

Final Regulatory Impact Assessment: Mental Health final fee scheme

1. Introduction

1.1 This document provides a final regulatory impact assessment (“RIA”) for proposals further to the Department of Constitutional Affairs (“DCA”, now Ministry of Justice – “MOJ”) and Legal Services Commission (“LSC”) papers, ‘*Legal aid: a sustainable future*’ and *Legal Aid Reform: the Way Ahead*, to be implemented from 1 January 2008 as follows:

- Mental Health fee scheme

1.2 RIAs for the remainder of the changes to civil and family fees to be implemented from 1st October 2007, are published in separate documents as follows:

- Tailored Fixed Fee (“TFF”) Replacement Scheme: final RIA published December 2006, available from the LSC website www.legalservices.gov.uk
- Family fees schemes, including family mediation: final RIA published 21 June 2007 available from the LSC website www.legalservices.gov.uk
- Immigration and Asylum Scheme: final RIA published 15th March and available from the LSC website www.legalservices.gov.uk

2. Title of Proposals

2.1 The Mental Health fee scheme for implementation from 1st January 2008 is set out in *Legal Aid Reform: Mental Health Fixed Fees*.

3. Purpose and Intended Effect

3.1 Objectives

Legal Aid Reform: the Way Ahead

3.1.1 The proposals are intended to create:

- A more open and responsive market, with risks shared between provider and purchaser.
- A diverse and competitive market of lawyers and others offering quality publicly funded advice and advocacy services.

Additional objectives of the Mental Health Fee Scheme

3.1.2 The scheme has the following objectives:

- Designed to be budget neutral and maintain spend to the 05/06 level under current funding arrangements.
- We need schemes that are effective in preparing the market for best-value tendering without pre-empting it. We need a structure which pays the same amount for the kind of work undertaken regardless of who undertakes it, while leaving the detailed decisions about what kind of assistance it is appropriate and cost-effective to provide, and when to provide it, to individual providers.
- We need a solution whereby cases that are justifiably exceptionally costly to undertake can escape from the standard fees as exceptional cases at a point which does not undermine cost neutrality or the basis for the Scheme.

3.2 Background

3.2.1 *A Fairer Deal for Legal Aid*¹, published in July 2005, set out the Government's long-term strategy for legal aid. The paper highlighted a number of areas in which the current system needs to be modernised. The paper identified the need to rebalance spending between civil and criminal legal aid, as well as various problems with the current system. A critical element of the strategy was a detailed examination of the way the Government purchases legal aid services. To this end, *A Fairer Deal* announced that Lord Carter of Coles would be commissioned to conduct an independent review into legal aid procurement. Lord Carter's remit was to deliver a system that would achieve maximum value for money, whilst ensuring quality and the fairness of the justice system.

3.2.2 Lord Carter published his final report on 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. The DCA and LSC simultaneously published a joint consultation paper, *Legal aid: a sustainable future*, proposing the introduction of fixed fees as a transitional step to enable providers to prepare for future competition³. Consultation ran until 12th October 2006.

3.2.3 On 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*), including the Tailored Fixed Fee ("TFF") Replacement Scheme and plans for publication of further papers seeking comments on revised family fee schemes, and providing details of revised mental health and immigration fee schemes to be implemented from 1 October 2007.

3.2.4 On 1 March 2007 the LSC and DCA published a strategy for family legal aid, *Making Legal Rights a Reality for Children and Families*, and a further consultation paper on family fee schemes. On the same date, the DCA and LSC published papers setting out the final scheme for immigration and asylum graduated fees, for which a final RIA was published on 15 March. This RIA relates to the final scheme for Mental Health.

3.3 Rationale for Government Reform

General

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

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

3.3.2 The Government's aim is to move that towards a competitive market, so that the market can determine the best price of providing services. However it has also concluded that fixed fees provide the best way to manage the transitional period, both to prime the market and stabilise spending.

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

3.4 Rationale for national fixed and graduated fees

3.4.1 The rationale for setting national, rather than regional fees is as follows:

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

3.4.2 We therefore consider that setting national fees for work combined with additional fees for travel to remote clients will better prepare providers for future

competition, and will be fairer, more consistent, and simpler to administer and understand.

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

4. Consultation

4.1 Legal Aid Reform: the Way Ahead

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

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

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

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

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

4.2 Impact of Consultation

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

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

| Main concern | Revision to proposals |
|---|--|
| Mental Health Scheme | |
| Exceptional case limit too high at x4 standard fee | To be exceptional, total profit costs less additional payments claimed must be greater or equal to x3 the total of the fees payable for each of the levels of work done. |
| The Level 1 fee is too low | We have split the Level 1 fee into work on a case relating to the Mental Health Review Tribunal and other work. The value of each of these fees is higher than the value of the fee we consulted on. |
| Work on a case that does not relate to the MHRT process will not be paid fairly | See above – we have changed the structure of the scheme such that we are able to increase the fee for this kind of work. |
| Clients in remote areas will not be served, and / or providers will not be paid fairly for such work | We have refined our approach to paying for travel and waiting. While payment for standard travel and waiting is incorporated within the basic fees, we will pay one or more additional fees, depending on the Level(s) of work carried out, for cases where the client is resident at a hospital remote from supply. |
| Providers will not be paid fairly if the Level 2 fee is not payable where a client has recently had a Tribunal Hearing and is now appealing on a different section type | Confirmed that all the relevant fees (including the Level 2 fee) will be payable for work carried out on behalf of a client in this situation, for example a client on a section 3 who had recently had a hearing while on a section 2. |
| The costs incurred via adjournments and late cancellations are not best paid for through the Level 3 fee as they will impact providers very differently | Re-structured the scheme so that adjournments and late cancellations will be remunerated separately from the Level 3 fee (which is slightly lower than the fee we consulted on as a result). |
| Providers will be expected to do social welfare law that they have not previously been expected to do without additional payment | We have clarified the action we expect Mental Health providers to take where their client has a social welfare legal problem in the draft specification currently out for consultation and available at www.legalservices.gov.uk |

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

4.3 Regulatory Impact Assessments

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

5. Options

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

Option 1: Do nothing

Option 2: Postpone the introduction of the fixed fee scheme

Option 3: Move immediately to competition

Option 4: Introduce the fixed fee Scheme in October 2007

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

6.1 Sectors and Groups

6.1.1 Sectors and groups affected include:

- Client users of legal aid services
- Providers of legal aid services
- Employees of providers of legal aid services
- Counsel and experts
- The LSC and MOJ
- Partners in the wider justice system, for example the Mental Health Review Tribunal
- Suppliers of software systems to legal aid providers
- Costs draftsmen

6.2 Analysis of Costs and Disbenefits, Risks and Benefits

Option 1: Do nothing

6.2.1.1 Client users of legal aid services

- There will be no, or lower incentives for providers to improve their efficiency and prepare for competition.
- The LSC would not be able to become more operationally efficient, or achieve the savings to administrative costs associated with fixed fees.
- Providers would remain on TFFs based on what work their firms carried out in 2003-4
- There would be an ongoing risk on inflation on Non-TFF cases.

6.2.2 Benefits:

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

6.2.3 This option is not recommended.

Option 2: Postpone the introduction of the fixed fee scheme

6.2.4 Costs, disbenefits and risks

- The impact on provider income, transition costs for providers and the impact on clients would be as set out under Option 4 below (however, these impacts would be postponed).
- There could be delay in controlling Fund spend due to the risk of case cost inflation for cases paid on hourly rates
- Providers on Tailored Fixed Fees would continue to be paid at rates reflecting out of date costs and the provider base would continue to be split
- Incentives to provide services close to clients are delayed

6.2.5 Benefits:

- The benefits would be as Option 4 below, but delayed
- Current uncertainty for providers would be resolved
- Providers would have more time to become accustomed to the principle and likely impacts of fixed fees.
- The LSC would have sufficient time to carry out measures to ensure continued access to services in at risk locations. Measures include

those which would receive additional travel payments, and running bid rounds in areas where access could at risk. These measures are advisable in the mental health scheme because of the unique issue of provider travel.

6.2.6 This option is recommended – with a three month delay until January 2008. It delivers the benefits of the fee schemes slightly later – but allows time for measures to deal with the unique features of mental health supply.

Option 3: Move immediately to competition

6.2.7 Costs, disbenefits and risks

- Providers will have little time to prepare for competition
- Providers would be asked to compete on price without a transitional period during which it would become possible to compare like for like costs of cases, thus making it difficult to know where to pitch a bid
- Similarly the Commission would not have information about like for like costs, making tender criteria development and assessment more difficult, and possibly resulting in opportunities to achieve better value for money being missed.

6.2.8 Costs, disbenefits and risks

- There may be some reduction in overall prices compared with current costs
- Providers would only need to adapt to one major change in remuneration rather than two

6.2.9 This option is not recommended. The Commission believes that the risks of moving straight to competition in this category without the preparation of fixed fees are too great.

Option 4: Introduce the fixed fee Scheme in October 2007

6.2.10 Costs, disbenefits and risks:

- The combined administrative cost to the LSC of the remaining work to introduce all the civil and family fee schemes from 1 October 2007 is estimated to be £750k.
- There is no money available for an increase in legal aid fee levels, but no money was taken out overall when calculating the fees. The scheme have been designed to be budget neutral for the legal aid fund overall. The calculation of fees for the Mental Health Scheme is based

on the historic costs in 2005/06 of the same services under the current arrangements.

- The potential financial impact on providers of the schemes will vary depending on the types of work undertaken and current average costs. A headline analysis of the potential financial impacts on providers is set out at 6.3 below. The impact on different types of providers is considered in the section on Equity and Fairness.
- A key risk for the LSC and clients of a procurement system based on fixed fees and ultimately competition is that quality of service and outcomes of some cases may be adversely affected by some providers seeking to maximise profits. However, the LSC will manage this risk by requiring providers to meet quality standards, by monitoring a range of key performance indicators and by taking action where necessary, including terminating contracts and reallocating matters to other providers
- A system of fixed fees also requires providers to take a more active approach to managing cases, to ensure that overall amounts paid reflect work done even though individual cases may cost more or less to complete. The MOJ and LSC will promote effective risk sharing through the operation of escapes such as remuneration by hourly rates in exceptional cases.
- Following introduction of the fee scheme some areas may be at risk from reduced access to services, Introduction in October would not allow sufficient time for the LSC to take measures to ensure continued provision these areas, so client access could be at risk.

6.2.11 Benefits:

- National systems of fixed fees for all providers will be fairer, more consistent, simpler to administer and understand, and will provide greater certainty and predictability in funding and payment for the LSC and providers.
- The current uncertainty for providers would be resolved
- The scheme will allow providers to innovate to improve the efficiency with which they provide their services, thereby increasing their ability to profit from civil legal aid work and enabling them to prepare for future competition to ensure a sustainable future.
- Local provision will be encouraged
- Moving to fixed fees will also help the LSC to become more operationally efficient, and will contribute to achieving savings to administrative costs for providers and the LSC.

- The scheme will improve risk sharing between the LSC and providers.

6.2.12 Although this option has major benefits –these are shared by option 2, which postpones them by three months but allows the LSC to take measures to protect services to clients. Option 2 is therefore preferred to this option.

6.3 – Headline analysis of financial impact on providers

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

6.3.2 It must be borne in mind that any interpretation of the figures here, including any comparisons, is subject to the caveat that, since these impacts assume that providers will spend exactly the same amount of time on exactly the same kind of cases as they have done in the past, and that they will do so in exactly the same volumes. Changes to case volumes and types and their proportions will alter the impacts of the Scheme. It may, for example, be open to providers to increase the numbers of cases undertaken, which would increase their legal aid income overall. Equally some providers may make efficiency savings in a fixed fee environment. It should also be remembered that gains and losses refer only to profit and counsel costs and not other income.

6.3.3 References to 'increase'; 'decrease'; 'winners' or 'losers' should therefore be understood in this light.

6.3.4 In April 2007, the LSC had 262 contracts to provide Mental Health legal services, 256 held by solicitors, and 6 by Not-for-Profit agencies. In 2005-06, the LSC spent approximately £27m on controlled work cases.

6.3.5 Please see Appendix B for a full analysis of financial impacts. A headline summary of key findings is set out below:

- In general, regional comparisons are difficult because of the small number of providers in many regions, meaning that one or two providers' statistics can considerably affect those of the whole region.
- the total funding of all providers will increase in all regions other than London.
- 75% of providers would increase their legal aid income per case under the new fees under the new scheme.
- On a volume of 32,857 cases (05/06 volume), 64.46% of cases would

increase under the new scheme, and 35.54% of cases by those whose income is expected to decrease.

- In all regions, a majority of providers are expected to experience an increase in income. In all regions bar Birmingham and London, a majority of clients are served by providers who are expected to experience an increase in income.
- In London, costs and Tailored Fixed Fee levels have been higher than in other regions, partly (but not wholly) because for historical reasons supply is concentrated in London, and London providers frequently travel to carry out work in other regions, resulting in increased costs.
- In Birmingham, the large difference between the percentage of providers whose income would increase and the percentage of cases carried out by those providers is caused by there being two large firms whose income per case will decrease.
- Although in London and Birmingham just under 50% of clients are served by providers whose income is expected to decrease, only 3 providers in London and 1 in Birmingham (all of which currently have very high case costs) would experience a decrease of more than 9% of their current income. Of those in London, one firm also has another office in London, whose income we expect to increase under the new scheme.
- Although we hope that those firms who may experience a decrease will be able to make the transition to the new scheme successfully, we recognise that there is a risk that they may not. In this case, more economical other firms would need to take on their work to ensure continued access to services. If this happens we intend to run bid rounds to ensure that this work is carried out

6.4 Preliminary recommendation

6.4.1 Our recommendation on the basis of an analysis of costs, disbenefits, risks and benefits is to take a phased approach to implementation (option 2). However, it is also important to assess the impact of the recommended options on equity and fairness, small firms and competition before a final recommendation is made. These are considered in the following sections.

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

7.1 Our Duties:

Race Equality

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

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

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

Disability Equality

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

7.1.4 When carrying out our functions, the 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.

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

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

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

This general duty came into effect on 6 April 2007.

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

Rural Proofing

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

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

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

7.2 Current Position

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

7.2.2 Research conducted by the Legal Services Research Centre (LSRC) in 2006, to be published in a forthcoming report has provided information on the ethnicity, gender, age and disability profile of providers of legal aid services, their employees and their clients based on the results of diversity monitoring forms completed by 44.7% of providers with legal aid contracts, and data from the LSC corporate information system. In 2007 the LSC will also publish its

4th Equality Annual Report, which provides information on a number of areas including numbers of clients assisted in different groups. Data from both sources is used below, together with other data collated for this impact assessment.

7.2.3 Clients of legal aid services

Ethnicity of client

- Contracting data shows the number of Legal Help and CLR matters completed by ethnicity of the legal aid client and category of law.

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

| Categories of law | White % | BME % | Total |
|-----------------------------------|---------|---------|---------|
| 2005/06 | 2005/06 | 2005/06 | 2005/06 |
| Mental Health (combined LH & CLR) | 73.1 | 26.9 | 100 |

Controlled Work matters completed by region and ethnicity of client

- The table below shows the regional variations in Legal Help and CLR Mental Health matters completed for white and BME clients:

| Region | White British % | BME % | Total |
|------------------------|-----------------|-------------|------------|
| 2005/06 | 2005/06 | 2005/06 | 2005/06 |
| West Midlands | 66.0 | 34.0 | 100.0 |
| South West | 67.8 | 32.2 | 100.0 |
| East | 79.1 | 20.9 | 100.0 |
| Wales | 96.4 | 4.0 | 100.0 |
| Yorkshire & Humberside | 79.3 | 20.7 | 100.0 |
| London | 38.0 | 62.0 | 100.0 |
| North West | 81.5 | 18.5 | 100.0 |
| North East | 88.8 | 11.2 | 100.0 |
| East Midlands | 75.7 | 24.3 | 100.0 |
| South East | 71.9 | 28.1 | 100.0 |
| TOTAL | 73.1 | 26.9 | 100 |

In one region, London, the majority of clients are from Black and Minority Ethnic groups

- Table 5 (Client ethnicity) at Appendix B shows that overall, Black and Minority Ethnic clients are more likely to be served by providers whose income per case would have decreased than white clients. This is primarily because of the greater adverse effects of the scheme on London, as 74% of all BME clients are served by London-based providers.
- At a regional level, in two regions (London and the West Midlands) more than 50% of BME clients are served by providers whose income is likely to decrease. However, these two regions are also where the highest proportions of White British clients are served by providers whose income is expected to decrease.

Ethnicity of client and ethnicity of managerial control

In the Mental Health category, the table below shows the number of providers nationally whose fees may increase or decrease following the implementation of the mental health fee scheme according to this analysis. As information on ethnicity is provided on a voluntary basis, the table below is based on a sample of 130 providers nationally. This represents approximately half of all Mental Health providers.

| | 115 White British | 11 BME | 4 Split |
|---|----------------------------------|-------------------|--------------------|
| % of providers whose fees would have increased | 81.7 | 63.6 | 50.0 |
| & % of providers whose fees would have decreased | 18.3 | 36.4 | 50.0 |
| Total | 100.0 | 100.0 | 100.0 |

- This sample is made up of 130 providers.
- The sample is made up of 115 White British, 11 BME and 4 Split managerial controlled providers.
- The number of providers whose income would increase is made up of 94 White British, 7 BME and 2 Split managerial controlled providers.
- The number of providers whose fees would decrease is made up of 21 White British, 4 BME and 2 Split managerial controlled providers.
- Out of 115 White British providers 94 (81%) of them would see their income increase.
- Out of 11 BME providers 7 (63%) of them would see their income

- Out of 4 Split providers 2 (50%) of them would have see their income increase and 2 (50%) would see their income decrease.

However, a statistical analysis of the above table (chi-squared test) indicates that there is no statistically significant difference in impacts between differing ethnicities of managerial control. Providers majority-managed by any one of the three ethnic groups are therefore no more likely to see their income increase or decrease than those of other groups.

Ethnicity of fee earners

The table below shows the impact of the new Scheme on White British and BME fee earners by giving the number and percentage of fee earners working for mental health providers broken down by the cash value of their predicted gain or loss. Again, this information is a sample of all fee earners as ethnicity data is provided on a voluntary basis to the Commission.

| | | Volumes | | Percentage | |
|------------------------------|--------------------------------|-------------|------------|---------------|---------------|
| | | White | BME | White | BME |
| Firms losing by this amount | Less than -£15,000 | 45 | 7 | 3.4% | 2.6% |
| | -£15,000 to less than -£10,000 | 23 | 0 | 1.8% | 0.0% |
| | -£10,000 to less than -£7,500 | 29 | 2 | 2.2% | 0.7% |
| | -£7,500 to less than -£5,000 | 2 | 1 | 0.2% | 0.4% |
| | -£5,000 to less than -£2,500 | 19 | 16 | 1.4% | 5.9% |
| | -£2,500 to less than -£1,000 | 65 | 5 | 5.0% | 1.9% |
| | -£1,000 to less than -£0 | 89 | 101 | 6.8% | 37.5% |
| Sub total | | 272 | 132 | 21% | 49% |
| Firms winning by this amount | £0 to less than £1,000 | 216 | 8 | 16.5% | 3.0% |
| | £1,000 to less than £2,500 | 205 | 25 | 15.6% | 9.3% |
| | £2,500 to less than £5,000 | 259 | 25 | 19.8% | 9.3% |
| | £5,000 to less than £7,500 | 143 | 22 | 10.9% | 8.2% |
| | £7,500 to less than £10,000 | 44 | 2 | 3.4% | 0.7% |
| | £10,000 to less than £15,000 | 60 | 9 | 4.6% | 3.3% |
| | £15,000 to less than £25,000 | 35 | 16 | 2.7% | 5.9% |
| | £25,000 or more | 77 | 30 | 5.9% | 11.2% |
| Sub total | | 1039 | 137 | 79% | 51% |
| Totals | | 1311 | 269 | 100.0% | 100.0% |

From the table it can be seen that of the responses received, 79% of White British fee earners are working for firms whose income is expected to increase under the new scheme while 51% of BME fee earners are working for firms whose income is expected to increase. While 49% of BME fee earners are working for firms whose income is expected to decrease, the majority of these (37% of all BME fee earners) are working for firms whose decrease is expected to be £1,000 or less. As these losses are very small, and since particular caution should be exercised when interpreting figures around the break-even mark, this finding is not cause for concern.

Disability

- Table 7 in Appendix B shows that, overall, disabled clients are slightly more likely to be served by providers whose income would have increased compared with non-disabled clients.
- At a regional level, the differences in impact between disabled and non-disabled clients are only statistically significant in five regions: Brighton, Bristol, Cambridge, Cardiff and Leeds.

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

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

| Category of law | Disabled % | Not disabled % | Total |
|-----------------|------------|----------------|---------|
| | 2005/06 | 2005/06 | 2005/06 |
| Mental Health | 37.52 | 62.48 | 100.00 |

- The relatively high proportion of disabled clients is an inevitable reflection of the poor health of most clients of mental health legal services, since poor mental health is a category of disability.
- Table 8 in Appendix B shows that overall, the impacts of the Scheme are evenly shared by clients of each gender. At a regional level, in only two regions - Newcastle and Reading - is there a statistically significant difference in impact between the two client groups. In Newcastle female clients are more likely to be served by providers whose income is likely to decrease, and in Reading male clients are more likely to be served by providers whose income is expected to decrease.
- It is also important to note that some hospitals will cater for both male and female clients, while others will only cater for only one or other group. Differential impacts on providers (and therefore differential impacts on male and female clients) will therefore be in part a function of the hospitals they serve.

7.2.4 Providers of legal aid services

- 11.2% of solicitors' offices with legal aid contracts had BME majority managerial control (9.2% of offices with a civil contract). 9.1% of NfPs with civil specialist level contracts have BME majority managerial control. This varies by region, with far higher rates of BME majority managerial control in London and the West Midlands.

- The proportion of providers with majority-disabled control is very low. 2.4% of NfPs with a civil specialist contract have majority disabled managerial control. 0.7% of solicitor offices with a contract (crime or civil) have majority disabled managerial control (7 offices in the sample).
- 17.4% of offices with a civil contract have female majority managerial control. 49.7% of NfPs with civil contracts have female majority managerial control. There is less regional variation in respect of gender.
- This dataset is across all civil categories rather than exclusive to Mental Health providers.

7.2.5 Staff employed by legal aid providers, and volunteers

- According to the LSRC 2006 survey, 13% of solicitor fee earners working within solicitors' firms holding civil legal aid contracts were BME (1050 solicitors out of a total 8,093 covered by the survey). It is not possible however to determine how many of those solicitors were working on legal aid cases, as opposed to privately funded ones or which categories of law they work when it is a multi-category provider. 63% of the offices undertaking civil legal aid work contained no BME solicitors. 6.8% of the offices contained no white solicitor fee earners. A majority of offices with BME majority managerial control contained a majority of BME employees.
- According to the LSRC 2006 survey, 19.5% of paid employees working within not for profit providers holding civil legal aid contracts were BME (757 out of a total of 3,878 covered by the survey). It is not possible however to determine how many of those employees were working on legal aid cases, as opposed to cases funded from other sources or what categories of law they work in when it is a multi-category provider. 47.1% of the organisations undertaking civil legal aid work contained no BME paid employees.
- 2.3% of the organisations contained no white paid employees. 242 NfP organisations covered by the survey with civil legal aid contracts had volunteers. Of these, 92 (38.0%) contained no BME volunteers and 17 (7.0%) contained no white volunteers. The 242 NfPs holding contracts contained 4,582 volunteers – an average of 18.9 per organisation. Of these volunteers 705 (15.5%) were BME.
- 3% of solicitors and 22.4% of NfP providers covered by the survey reported one or more solicitors or paid employees long term ill or disabled.
- Females make up the majority of paid employees and volunteers in NfPs (74.9%) compared to 47.5% of solicitor fee earners.
- This dataset is across all civil categories rather than exclusive to

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

Legal Aid Reform: the Way Ahead

7.3.1 Preliminary assessment

Our preliminary assessment of the original mental health fee scheme proposals, as published in the draft RIA for the consultation paper *Legal Aid: a sustainable future* (available at <http://www.dca.gov.uk/consult/legal-aidsf/civil-family-ria.pdf>) was as follows:

Mental Health

- The volume of Mental Health cases is increasing year on year, with a 6% year on year rate of growth for MHRT cases. The cost of publicly funded Mental Health services has increased by around 30% from 2001/2002 to 2004/2005, and average case costs have risen by 23%.
- Whilst some Mental Health providers are remunerated under the current TFF scheme, many are still paid hourly rates. The Commission has always recognised that in the long term it would be neither justifiable nor desirable to pay for the same mental health legal services through two different schemes. A key objective is therefore to introduce a single scheme for all Mental Health Controlled Work.
- The scheme is intended to break down the way in which fees are calculated and paid differently from the two existing payment schemes, and is not designed to either result in higher or lower average fees per case. In other words, the scheme is intended to be cost neutral against historic spend in 2005/06, and to reflect the current average costs of particular kinds of cases. This is key to our over-arching objective and statutory obligation to maintain sufficient capacity to represent clients before the Mental Health Review Tribunal.
- We want to abolish means testing for compulsory patients on their rights to pursue a tribunal hearing. We recognise that at the moment both providers and the LSC are required to spend a disproportionate amount of time ascertaining financial eligibility for Legal Help work, and, where this is not possible, providing and assessing the justification for beginning work regardless of this. Many patients who start out on legal help move quickly onto non-means-tested CLR. Removing the means test would therefore be almost cost neutral to Legal Aid, and might result in some savings for firms who would not need to spend time applying the means test.
- The scheme will be complemented by the changes we have already introduced (and further changes in the future) to the management

information we collect from providers to provide the LSC and other stakeholders with data that will enable better tracking and analysis of changes in the (linked) risks to the legal rights of clients and external cost drivers, such as changes in legislation, the operation of the Tribunal, the behaviour of individual Trusts, and patterns within the provision of legal services.

- The scheme is also designed to complement the principles of devolved decision-making and greater flexibility that are key to our Proposed Supplier Scheme (see the Preferred Supplier Scheme consultation paper, 'Quality Relationships Delivering Quality Outcomes').
- The proposals to introduce a fixed fees scheme will simplify payment arrangements and control future rises in average costs, whilst at the same time providing certainty for both providers and the Commission.

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

A summary of the responses to the draft RIA and other diversity issues raised is contained in the RIA for *Legal Aid Reform: the Way Ahead*, published 20 December 2006.

Urban/Rural

A headline summary of the impact of the schemes split between urban and rural areas in relation to clients and providers is set out below. A regional breakdown can be found at Appendix B.

| Urban/Rural | Current % of providers | % providers with increase | % providers with decrease |
|-------------|------------------------|---------------------------|---------------------------|
| Urban | 87.95% | 76.67% | 23.33% |
| Rural | 12.05% | 70.27% | 29.73% |

- When considering the impact on rural and urban providers it is important to note that the majority of the cases are dealt with by urban providers.
- Overall, the fees do not impact unfairly on rural or urban providers, with slightly more than 70% of providers in each category expected to experience an increase in income. This trend is also true at a regional level, with the exception of Nottingham, where urban providers are slightly more likely to experience an increase in income than their rural counterparts.
- There are no regions in which a majority of urban providers stand to lose financially.

- In each of two regions, Birmingham and Reading, there is only one rural supplier. In each case the provider is expected to lose financially, by 29% in Birmingham and by 6% in Reading.
- We will pay an additional fee for travel to hospitals that are remote for supply

8. Small Firms Impact Test

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

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

9. Competition Assessment

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

10. Legal Aid Impact Test

10.1 The fixed fees schemes are intended to be budget neutral and there should therefore be no additional costs to the Legal Aid Fund. As highlighted above, one of the key assumptions underpinning this analysis is that the volume and proportional volumes of case types is as currently. The impacts of implementing the Mental Capacity Act have been addressed by government in a separate Regulatory Impact Assessment, as have the impacts of the planned new legislation in Mental Health.

11. Impact on the Bar

11.1 The Legal Services Commission does not directly contract with Counsel and therefore does not hold data on gender and ethnicity of barristers.

Where Counsel is instructed, the Scheme provides for higher fees to be paid to Counsel when necessary (through prior authority and the exceptional case threshold). Therefore we anticipate no significant impacts on the Bar.

12. Compensatory Simplification

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

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

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

13. Revised assessment of equity and fairness

Taking into account the impact on clients and providers with reference to the duties of the Commission and the Ministry of Justice outlined above, we believe that the benefits of introducing the Scheme in October 2007 (Option 4 above) outweigh the costs, risks and disbenefits of this approach and the potential benefits of other possible approaches, and recommend this option.

14. Enforcement, sanctions and monitoring

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

15. Implementation and Delivery Plans

Please refer to Appendix C.

16. Post Implementation Review

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

17. Summary and Recommendation

17.1 After full consideration the LSC recommends taking a phased approach to implementation (option 2) for the proposals. This allows us to introduce

clients' access to services is protected. Providers whose income per case is expected to increase under the new scheme, who represent over 75% of providers, are serving over 64% of clients nationally. Whilst all regions have a majority of providers who would potentially gain, in two regions - London and Birmingham those providers do not deal with a majority of cases. However only 3 providers in London and 1 in Birmingham would experience a decrease of more than 9% of their current income. In our view the additional travel payments, and the delay to January 2008 to enable us to run bid rounds will ensure any potential difficulties that arise through these and any other transitional issues can be dealt with without adverse impacts on clients.

18. Declaration and Publication

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

Signed:

Date:

Minister's name, title and department:

Vera Baird QC MP, Parliamentary Under-Secretary of State, Department for Constitutional Affairs

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Appendices:

Appendix A: Fees table for Mental Health final fee scheme

Appendix B: Impact analysis for Mental Health fee

Appendix C: Implementation plan

Appendix A: Fees table for Mental Health

The fees to be paid (exclusive of any VAT payable) are set out in the table below:

| Basic fees | Value |
|---|--------------|
| Level 1 Non-MHRT | £275 |
| Level 1 (MHRT) | £140 |
| Level 2 (MHRT) | £340 |
| Level 3 (MHRT) | £311 |
| Additional fees | Value |
| Adjourned Hearing Fee | £124 |
| Remote travel payment Level 1 (MHRT) | £75 |
| Remote travel payment Level 1 Non-MHRT Levels 2 and 3 | £150 |

As set out in the document *Legal Aid Reform: Mental Health Fixed Fees*, each case will attract basic fees at one or more of the four levels, depending on the work carried out on that case, and potentially one or more additional fee.

However, when profit costs and counsel's fees result in a case costing more than three times the overall fee payable for that case, it will be classed as exceptional and paid on hourly rates (see *Legal Aid Reform: Mental Health Fixed Fees* for further explanation).

Appendix B Mental Health – Impacts of the Proposed Fee Scheme

Note: Except where specified, regions in all tables refer to the region in which the provider is located. It should be remembered that providers are not always located in the same region as their clients. For example, 42% of cases done by London Suppliers are for clients based outside London. This needs to be taken into account when considering impacts on service provision.

Fees

The fees are detailed in the following table –

| Level | Fee | Travel Uplift |
|------------------------|------|---------------|
| Non-MHRT | £275 | £150 |
| MHRT Level 1 | £140 | £75 |
| MHRT Level 2 | £340 | £150 |
| MHRT Level 3 | £311 | £150 |
| Additional Hearing Fee | £124 | N/A |

Exceptional cases are those whose costs equal or exceed three times the relevant fee, plus any additional travel or additional hearing fee payable.

Financial Impacts

The following table shows the potential financial impacts of the scheme.

Table 1

| Region | Current Spend | Projected Spend | Over/Underspend | As a % of Total Spend |
|----------------------------|-----------------------|-----------------------|--------------------|-----------------------|
| West Midlands | £839,275.02 | £892,262.47 | £52,987.45 | 6.31% |
| South East (Brighton) | £1,120,693.53 | £1,171,871.98 | £51,178.45 | 4.57% |
| South West | £953,206.67 | £1,121,754.74 | £168,548.07 | 17.68% |
| East of England | £1,078,277.54 | £1,175,291.39 | £97,013.85 | 9.00% |
| Wales | £819,806.33 | £844,743.77 | £24,937.44 | 3.04% |
| Yorks and Humberside | £1,366,327.07 | £1,619,575.69 | £253,248.62 | 18.53% |
| North West (Liverpool) | £1,463,981.13 | £1,689,213.03 | £225,231.90 | 15.38% |
| London | £12,275,362.92 | £11,909,881.37 | -£365,481.55 | -2.98% |
| North West (Manchester) | £1,363,604.70 | £1,483,597.61 | £119,992.91 | 8.80% |
| North East | £702,471.55 | £834,544.80 | £132,073.25 | 18.80% |
| East Midlands | £1,295,771.31 | £1,323,751.67 | £27,980.36 | 2.16% |
| South East (Reading) | £759,635.72 | £804,168.10 | £44,532.38 | 5.86% |
| Total | £24,038,413.49 | £24,870,656.63 | £832,243.14 | 3.46% |

Regional Provider Impacts

The following table summarises the potential impacts on providers across different regions.

Table 2

| Region | Current No of Providers | % of Providers Whose Income Would Have Increased | % of Providers Whose Income Would Have Decreased | Current Volume of Cases | % of Cases Conducted by Providers Whose Income Would Have Increased | % of Cases Conducted by Providers Whose Income Would Have Decreased |
|-------------------------|-------------------------|--|--|-------------------------|---|---|
| West Midlands | 18 | 83.33% | 16.67% | 1,610 | 41.68% | 58.32% |
| South East (Brighton) | 14 | 78.57% | 21.43% | 1,426 | 66.20% | 33.80% |
| South West | 41 | 85.37% | 14.63% | 1,886 | 85.10% | 14.90% |
| East of England | 25 | 80.00% | 20.00% | 1,668 | 89.09% | 10.91% |
| Wales | 26 | 57.69% | 42.31% | 1,161 | 67.36% | 32.64% |
| Yorks and Humberside | 27 | 92.59% | 7.41% | 2,616 | 89.37% | 10.63% |
| North West (Liverpool) | 8 | 75.00% | 25.00% | 2,012 | 90.56% | 9.44% |
| London | 49 | 51.02% | 48.98% | 13,323 | 47.28% | 52.72% |
| North West (Manchester) | 37 | 78.38% | 21.62% | 2,608 | 71.74% | 28.26% |
| North East | 26 | 96.15% | 3.85% | 1,433 | 93.16% | 6.84% |
| East Midlands | 30 | 70.00% | 30.00% | 1,987 | 63.31% | 36.69% |
| South East (Reading) | 20 | 75.00% | 25.00% | 1,127 | 68.15% | 31.85% |
| Total | 321 | 75.39% | 24.61% | 32,857 | 64.46% | 35.54% |

It can be seen in all regions, a majority of providers potentially experience an increase in income. In all regions bar West Midlands and London, a majority of cases are currently conducted by providers whose income is expected to increase.

In London, costs and Tailored Fixed Fee levels have been higher than in other regions, particularly because for historical reasons supply is concentrated in London - London providers frequently travel to carry out work in other regions, which results in increased costs.

In the West Midlands the large difference between the percentage of providers whose income would have increased and the percentage of cases carried out by those providers is caused by there being two large firms whose income will decrease. In general, regional comparisons are difficult because of the small number of providers in many regions, meaning that one or two providers' statistics can considerably affect those of the whole region.

Within London, the amounts by which providers' incomes could potentially decrease are shown in the table below.

Table 2A

| % Decrease In Income | 50% | 49-40% | 39-30% | 29-20% | 19-10% | 9-5% | 4% | 3% | 2% | 1% |
|--|-----|--------|--------|--------|--------|------|----|----|----|----|
| No. of Providers Experiencing This Decrease | 0 | 0 | 1 | 1 | 1 | 2 | 3 | 5 | 9 | 1 |

This table shows that although a high proportion of providers in London may experience a decrease in income, only 3 would experience a decrease of more than 9% of their current income. Of these three, one firm also has another office in London, whose income we expect to increase under the new scheme.

Although we hope that these three firms will be able to make the transition to the new scheme successfully, we recognise that there is a risk that they may not. In this case, other firms would need to take on their work to ensure continued access to services. If this happens we intend to run bid rounds to ensure that this work is carried out.

Within the West Midlands, the amounts by which providers' incomes potentially decrease are shown in the table below.

Table 2B

| % Decrease In Income | 29-20% | 19-10% | 9-5% | 4% | 3% | 2% | 1% | 1-0% |
|--|--------|--------|------|----|----|----|----|------|
| No. of Providers Experiencing This Decrease | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |

This table shows that although a high proportion of cases carried out by providers in the West Midlands may experience a decrease in income, only 1 provider would experience a decrease of more than 9% of their current income.

Regional Client Impacts

The following table summarises the numbers of clients dealt with across different regions. "Region" here refers to the region in which the client is located- the provider may be in a different region.

Table 3

| Region | Current No of Clients | % of Clients Served by Providers Whose Income Would Have Increased | % of Clients Served by Providers Whose Income Would Have Decreased |
|-------------------------|------------------------------|---|---|
| East Midlands | 1,850 | 53.38% | 46.62% |
| East of England | 2,288 | 73.31% | 26.69% |
| London | 7,750 | 51.89% | 48.11% |
| North West (Liverpool) | 885 | 87.11% | 12.89% |
| North East | 1,322 | 84.49% | 15.51% |
| North West (Manchester) | 3,043 | 82.75% | 17.25% |
| South East | 3,649 | 59.98% | 40.02% |

| | | | |
|-----------------------------|-------|--------|--------|
| Unknown | 4,424 | 63.31% | 36.69% |
| Wales | 1,300 | 52.28% | 47.72% |
| West Midlands | 2,255 | 55.10% | 44.90% |
| Yorkshire and Humberside | 2,399 | 80.11% | 19.89% |

It can be seen that in all regions a majority of clients are served by providers who will potentially experience an increase in income.

Many Mental Health clients receive advice from providers who travel from other areas. It is possible that, following the introduction of the new fee scheme, providers will change their patterns of travel which could leave some clients with reduced access to services. Implementation of the scheme will be delayed until January 2008 to allow us time to run bid rounds and take other measures to address any access problems.

Rural/Urban Coverage

The following table compares the impacts regionally on rural and urban providers.

Table 4

| Region | Current Number of Suppliers | | Number Whose Income Would Have Increased | | Number Whose Income Would Have Decreased | |
|----------------------------|-----------------------------|------------|--|------------|--|-----------|
| | Rural | Urban | Rural | Urban | Rural | Urban |
| West Midlands | 1 | 17 | 0 | 15 | 1 | 2 |
| South East (Brighton) | 2 | 12 | 1 | 10 | 1 | 2 |
| South West | 12 | 27 | 11 | 23 | 1 | 4 |
| East of England | 4 | 21 | 3 | 17 | 1 | 4 |
| Wales | 11 | 14 | 6 | 9 | 5 | 5 |
| Yorkshire & Humberside | 0 | 26 | 0 | 24 | 0 | 2 |
| North West (Liverpool) | 0 | 8 | 0 | 6 | 0 | 2 |
| London | 0 | 48 | 0 | 24 | 0 | 24 |
| North West (Manchester) | 1 | 28 | 1 | 23 | 0 | 5 |
| North East | 3 | 23 | 3 | 22 | 0 | 1 |
| East Midlands | 2 | 27 | 1 | 19 | 1 | 8 |
| South East (Reading) | 1 | 19 | 0 | 15 | 1 | 4 |
| Total | 37 | 270 | 26 | 207 | 11 | 63 |

It can be seen that overall the impacts do not impact unfairly on rural or urban providers, with slightly more than 70% of providers in each category potentially experiencing an increase in income. This trend is also true at a regional level, with the one exception of East Midlands, where urban providers are slightly more likely to experience an increase in income than their rural counterparts.

In one region, Wales, just under half of all providers are rural. In this region just over

In the South West, just under a third of providers are rural. 11 out of 12 rural providers are likely to experience an increase in income.

In the West Midlands, only 1 firm is rural (out of 18 providers). Although this firm loses by 29%, it only did 29 cases last year. This represents only 2% of all West Midlands claims.

Similarly in the South East (Reading), only 1 firm is rural (out of 20 providers). Although they carried out 15% of all South East (Reading) cases (164 claims) they are predicted to lose by only 6% on profit and counsel costs.

Client Ethnicity

The following table shows the regional spread by client ethnic group.

Table 5

| Region | Current Number of Claims Reported | | | % Reported Served by Providers Whose Income Would Have Increased | | | % Reported Served by Providers Whose Income Would Have Decreased | | |
|-------------------------|-----------------------------------|--------------|--------------|--|------------|------------|--|------------|------------|
| | White | BME | Unknown | White | BME | Unknown | White | BME | Unknown |
| West Midlands | 1,104 | 360 | 144 | 42% | 40% | 40% | 58% | 60% | 60% |
| South East (Brighton) | 688 | 59 | 345 | 68% | 75% | 28% | 32% | 25% | 72% |
| South West | 802 | 90 | 350 | 98% | 100% | 100% | 2% | 0% | 0% |
| East of England | 1,051 | 99 | 102 | 88% | 95% | 64% | 12% | 5% | 36% |
| Wales | 957 | 47 | 60 | 71% | 72% | 100% | 29% | 28% | 0% |
| Yorks and Humberside | 1,507 | 276 | 167 | 84% | 87% | 98% | 16% | 13% | 2% |
| North West (Liverpool) | 1,808 | 156 | 30 | 90% | 95% | 100% | 10% | 5% | 0% |
| London | 6,919 | 5,238 | 559 | 51% | 46% | 60% | 49% | 54% | 40% |
| North West (Manchester) | 1,832 | 379 | 58 | 69% | 70% | 78% | 31% | 30% | 22% |
| North East | 1,210 | 58 | 71 | 92% | 97% | 100% | 8% | 3% | 0% |
| East Midlands | 823 | 203 | 95 | 76% | 85% | 66% | 24% | 15% | 34% |
| South East (Reading) | 787 | 130 | 27 | 79% | 68% | 22% | 21% | 32% | 78% |
| Total | 19,488 | 7,095 | 2,008 | 69% | 54% | 67% | 31% | 46% | 33% |

This table shows that BME clients are more likely to be served by providers whose income would have decreased than white clients. However, this is heavily influenced by the greater adverse effects of the scheme on London, as 74% of all BME clients are served by London based suppliers.

Therefore nationally, 31% of white clients are served by providers whose income may potentially decrease, compared to 46% of BME clients.

If London is excluded the figures are 22% of white clients, compared to 26% of BME clients.

Within London the figures are 49% for white clients and 54% for BME clients.

Whilst this is a difference within London, it is not a large one. It is also important to ask what the effect of this difference would have on BME clients. Since the clients themselves do not get paid the fees, there will only be a discriminatory effect if as a result of the fee schemes BME clients find it more difficult to access an appropriate service.

In other words, it is the impact on suppliers that is important in assessing any potentially discriminatory effects.

One effect of the fee schemes may be that London suppliers concentrate more on cases in London, which is where the majority of BME clients are. In that case it would be unlikely that services to BME clients will be reduced.

Client Age

Table 6

| Region | Current Number of Claims Reported | | | | | | | % Reported Served by Providers Whose Income Would Have Increased | | | | | | |
|-------------------------|-----------------------------------|--------------|--------------|---------------|--------------|--------------|-----------|--|------------|------------|------------|------------|------------|------------|
| | 0-16 | 17-24 | 25-34 | 35-49 | 50-64 | 65+ | n | 0-16 | 17-24 | 25-34 | 35-49 | 50-64 | 65+ | Unknown |
| | Unknown | | | | | | | | | | | | | |
| West Midlands | 44 | 291 | 410 | 474 | 235 | 110 | 2 | 100% | 100% | 100% | 99% | 98% | 100% | 100% |
| South East (Brighton) | 7 | 153 | 287 | 591 | 198 | 114 | 1 | 86% | 39% | 31% | 34% | 49% | 44% | 0% |
| South West | 16 | 298 | 431 | 574 | 329 | 150 | 1 | 100% | 88% | 87% | 85% | 89% | 91% | 100% |
| East of England | 12 | 129 | 274 | 446 | 164 | 79 | 1 | 83% | 57% | 55% | 51% | 60% | 59% | 100% |
| Wales | 9 | 273 | 446 | 564 | 246 | 97 | 0 | 44% | 62% | 74% | 76% | 71% | 77% | N/A |
| Yorks and Humberside | 14 | 342 | 727 | 853 | 347 | 137 | 0 | 100% | 88% | 89% | 88% | 90% | 92% | N/A |
| North West (Liverpool) | 8 | 237 | 502 | 661 | 261 | 128 | 0 | 100% | 100% | 100% | 100% | 100% | 99% | N/A |
| London | 111 | 1,473 | 3,005 | 3,944 | 1,250 | 415 | 6 | 24% | 44% | 40% | 45% | 46% | 55% | 0% |
| North West (Manchester) | 19 | 364 | 650 | 853 | 393 | 149 | 6 | 89% | 91% | 87% | 88% | 85% | 91% | 100% |
| North East | 33 | 208 | 340 | 425 | 245 | 95 | 0 | 94% | 96% | 93% | 92% | 99% | 99% | N/A |
| East Midlands | 14 | 229 | 509 | 782 | 285 | 109 | 1 | 86% | 94% | 92% | 94% | 91% | 92% | 0% |
| South East (Reading) | 17 | 124 | 254 | 393 | 146 | 71 | 0 | 100% | 74% | 62% | 66% | 55% | 68% | N/A |
| Total | 304 | 4,121 | 7,835 | 10,560 | 4,099 | 1,654 | 18 | 68% | 70% | 67% | 67% | 72% | 77% | 56% |

This table shows that the impacts of the scheme are evenly shared by clients from all age groups.

Client Disability

Table 7

| Region | Current Number of Claims Reported | | | % Reported Served by Providers Whose Income Would Have Increased | | | % Reported Served by Providers Whose Income Would Have Decreased | | |
|----------------------------|-----------------------------------|---------------|--------------|--|--------------|-------------|--|--------------|-------------|
| | Disabled | Not Disabled | Unknow n | Disabled | Not Disabled | Unknow n | Disabled | Not Disabled | Unknow n |
| | | | | | | | | | |
| West Midlands | 410 | 800 | 398 | 30% | 38% | 62% | 70% | 63% | 38% |
| South East (Brighton) | 263 | 596 | 567 | 80% | 90% | 35% | 20% | 10% | 65% |
| South West | 363 | 929 | 592 | 91% | 74% | 98% | 9% | 26% | 2% |
| East of England | 400 | 893 | 403 | 84% | 97% | 71% | 17% | 3% | 29% |
| Wales | 373 | 345 | 441 | 71% | 44% | 83% | 29% | 56% | 17% |
| Yorks and Humberside | 307 | 1,366 | 948 | 98% | 80% | 100% | 2% | 20% | 0% |
| North West (Liverpool) | 1,100 | 806 | 106 | 94% | 85% | 99% | 6% | 15% | 1% |
| London | 2,307 | 7,789 | 3,283 | 43% | 49% | 48% | 57% | 51% | 52% |
| North West (Manchester) | 1,071 | 608 | 927 | 88% | 84% | 44% | 12% | 16% | 56% |
| North East | 537 | 339 | 554 | 99% | 100% | 84% | 1% | 0% | 16% |
| East Midlands | 629 | 671 | 681 | 61% | 68% | 60% | 39% | 32% | 40% |
| South East (Reading) | 286 | 614 | 223 | 73% | 77% | 37% | 27% | 23% | 63% |
| Total | 8,046 | 15,756 | 9,123 | 70% | 63% | 62% | 30% | 37% | 38% |

This table shows that, overall, disabled clients are slightly more likely to be served by providers whose income would have increased than non-disabled clients. There are only five regions, however; South East (Brighton), South West, East of England, Wales and Yorkshire and Humberside, in which there is a significant difference in impact between the two client groups.

Client Gender

Table 8

| Region | Current Number of Claims Reported | | % Reported Served by Providers Whose Income Would Have Increased | | % Reported Served by Providers Whose Income Would Have Decreased | |
|-------------------------|-----------------------------------|---------------|--|------------|--|------------|
| | Male | Female | Male | Female | Male | Female |
| West Midlands | 1,039 | 569 | 41% | 44% | 59% | 56% |
| South East (Brighton) | 791 | 635 | 65% | 67% | 35% | 33% |
| South West | 1,085 | 799 | 85% | 86% | 15% | 14% |
| East of England | 1,063 | 633 | 89% | 85% | 11% | 15% |
| Wales | 744 | 415 | 68% | 67% | 32% | 33% |
| Yorks and Humberside | 1,706 | 915 | 91% | 87% | 9% | 13% |
| North West (Liverpool) | 1,330 | 682 | 90% | 91% | 10% | 9% |
| London | 9,038 | 4,341 | 47% | 49% | 53% | 51% |
| North West (Manchester) | 1,699 | 907 | 69% | 76% | 31% | 24% |
| North East | 862 | 568 | 99% | 84% | 1% | 16% |
| East Midlands | 1,251 | 730 | 64% | 62% | 36% | 38% |
| South East (Reading) | 725 | 398 | 64% | 75% | 36% | 25% |
| Total | 21,333 | 11,592 | 64% | 66% | 36% | 34% |

This table shows that the impacts of the scheme are evenly shared by clients of either gender.

Appendix C: Implementation plan

| <i>Scheme</i> | <i>Activities</i> | <i>Date</i> |
|----------------------|---|--------------------|
| Mental Health | Unified contract standard terms published and sent to all providers | March 2007 |
| | Implementation of Unified Contract | April 2007 |
| | LSC announce final detail of scheme | June 2007 |
| | Consultation on new category specification | June- July2007 |
| | Unified Contract specifications finalised | June 2007 |
| | Category specification finalised | September 2007 |
| | Implementation of scheme | January 2008 |