the groups.

Table 9: Impact of total costs on providers nationally

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

Table 12: Impact of total costs on London providers

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

Table 11: Impact of total costs on urban providers

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

Table 10: Impact of total costs on rural providers

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

13.39. The tables above show that the impact of fixed fees varies as between BME, white and split-controlled firms. In the government's view these variations are justifiable as the objectives of the scheme are specifically that firms should adapt and change their working practices so as to minimise waiting and travel time, which is non-productive, and in order to enable firms to prepare for and enter the planned system of best value tendering on a fixed price per case basis, on a more equal footing.

Gender Equality

13.40. The tables below demonstrate the impact of fixed fees on gender ownership and control. In terms of the national picture, although percentage impacts are not significantly different, cash impacts are. This suggests that female owned and controlled providers are likely to see a reduction per case overall compared to their male counterparts. From the London perspective, the percentage impact is more positive for female owned and controlled providers, although in cash terms the impact is slightly more in terms of amount lost per case. The extent of the impact shown is a direct result of savings being taken from London.

13.41. The rural picture shows the highest percentage increase in income within the female owned and controlled category. From the urban perspective, the percentage impact between male and female owned and controlled providers is almost identical, whilst the cash impacts are across a relatively narrow band. The extent of the reduction per case is driven by the fact that savings are being taken from urban areas.

Table 13: Impact of proposed fees by provider (gender) nationally

Gender of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
Male	286.74	70,489.21	70,204.70	-284.51	-0.40
Female	181.74	49,959.51	49,959.51	-2,153.87	-4.31
Split	248.44	60,778.62	59,849.39	-929.23	-1.53

Table 14: Impact of proposed fees by provider (gender) London

Gender of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
Male	355.42	123,605.31	114,710.38	-8,894.93	-7.20
Female	267.96	94,074.03	86,150.35	-7,923.68	-8.42
Split	235.04	85,419.20	76,147.40	-9,271.80	-10.85

Table 16: Impact of proposed fees by provider (gender) Urban

Gender of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
Male	332.48	78,495.00	75,313.00	-3,182.00	-4.05
Female	173.87	41,937.25	39,791.72	-2,145.53	-5.12
Split	231.36	55,375.87	52,274.02	-3,101.85	-5.60

Table 15: Impact of proposed fees by provider (gender) Rural

Gender of majority managerial control	Average number of claims	Average payments hourly rates £	Average payments fixed fees £	£ Impact	% Impact
Male	249.39	54,220.57	57,402.73	3,182.16	5.87
Female	146.73	34,047.95	34,495.62	447.67	1.31
Split	263.33	55,478.20	58,744.64	3,266.44	5.89

13.42. Again, as with the disproportionate impact seen on BME providers, whilst we recognize the varying impacts across different provider groups, the need to bring legal aid expenditure under control is paramount if we are to secure a sustainable future for publicly funded legal advice.

13.43. It is not possible to consider client gender impacts due to a lack of data, however we believe that the considerations in paragraph 13.12 above are applicable to all clients.

Disability Equality

13.44. There is currently insufficient data to be able to draw statistically valid conclusions in terms of impacts of fixed fees on those providers that have disabled majority ownership and control. Similarly from the client perspective we do not have sufficient data on which to deduce specific impacts, however we believe the same considerations expressed at paragraph 13.12 above are applicable to all clients

Rural Proofing

13.45. The impact of the fees on rural providers is demonstrated within the BME analysis at tables 2 and 6 above. Tables 17 and 18 below demonstrate the comparative rural/urban/London impacts when treating the sample collectively.

Table 17: Fee impacts (rural)

Scheme	Claims	Costs	£ Impact	% Impact
Rural	803.24	190,088.26	3,310.78	11.71
Urban	1022.86	234,756.70	-11,981.31	-16.44
London	966.91	312,231.65	-25,155.99	-13.85

Table 18: Total costs (rural)

Scheme	Profit Costs	Travel Costs	Waiting Costs	Total Costs
Rural	161,693.55	37,821.31	10,105.84	209,620.70
Urban	211,047.51	54,707.10	14,641.54	280,396.15
London	236,848.14	90,021.94	41,654.49	368,524.57

Cumulative Impact

13.46. We have also considered these impacts alongside those of the Magistrates' Court revised fee schemes. Although it cannot be said for every case, the vast majority of providers deliver publicly funded criminal legal aid at both the Police Station and Magistrates' Court.

13.47. The Magistrates' Court revised standard fees have to date been introduced in 16 designated areas. The national impact of these is an average reduction in income of 8% for white controlled providers and a reduction of 15% for BME controlled providers. That impact should be considered cumulatively alongside those described for providers in the analysis above.

13.48. Other initiatives already consulted upon, such as CDS Direct and DSCC expansion, and Market Stability measures, do not show any disproportionate impact. The LSC has committed to producing a full cumulative impact assessment of reform measures in the near future.

New Boundary Areas

13.49. The revised boundary areas of themselves do not impact on providers, fee earners or clients.

14. Declaration and Publication

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

Signed

Date

Vera Baird QC

Minister of State
Ministry of Justice