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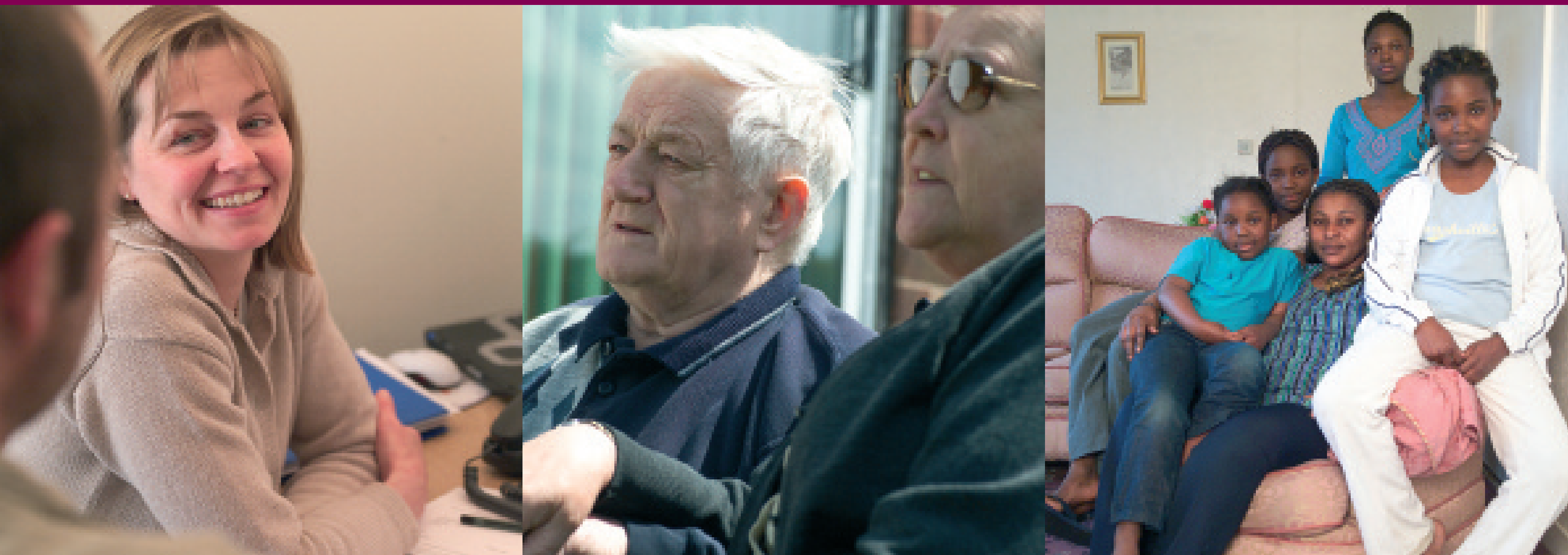
Department for Constitutional Affairs
Justice, rights and democracy

Legal Aid: a sustainable future – analysis of responses



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Legal Aid: a sustainable future – analysis of responses

Consultation Paper

November 2006

Response to consultation carried out by the Department for Constitutional Affairs and the Legal Services Commission. This information is also available on the DCA website at www.dca.gov.uk and the LSC website at www.legalservices.gov.uk

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Introduction

This document is the post-consultation report for the consultation paper, *Legal Aid: a sustainable future*.

It covers:

- the background to the report;
- a summary of the responses to the report; and
- a list of key representative bodies that responded to the consultation.

It is accompanied by the simultaneous publication of the Government's response to the consultation paper, indicating the way forward for reform, and entitled *Legal Aid Reform: the way ahead.* Further copies of both reports and the consultation paper can be obtained by contacting **Sheena Symes** at the address below:

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This report is also available on the Legal Services Commission website at: www.legalservices.gov.uk and on the DCA website at: www.dca.gov.uk.

Background

The consultation paper *Legal Aid: a sustainable future*, was published on 13 July 2006. This followed the publication of the final report of Lord Carter of Coles, *Legal Aid: a market-based approach to reform,* at the conclusion of his Review of Legal Aid Procurement. This review was established following the publication of *A Fairer Deal for Legal Aid* in July 2005. Lord Carter was commissioned to examine two areas. First, to re-balance the legal aid budget, putting it on a sustainable footing and ensuring that the government is procuring a quality, efficient and diverse service at the best price for the taxpayer. And, secondly, to ensure that the proposals are in line with the aims of the wider Criminal Justice System.

The consultation paper requested comments on the recommendations outlined in Lord Carter's final report and within the consultation paper itself. A brief summary of those proposals appears below.

Crime

The final report proposed that reform of the criminal legal aid system should undergo a phased implementation process with the suggested way forward including:

- April 2007 would see the introduction of new fixed fees scheme in Police Stations and an extension of the Graduated Fee Scheme to litigators in the Crown Court;

- From October 2007 new General Criminal Contract boundary areas would be introduced; and

- From 2009 best value tendering would come into effect, with quality assured suppliers competing for criminal work.

In Very High Cost Cases (VHCCs), it was also suggested that the LSC could introduce an enhanced quality threshold and use an increased level of in-house legal expertise and sanctions to bring greater control over the individual case contracting regime. This way forward would be effectively introduced by the end of financial year 2007/08 through the LSC only contracting with a panel of suppliers cleared through price competition and meeting the required standard of quality.

Civil, Family and Immigration

For Civil, Family and Immigration Legal Aid, Lord Carter's final report recommended that:

- Schemes for replacing tailored fixed fees, and those covering private law family and public law children which are sustainable within the overall legal aid budget should be introduced in April 2007;

- Mental health and asylum and immigration suppliers to move to payment through a graduated fee scheme for the majority of work. Lord Carter's report endorsed the proposals in the joint consultation paper that these schemes should be implemented in April 2007;

- The Family Help – Private scheme to be seen as paving the way to a graduated fee scheme for solicitors in private law family that includes the final hearing stage from Autumn 2007;
- The current civil representation scheme to be kept under close review and that together with the professions, the DCA and LSC should produce a report of their findings by July 2008; and
- Best value tendering for new civil and family contracts to begin in 2009.

Summary of responses

1. A total of 2372 responses to the consultation paper were received. These are broken down by respondent type in Table 1 below. As some respondents addressed both sections of the consultation paper, the combined totals in Table 1 are greater than the overall number of respondents.

Table 1: Table of respondent type to the Consultation Paper Legal Aid: a sustainable future

	Civil Responses		Crime Responses		Non-specific Responses	
Provider Type	**Number**	**Percentage**	**Number**	**Percentage**	**Number**	**Percentage**
Solicitor provider	617	44%	923	90%	55	64%
NfP Provider	169	12%	5	0%	1	1%
Barrister	446	32%	19	2%	4	5%
Family Mediator	31	2%	-	-	0	0%
Representative body	63	5%	25	2%	6	7%
Client group	2	0%	-	-	0	0%
Government	8	1%	-	-	3	3%
Other	56	4%	49	5%	17	20%
Total	**1,392**	**100%**	**1,021**	**99%***	**86**	**100%**

2. Responses were analysed in particular for specific evidence regarding the impact of Lord Carter's proposals on practitioners and any suggestions for how the proposals could be adapted to ensure that greater efficiency and quality in provision of service could be secured.

3. The analysis itself was of a more statistical nature for the Civil, Family and Immigration Legal Aid responses, in terms of providing, where appropriate, a statistical breakdown of where respondents agreed or disagreed with the proposals. This was due to the more specific nature of the questions in this area compared to the broader approach for the questions regarding Criminal Legal Aid and the supporting measures. Similarly, as the vast majority of respondents to the proposals for Criminal Legal Aid were solicitors (90%) there has been no breakdown of respondent type in this section. However, the views of respondents are evenly reflected throughout the paper.

4. The consultation paper was divided into a series of questions for both Criminal and Civil, Family and Immigration Legal Aid. Points raised in respect of the proposals for Criminal Legal Aid included:

   - a general agreement that there was a need for modernisation in the procurement of legal aid;
   - a consensus that any timetable for implementation should be subject to a phased approach;
   - the need to focus on wider CJS reform, not just that for the defence;
   - a concern that fixed fees could favour larger firms and be more difficult for smaller firms, including BME firms;

* 99% due to rounding.

- that the inclusion of travel and waiting within a fixed fee could adversely affect rural firms;
- the potential impact on both firms and clients of any limits to own client work;
- the tension between ensuring quality whilst achieving a sustainable level of profit under fixed fees;
- the need for sufficient flexibility to reflect the complexities of preparing defence cases in the revised litigators fees;
- agreement in principle with the tendering of VHCC work but balanced with the need to ensure panel areas are large enough to secure national coverage; and
- the benefits of increased remuneration for the Junior Bar and the anticipated positive effect this could have on wider diversity objectives.

5. Points raised in respect of the proposals for Civil, Family and Immigration Legal Aid included:

   - a widespread concern that the proposed fee schemes were set at levels that are too low;
   - a widespread concern about the concept of fixed fees that are based on an average with some cases costing more and some less;
   - a widespread concern that the proposals will drive firms out of legal aid and this will affect access to justice for vulnerable clients;
   - respondents in all categories consider that the proposed exceptional rate is set too high at four times the fee; and
   - there was little consensus as to whether regional or national rates would be the preferred option across any categories.

Responses to Specific Questions

General – for all respondents

A total of 1656 of 2372 respondents provided information relating to the general questions outlined below.

1.1 Do you have a particular interest in legal aid? If so, what (e.g. practising lawyer)

70% of respondents said they were lawyers undertaking legal aid work, whilst less than 1% said they did no legal aid work. The remaining respondents stated that the question did not apply to them, for instance, because they were a non-lawyer manager representing a Not for Profit (NfP) advice agency. Responses were received from organisations working in all publicly funded areas of law. Of the 1,656 respondents who indicated the area of law they worked in, the highest proportion, almost 50%, mentioned doing criminal work. 45% of respondents mentioned that they were involved in family work. Other areas of law were less heavily represented with 6% mentioning housing, 5% mental health and 4% immigration (1% of which were involved in asylum). Nearly 4% of respondents mentioned debt and benefits. There were also responses from people interested in quite specific areas of law, such as public law children work, education or clinical negligence.

1.2 If you are a lawyer, do you undertake legally aided work? If so, what type(s) and for how many years?

The majority of those who indicated how long they had been working in legal aid noted that they had been involved for more than 10 years, with many claiming experience of over 20 years.

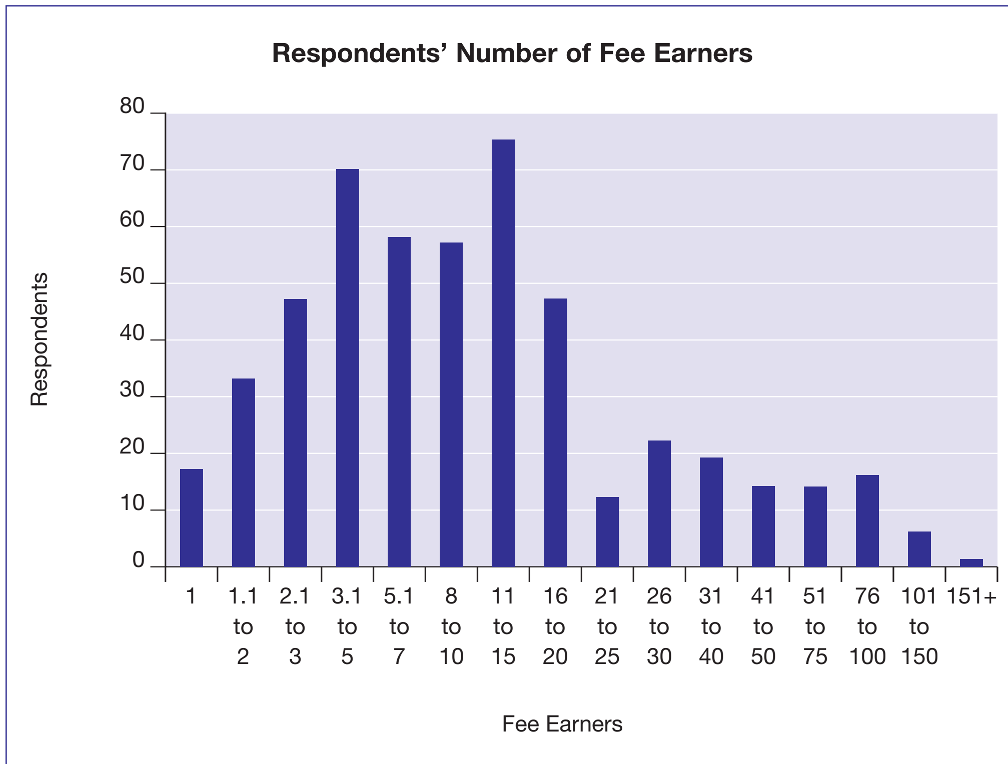
1.3 If you are a legal practitioner, how do you think these reforms will impact on your business?

Expectations regarding the impact of the reforms proposed in the consultation paper were largely negative. Many respondents anticipated that they and many of their colleagues would see a drop in income, and that this would cause them to re-evaluate whether to continue with publicly funded work. It was noted that this would have the likely effect of reducing access to justice. The principal concern had to do with the fixed fees proposed in the consultation, which many respondents thought were set at a level that would make legal aid work uneconomic.

1.4 How many fee earners are there at your firm?

Respondents came from a wide range of different sizes of organisation. However, many of the NfP providers that responded did not indicate how many LSC-funded staff they employ because they do not use the term '*fee earners*'. The respondents that did provide usable information about the number of fee earners in their organisation can be broken down as per Fig. 1 below.

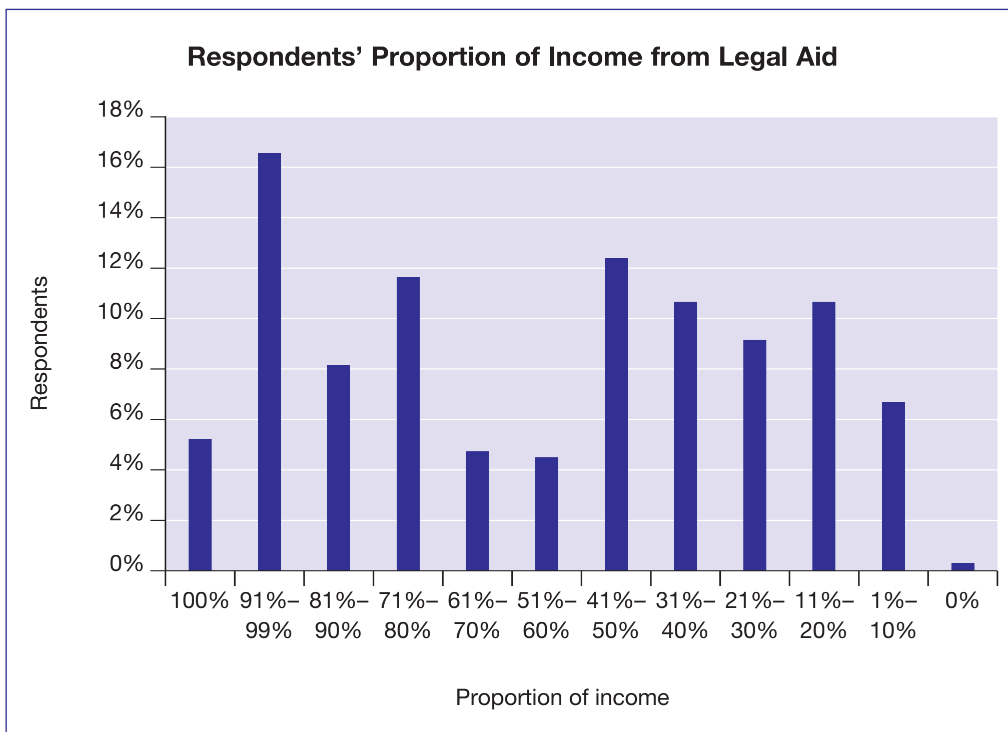
Fig 1 – Bar chart of number of fee earners in respondents firms



1.5 Approximately, what proportion of your firm's work comes from legal aid?

Of those respondents that were able to provide usable data to this question, the results can be found in the Fig 2 below.

Fig 2 – Bar chart of respondents' proportion of income from Legal Aid



Criminal Legal Aid

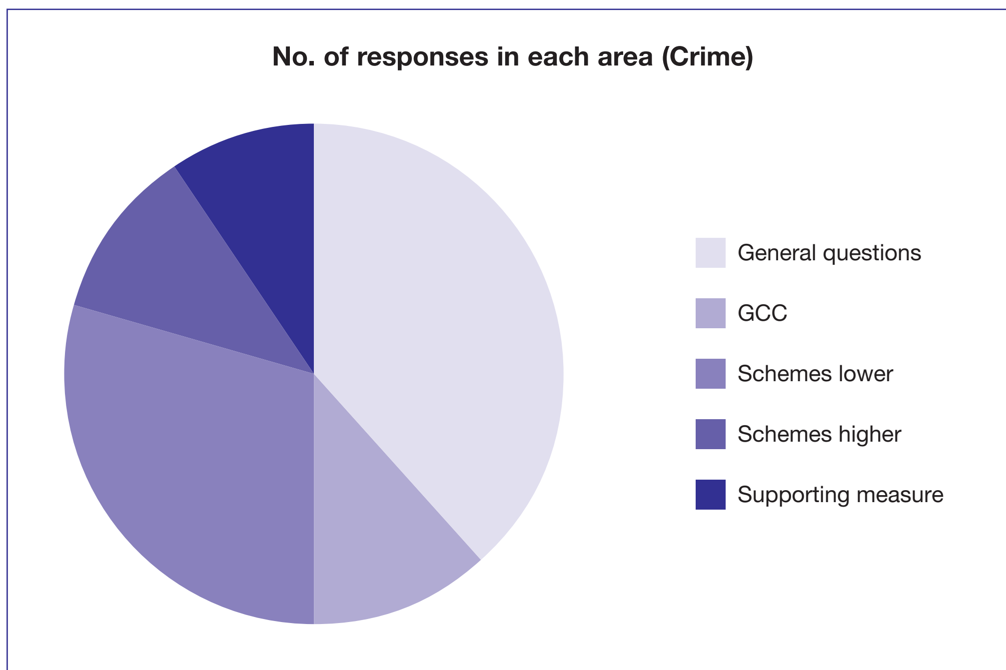
Lord Carter's final report clearly set out his proposed schemes for the procurement of criminal defence services. DCA and LSC consulted on these schemes and other inter-related issues that were identified by the Review in the consultation paper *Legal Aid: a sustainable future*. The responses to the questions contained in the consultation paper are summarised below.

The majority of respondents did not structure their returns in the format outlined in the consultation paper, however, the analysis of the responses has been broken down in this format. To facilitate this work in the first instance, an assessment was conducted of which sections of the consultation paper the 1021 (43%) respondents who had addressed the proposals relating to Criminal Legal Aid had directed their returns. This was broken down as outlined in Table 1 and Figure 1 below[1]. In the majority of cases, respondents had addressed more than one section of the consultation paper leading to the breakdown below resulting in a significantly higher number than the total number of respondents on Criminal Legal Aid.

Table 2: Table of response areas to Criminal Legal Aid proposals

Response area	No. of responses
General Questions	920
General Criminal Contract	285
Schemes Lower	705
Schemes Higher	269
Supporting Measures	220

Fig 3 – Pie chart of response areas to Criminal Legal Aid proposals



[1] The majority of respondents did not format their responses in the manner of answering the specific questions provided in the consultation paper. All figures provided, therefore, are a best assessment of which questions were addressed by respondents.

It was evident throughout the analysis process that the majority of respondents who had considered the consultation questions for Criminal Legal Aid were responding to the proposals for the re-structuring of the market at the police station. This included a particular regard to the introduction of fixed fees for this work and the cessation of separate payments for travel and waiting. Many of the responses to both the General Questions and Supporting Measures were framed in such a way as to support the points made by respondents in respect of these proposals, which is reflected in the analysis of these areas where appropriate below.

GENERAL QUESTIONS

2.1 Do you agree that there is a need to modernise the procurement of Criminal Legal Aid? Do the recommendations outlined in Lord Carter's final report address this issue? Please provide supporting reasons for your answer.

There were 596 responses that either answered this question or commented on relevant aspects of the proposed schemes.

Of these 178 specifically addressed the point regarding the need, or lack thereof, for modernisation of the Legal Aid procurement system. 72% of these appreciated that there was a need for reform with 28% expressing a view counter to this. As is evident, therefore, the majority of stakeholders believe that there is a need to move forward with a programme of reform.

Some respondents agreed with the underlying work and principles behind Lord Carter's final report, feeling that it provided an opportunity to remove inefficient practitioners and those that drove up costs. The majority, however, felt that the detail of many of Lord Carter's proposals, particularly in relation to police station work, would undermine his broader aims for a sustainable legal aid market, as the proposed fee levels were too low, and without the ability to pick up sufficient extra volume.

Specific concerns regarding the approach outlined in Lord Carter were that:

- the proposals were based on evidence of inefficiencies in London and other large urban areas rather than the country as a whole;
- that the stated principle of *'one size does not fit all'* would not be followed; and
- that the report failed to appreciate the cost drivers in other areas of the Criminal Justice System which solicitors were being forced to pay for.

2.2 What is your view of the timetable for implementation suggested in Lord Carter's report in Chapter 3, paragraph 120, table 3.1 and Annex 6.1? Do you have any comments on the proposal that a phased approach to implementation be followed? Do you have any other comments on this timetable which you would like the Department to take into consideration?

There were 295 responses that either answered this question or commented on relevant aspects of the proposed schemes.

Of those that considered this issue, the majority agreed with the principle that any implementation plan would have to follow a phased approach. However, the majority of respondents to this question also felt that the timetable was not realistic and did not believe that the LSC would be able to meet the deadlines proposed by Lord Carter. Several respondents noted that as they did not agree with Lord Carter's proposals as a whole they could not agree with the timetable.

A number of respondents felt that the phasing of the proposals for the police station was incorrect, with the proposed cut in income from fixed fees introduced prior to any facility for firms to make efficiency savings via volume increases and redrawn scheme boundaries. There was also a significant number that felt the timeline placed undue pressure on firms in a short period, with several suggesting that any reforms should be delayed by up to a year to allow them to make the necessary internal adjustments to their working practices. It was also suggested that implementation of the reforms should be taken forward in pilot areas, running concurrently with the present system, to allow an assessment on the impact that any cuts and new business structures would have on the marketplace as a whole.

2.3 What benefits might be generated for defendants and other stakeholders by adopting these proposals? Also what impacts/disadvantages do you consider might result from implementation? Please give consideration to different diverse communities such as BME and rural communities.

There were 435 responses that either answered this question or commented on relevant aspects of the proposed schemes.

The majority of responses argued that, as framed, it was difficult to see any benefits that would arise from implementation of the proposals for either defendants or stakeholders. In particular there was concern that there would be a shift of focus away from the needs of the client to the need for speed in progressing cases which could impact on 'vulnerable' clients. Several respondents also highlighted their specific opposition to any moves to restrict defendant eligibility, which they considered contrary to the right of access to justice.

Many also raised the need for a continued assurance for equality of arms at the centre of the justice system. The need to ensure that the defence are not disadvantaged in comparison to the prosecution when conducting a case was considered a core tenet of the justice system.

There were, however, some positive references to the potential outcome of the proposals, including the potential for viable firms to provide a stable and professional service to communities.

Rural considerations

A significant number of respondents were particularly concerned about the adverse impact that the proposals may have in rural areas. In particular, respondents from both rural and urban areas argued for a greater uplift in any fixed fee arrangements to take into account the additional travel burden that practitioners in rural areas face. It was suggested that, without such consideration, there was a danger too many firms would be forced out of business, endangering both coverage and the need to prevent conflicts of interest in those cases where there were multiple defendants. A number of respondents felt that the proposals were geared to urban areas, particularly London, and did not reflect the different needs of the rest of the country, including rural areas.

BME considerations

Of those that specifically considered the impact of Lord Carter's proposals on BME clients there was a mixture of views. Some felt that there was a possibility that if too many BME firms and niche practices were to close as a result of the proposals this would impact on those from certain backgrounds. In particular there was a view that fixed fees particularly affect those working with BME clients, for instance, where working through an interpreter took longer for practitioners than for those who could communicate directly with their client.

This was coupled with the suggestion that such an impact would also adversely affect BME firms due to the higher number of BME clients that made up their business, immediately lowering their profitability under fixed fees. It was felt that this could result in a denial of access to justice for many communities if these firms were to subsequently close. It was argued by others, however, that as long as service coverage remained complete a special provision for BME firms should not be an overarching concern, as the aim should be, and currently was, that all firms provide a high standard of service to all clients.

Many respondents felt that best value tendering could disproportionately impact upon small and BME firms, and as such, particularly in the context of the latter, might restrict client choice. Referring to earlier MDA research into this area, some respondents noted that BME firms could be considered to reassure their communities, and it was suggested that any loss could lead to a wider mistrust in the fairness of the system. To this end it was argued that if the number of BME firms reduced significantly, and if the choice of these firms by BME clients was not based solely on geographical proximity, there could be a loss of confidence by BME clients in the justice system. It was also felt that the proposals could undermine the work done to get more representatives of BME communities into the legal system.

2.4 What impact will any or all of the recommendations have on criminal legal aid providers? Please give consideration to firms of differing size, structure and practitioner mix. Do you have any other comments on this proposal which you would like the Department to take into consideration?

There were 592 responses that either answered this question or commented on relevant aspects of the proposed schemes.

The sense from the majority of providers was that, although they could appreciate the benefits of some aspects of Lord Carter's proposals, for instance an allowance for the fact that, *'one size does not fit all',* they were concerned that, as structured, it would be hard to realise any benefits. Whilst it was considered likely that most firms would continue to take on this work in the first instance, there was concern about how many would survive if the fee levels failed to be pitched at a sustainable level. A number of respondents felt that this could lead to a significant number of firms ultimately leaving the market as they took a longer term look at the viability of taking on legal aid work. In particular it was felt that the introduction of means testing could undermine the proposals as if core volume dropped, firms would be unable to secure the core volume needed to secure a viable income.

Firm size

There were a wide variety of views on the impact of Lord Carter's proposals on the size of firms. The majority of respondents felt that larger firms were favoured, with a risk that smaller firms would fall out of the market. However, there were a significant number of responses that actually felt small firms would be favoured, or that alternatively, medium size firms would profit at the expense of others. It was considered by many, however, that efficiency and value for money should be the key focus not the size of a firm. There was some argument that firms of all sizes would struggle to make the proposals work.

Several respondents did put forward the view that volume should be secured for large firms to ensure that their profitability levels remained intact. However, this was countered in a number of other responses, with a suggestion that, whilst it was likely larger firms in major conurbations would need to be substantially larger there was no reason why small firms could not thrive in other areas.

Firm structure

Several respondents also addressed the structural implications of Lord Carter's proposals on firms and, by proxy, on the market. In urban areas there was a concern that, if too many firms fell out of the market at an early stage as a result of the phasing order for implementation, there was a danger the cartel would be created in advance of the introduction of best value tendering.

It was also felt that in rural areas, where firms were often spread across a large area, it could be more difficult to give practical effect to the structures it was anticipated would best realise the efficiencies suggested in the report. Similarly, the need to retain a certain number of firms to prevent conflicts of interest in cases with several defendants was also seen as a significant obstacle in areas where there was already a small number of firms.

The ability of small firms, including those under BME ownership or providing specialist services, to merge with larger providers was thought to be equally difficult. A number of respondents argued that they would also be unwilling to merge with other firms as this undermined the reasons that many small firms were established, however, it was noted that networks could be established in some areas to take on larger contracts and share work.

Practitioner mix

Almost all those that responded to this issue expressed a concern that younger or new solicitors would be increasingly unlikely to enter criminal law. In particular it was felt that the proposals to reduce the requirements for duty solicitor work undermined the career structure that had been established in the profession. The importance of fee levels being pitched correctly was also noted, to ensure the entry of quality new practitioners to the market who, although realistic about their income, would need assurance that they would make a reasonable living from legal aid work.

2.5 Lord Carter's proposals are designed to promote the provision of high quality advice and to support the effective implementation and operation of the Criminal Justice System. Do you believe that the measures proposed will achieve this? Please provide supporting reasons with your answer and explain which of the specific recommendations you agree/disagree with.

There were 375 responses that either answered this question or commented on relevant aspects of the proposed schemes.

The majority of respondents to this question agreed with the objective of Carter to place quality at the centre of his proposals, and that there should be a high basic threshold of competence for those paid with public money. However, almost all respondents felt that the impact of other proposals, particularly with regard to the introduction of fixed fees in the police station would undermine this goal as the quality of service would be directly linked with the financial impact on providers of the proposals. It was also felt that the proposals would lead to the employment of lower quality staff and the profession could become, *'de-skilled'*. This would become increasingly true as experienced practitioners left the profession, whilst new graduates failed to enter.

It was argued by some respondents that, in fact, the level of quality currently provided was already of the required level. Further analysis of responses to the detailed quality measures proposed by Lord Carter can be found outlined for Question 5.1 below.

GENERAL CRIMINAL CONTRACT

3.1 Scheme Boundaries (Recommendation 4.1) – What is your view of Lord Carter's proposal that the Legal Services Commission adopt the method described in Chapter 4 paragraphs 4 to 9 and Annex 4.1 of the Review's final report to construct new General Criminal Contract boundary areas for all of England and Wales by October 2007? Do you agree or disagree with any of the specific recommendations? Please provide supporting reasons for your response.

There were 193 responses that either answered this question or commented on relevant aspects of the proposed schemes.

The majority view expressed to this question was that this proposal was welcomed by practitioners and seen as a positive move and a possible catalyst market reorganisation. Some respondents wanted these changes implemented as soon as possible after, or simultaneous to, the introduction of the proposed fixed fees for police station work. Many considered that the creation of boundary areas could boost profitability and that larger boundaries could lead to more firms remaining in the market.

It was also suggested that the boundary areas should be drawn smaller in some areas in order that travel and waiting could be minimised, allowing firms to make up for some of the money they would lose as a result of fixed fees. An alternative solution was also proposed for London where it was suggested that each individual solicitor should be on only one Duty solicitor scheme each. This could be coupled with active enforcement of the rule that the Solicitor must carry out 80% of duty work personally, reducing the use of agencies and ensuring quality.

It was argued by some that this proposal would not have benefit outside London and that the impact on the market in terms of restricting own client work would be detrimental to both firms and clients. Even for firms in London it was claimed that, a 20% rule would not take into account the fact that many London firms have significant own client followings and that investigation would always fit within a boundary. If this proposal was to be introduced, it was argued that the input of local practitioners would be essential in ensuring that it was a success. This was particularly true in areas with small communities, where small firms were in place to meet the local need and large boundary areas would not be workable due to the distances and lower volume of crime involved or for niche firms that provide specialist services over larger areas. It was also suggested that boundaries could become more localised and based around individual crown courts with the surrounding police stations captured within that scheme.

A small number of respondents felt that there currently existed too little detail to comment fully. These respondents tended to note, however, that in designing areas local circumstances should be taken into account. This would ensure that the different issues faced by rural and urban practitioners could be addressed.

3.2 General Criminal Contract Working Arrangements [Recommendations 3.2, 3.3, 4.2, 4.3, 4.4, 4.5 and 4.6] – Do you have any comments on the new General Criminal Contract working arrangements proposed by Lord Carter in Chapter 3 paragraphs 44 to 68 and Chapter 4 paragraphs 10 to 35 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 202 responses that either answered this question or commented on relevant aspects of the proposed schemes.

The broad nature of this question meant that many respondents considered some of the recommendations and not others. The main areas in which detailed feedback was offered are outlined below. To the extent that respondents commented on the proposal that a register of potential very high cost cases be developed, it was met with approval and considered a logical way forward.

Best Value Tendering

A significant number of respondents expressed the view that best value tendering emphasised cost savings over quality of service, and that the scheme could lead to a number of suppliers being unable to continue in practice. To mitigate this, it was noted that a transition period from the current system to best value tendering would be essential to allow firms who were able to restructure to do so. It was also considered important by a number of respondents that small firms, including those under BME ownership, would need to be taken account of during any transition, and appropriate allowance made, if their survival in the marketplace was to be secured.

A recurrent concern was that best value tendering could reduce margins of profitability and incentivise volume over service. Along the same lines, many respondents suggested that the proposals might encourage firms to cherry-pick the best cases, and make them less inclined to take on difficult or vulnerable clients or complex cases. It was also felt by some that firms were being asked to gamble, and regularly negotiate on, fluctuating prices and volumes of work if they decided to stay in the market which would make it increasingly difficult to plan for the future.

Special arrangements for niche providers

Respondents offered mixed feedback on the recommendation that special arrangements be developed for niche suppliers. Some felt that, since niche suppliers are unlikely to be able to provide a holistic service, it was difficult to justify any ongoing support for them which would divert resources away from those firms that did provide a more comprehensive services. Others, however, felt that niche firms added considerable value.

Some respondents felt that sub-contracting specialist work would be problematic, owing to the possibility of firms without relevant experience or expertise being given contracts, and favoured panels of specialist suppliers to whom such work could be contracted directly. It was suggested that the criteria used by the CPS Specialist Casework Unit be adopted to trigger notification that a specialist firm be contracted. It was also argued that niche providers should be granted a specific exemption from the out of area requirements in order that they could maximise their income and that the benefits of their service were not excluded from some parts of the market.

Duty solicitors and in-house work

A number of respondents recognised that proposals to allocate duty slots to firms as a whole rather than by the number of solicitors on their rota would be an effective way of reducing costs, welcoming the opportunity for accredited and probationary representatives to do a broader spectrum of work. There was concern, however, that basing allocations on work volumes undertaken between July 2005 and July 2006 could adversely affect both new firms and those that have expanded since that period.

The proposal that a minimum 80 per cent of police station and 50 per cent of Magistrates' court work should be conducted in-house was broadly welcomed.

A significant number of respondents argued that the quality of advice may suffer if duty solicitor work was opened up to accredited representatives as suggested in the final proposals, arguing that a change in allocation of duty solicitor slots could result in less experienced representatives advising in police stations. Many also felt that, if introduced, this proposal should not extend to more serious cases, where experience is important in ensuring quality.

There was also concern that the proposals would devalue the status of duty solicitors, which could lead to experienced practitioners moving to other areas of law, and to the career structure becoming ill-defined, deterring new practitioners from considering criminal work.

Own client work and out of area limits

A high number of respondents were concerned about the proposals to limit own client work, and the introduction of an *'out of area limit'*. This was raised in particular with reference to the market in London, where it was argued a significant number of firms conducted work outside of their anticipated boundary area. Many felt that this approach could lead to a downturn in income for firms who have established a reputation for quality service.

It was also considered that the quality of advice to clients may suffer as a result of limits to own client work as it would lead to a loss of client knowledge and could affect the behaviour patterns of certain clients if previously developed relationships were lost. Respondents also expressed a belief that own client work itself, owing to the need to attract new clients and build reputation, encouraged quality. There was concern that these effects could be magnified in large and rural areas. A substantial number of respondents also noted that there needed to be sufficient flexibility in the system to ensure that work was distributed evenly and that firms could take on work from busier areas if the volume of crime in their area was low.

Use of CDS Direct

It was argued by some respondents that a number of clients could be unwilling to deal with CDS Direct in the first instance, preferring to go straight to their own solicitor.

The Specialist Fraud Association also suggested that, there should be a separate fraud Duty Solicitor Scheme where boundary restrictions would not apply to ensure that coverage for these cases remains complete.

Minimum thresholds

Some respondents expressed concern that the introduction of a minimum threshold could penalise small, including BME owned, and specialist firms owing to the lower volume of cases they handle. The question was also raised as to how this proposal would make space for new entrants to the market, particularly if historic volume, rather than current capacity was to determine the level of market access. It was suggested that imposing a threshold prior to the completion of peer review would be difficult as there would be uncertainty over the number of firms that could bid for work within an area and to exclude on capacity as well as quality could lead to a lack of coverage in some areas. A number of respondents considered that further detail would be required in these areas before a full assessment could be provided.

PROPOSED CRIMINAL SCHEMES

4.1 Police Stations [Recommendation 4.7] – Do you have any comments on the Police Station scheme proposed by Lord Carter in chapter 4 paragraphs 36 to 39 and Annex 4,2 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 692 responses that either answered this question or commented on relevant aspects of the proposed schemes.

All of the respondents who commented on this question expressed concern at the police station proposals. While some respondents recognised that change was required in police station procurement the majority considered the fees proposed to be unsustainable. The most frequent concerns noted by respondents are outlined below.

Travel and Waiting

A significant number of respondents considered that the proposed fixed fee rates produced an unsustainable reduction in remuneration, by including travel and waiting in the fixed fee. In particular practitioners based outside major conurbations argued that they would be adversely affected by the inclusion of travel in the fee.

Some respondents in rural areas stated that the nearest custody suite or prison could be up to 60 miles from their office. It was also noted that in some criminal cases involving minors, visits may have to be made to non-local guardians and the removal of travel and waiting payments made no account of these types of cases.

A significant number of respondents argued that the inclusion of waiting time in the fee was unfair on defence practitioners, as delays were often caused by others in the Criminal Justice System. This included specific requirements which often caused significant delay, such as attendance at ID parades. It was also noted by some that solicitors have very little control over the time taken at the police station. Concern was also expressed at the impact of bailbacks on the profitability of fixed fee cases.

Service Delivery

The majority of respondents argued that the proposed rates were insufficient to adequately remunerate cases that are heard out of hours. Some respondents stated that the level of reduction against the current remuneration rates would be significant enough to threaten their ability to continue providing criminal legal aid services.

Quality

The majority of respondents also expressed concerns about the level of quality of defence services that could be provided under fixed fees. It was indicated that firms would need to delegate the police station work to lower grades of fee earners. It was argued that this could impact upon the equality of arms of representation as there would be no incentive for representatives to attend and challenge investigating authorities on an ongoing basis.

Some respondents also raised the issue that this could have a longer-term effect upon the overall quality of criminal legal aid solicitors, with fewer solicitors gaining experience of frequent work in police stations.

Escape limits

The majority of respondents stated that the proposed hourly limits before cases escape were set at too high a level. Many respondents suggested that the proposed level of escape was not actually achievable.

Regional variances

Some respondents noted that there are differing levels of efficiency in police stations and courts around the country and, as such, the fixed fee would not reflect the specific challenges for practitioners in some local areas. Conversely, some respondents suggested that there should be a single national fixed fee, with an uplift for London, set at a universally sustainable level.

The future for legal aid practice

Some respondents expressed a concern that the proposed level of the rates could lead to a reduction in the number of firms undertaking this work. This could lead to an increasing unwillingness for new solicitors to enter this field of work owing to the perceived levels of unprofitability.

4.2 Magistrates' Courts [Recommendations 4.8, 4.9 and 4.10] – Do you have any comments on the magistrates' courts scheme proposed by Lord Carter in chapter 4 paragraphs 40 to 45 and Annex 4,3 of the final report, including the payment of assigned counsel? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 373 responses that either answered this question or commented on relevant aspects of the proposed schemes.

While some respondents recognised that change was required in magistrates' procurement the majority considered the fees proposed to be unsustainable and did not take account of systemic irregularities such as the movement of hearings to different venues. The issue of waiting rates being included within the fixed fee attracted the majority of the criticism which is explained in further detail below along with the other most frequent comments made by practitioners.

Travel and Waiting

Some respondents stated that there were some travel issues in urban areas that require attention, and that steps were needed to make certain practices, such as firms covering oversized areas of an urban market and wasting travel and waiting time, unattractive to firms. However, most respondents were concerned at the impact that this approach could have on firms that were located in rural areas.

Many respondents suggested that it was inappropriate to include waiting time in the fee as defence lawyers had no control over the timetabling at court. As such those lawyers attending inefficient courts would be penalised.

Some respondents are unsure that increasing volumes of work in the magistrates' court will compensate for the inclusion of travel and waiting in the fee, with some suggesting that this move would lead to clients failing to get sufficient access to their solicitors between hearings.

Quality of service delivery

Concern was expressed by several respondents that there could be a significant reduction in the quality of service to clients in the magistrates' court especially clients who are on remand. Other respondents stated that the proposals could also lead to a reduction in the number of solicitors attending the magistrates' court.

Inappropriate guilty pleas

Some respondents noted a concern that the proposal's emphasis on the financial rewards for early resolution could result in inappropriate early guilty pleas if there was an inadequate level of payment to fund all of the work required on a case.

A small number of respondents also expressed the concern that the fees for guilty pleas in the magistrates' court are set at a rate high enough to encourage the practise of not contesting cases.

Assigned Counsel

There were a very limited number of representations on this point, but the favoured option from the three stipulated in the Carter report would be to introduce a graduated fee.

Impact of fees

Several respondents have expressed concerns that more complex cases that involve vulnerable clients will be adversely affected by the proposals. Examples included were cases where the clients were remanded in custody or required the services of an interpreter.

4.3 Crown Court: Advocates [Recommendations 4.11, 4.12, 4.13, 4.14 and 4.16] – Do you have any comments on the Advocate's Graduated Fee Scheme proposed by Lord Carter in chapter 4 paragraphs 46 to 57 and 67 to 68 and Annex 4.5 and 4.6 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 148 responses that either answered this question or commented on relevant aspects of the proposed schemes.

Many of those who responded to the detail of the proposed revised Advocates' Graduated Fee Scheme (AGFS) were positive, with a number of respondents suggesting that the proposals would introduce significant benefits to the current system. Some respondents felt that the proposed rates remained too low and did not reflect the true value of the work, with others suggesting that the system had been rebalanced too far in favour of the Bar and in particular Junior Barristers. It was also suggested that the current arrangements for Crown Court listings would need to be changed to assure that dates were fixed in order for the proposals to be implemented successfully.

Proposed rates

A number of respondents did express concern at the proposed capping of ancillary payments. The proposed remuneration for the Junior Bar was generally welcomed, and considered likely to have a positive effect on diversity.

It was felt that the cracks and guilties scheme should be adjusted to incentivise earlier preparation, whilst another suggested that the timing of the thirds should commence from the date the case is either sent, committed or transferred from the crown court and not from the date that the trial is listed or placed in the warned list. Some concern was also expressed that there could be a rise in the number of inappropriate guilty pleas, as longer cases were not rewarded with an appropriate level of income. It was felt that this could equally lead to a lower quality of advice being presented to clients. Equally, it was suggested by some respondents that there was no longer an incentive to prepare cases until the last minute. Whilst it was also argued that the proposed base fee would not cover the number of mentions in many cases, again undermining quality for cases that fell in the middle range of trial length.

Payment of first instructed advocate

Among those who responded to the detail of the proposal to direct total payment to the first instructed advocate there was general agreement with the principle, and minor concerns about the practical application of the procedure. These concerns centred on the possibility that an advocate would be instructed and then find themselves unable to undertake the trial, leading to a situation where an advocate with no further involvement in a case is required to organise payment of other advocates and litigators.

The Bar Council's suggested solution was the identification of a provisional instructed advocate, who would become the instructed advocate once a trial date and their own availability had been confirmed. It was argued that that the returns needed to be the exception, and that the ownership of cases should be the norm.

It was also proposed that there could be a draft protocol to manage the payment of first instructed advocate. The same organisation asked an open question as to whether the appropriate recipient of the case fee should be the first instructed advocate or the trial advocate, with the recipient of the single payment only identified once the trial date was fixed and trial advocate identified.

4.3 Crown Court: Litigators [Recommendations 4.15 and 4.16] – Do you have any comments on the Litigator's Graduated Fee Scheme proposed by Lord Carter in chapter 4 paragraphs 58 to 68 and Annex 4.6 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 159 responses that either answered this question or commented on relevant aspects of the proposed schemes. The main points raised by respondents are outlined below.

Basis of LGFS

A number of respondents felt that modelling the litigators' graduated fee scheme on the advocates' graduated fee scheme did not adequately capture the differences between litigation and advocacy. Many respondents stated that the scheme lacked sufficient flexibility to reflect the complexities of preparing defence cases, and that it applied inappropriate proxies in setting fee grades. A substantial number of respondents shared the view that the specialist skills involved in defending these cases should not be measured simply in terms of pages of evidence or the number of witnesses and that establishing a fee structure for litigation would therefore be harder than for advocacy.

In order to reflect the complexity of large cases, most respondents felt that the fee structure should take into consideration a variety of factors. It was suggested that these could include:

- unused material;
- non-paper evidence (for example, CCTV and other video evidence, as well as mobile telephone and other audio evidence);
- confiscation hearings;

- vulnerable defendants (and witnesses) and those who suffer from mental health problems;
- clients in custody;
- those requiring interpreters; and
- third party disclosure.

Impact on serious cases

Several respondents applied the proposed rates to their previous caseload to determine the impact that the fee would have on their revenues. There was a large variance in the difference between what previous cases had been paid and what they would be paid under the proposed scheme. While some cases achieved better remuneration under the proposed schemes it was the longer cases that respondents were concerned about.

Some respondents were concerned that there would no longer be a mechanism by which to claim an interim payment on account. It would be important that this were retained for the long cases.

Representations were also made to include the proposed D+ and G+ categories of the advocates graduated fee in the proposed litigators fee.

Focus on defence practitioners

Most respondents also expressed the belief that defence practitioners were penalised for delays and costs not of their making. The exclusion of waiting from the fee structure was therefore of specific concern to most respondents, as was the exclusion of travelling costs, which they felt did not take into account the situation of many non-urban firms. There was consistent reference to the possible introduction of a, *'polluter pays',* principle, whereby the costs of wider inefficiencies in the criminal justice system would be borne by the inefficient agent.

Incentives created by the LGFS

Most respondents highlighted concerns that the proposed fee structure might establish the wrong incentives. Some felt that the exclusion of waiting from the fee structure could disadvantage vulnerable clients who require greater care.

Harmonising the Advocates and Litigators GFS

Few respondents addressed the proposal to harmonise the AGFS and the LGFS into a single fee structure. One advocated that the new schemes should be allowed to bed down before any further adjustments, and felt that should a harmonisation be considered, three safeguards should be included: direct payment for advocacy work; a *'price floor'* for advocates; and, pro rata variation between advocacy and litigation fees. Another stated that the differences between the two areas of work made such a harmonisation difficult to develop and that there should always be a separate advocates fee and litigators fee.

4.5 Very High Cost Cases [Recommendations 4.17, 4.18, 4.19, 4.20, 4.21, 4.22 and 4.23] – Do you have any comments on the VHCC Scheme proposed by Lord Carter in chapter 4 paragraphs 69 to103 and Annex 4.7 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 126 responses that either answered this question or commented on relevant aspects of the proposed schemes.

There were several positive comments on the proposed VHCC schemes, with the views of all respondents outlined below

The composition of the VHCC panel

The majority of respondents argued that there was no need for a panel as the existing system is already controlling costs well and that there was no benefit to be gained by further price reduction. Most of these were simple endorsements of the submission from one large criminal solicitors association. Many others, however, supported the creation of a panel.

Some respondents felt that the right to apply for membership of the panel should be extended to preferred supplier firms. There were concerns raised, however, about how new firms would access the panel.

One representative group outlined concerns around the team composition. Their preferred option would be to have two panels one for advocates and one for litigators. This would allow team composition to be as flexible as possible. It would, in some respondent's views, limit the potential conflicts of interest. However, all agreed that the concept of team working was essential to delivering savings.

The size of the panel was an issue of concern for many respondents who felt that if it was too small there would be problems with achieving full regional coverage. In addition to this some respondents raised concerns about client choice in arguing for a larger panel. It was also argued that monopoly prevention measures should be taken by the LSC.

Linked to the exclusion of smaller firms was a view that there would be a possible, polarisation of firms undertaking VHCC and General Criminal Contracts. A respondent was concerned at the costs involved in transferring cases to panel members. This and the associated travel costs of a panel member commuting to see a client would incur additional costs.

There were varying views on the absence of any fraud specialism in the panel, with some large firms who specialise in complex fraud saying that it required its own qualification criteria, however, more respondents supported the move to a single panel.

Tendering the panel

The split of responses in terms of support for the recommended best value tender was similar to that above under the Composition of the Panel. Several doubted the ability of the LSC to forecast demand accurately, with potential new terrorism cases being a particular variable. One concern was that poorer quality firms would outbid higher quality providers, whilst some observed that, owing to the unique nature of these cases, they were unsuitable for tendering. Some respondents expressed concerns that the tendering process would create incentives for firms to delegate the work to lower grades of fee earner. Comments were also made that the 12-month panel period is too infrequent and would not allow firms to adequately plan.

Criteria for Expression of Interest

There were mixed responses on this point, with some respondents considering that previous experience of a VHCC was essential. Other respondents, however, argued for a broader definition of experience to include private work of an equivalent nature.

Other concerns raised included observations that there would be an unfair advantage to firms that currently undertake this work, who would be able to cross-subsidise their lower value work. Some respondents considered the holding of a general criminal contract essential so that specialist firms could not cherry-pick the highest value cases only.

Connected to this were the concerns that smaller practices would be unable to meet the criteria and therefore there would be an adverse affect on the BME firms. Conversely there were respondents who argued that only firms above a certain size should be entitled to undertake this work.

Notification and contracting of 25-40 day cases

This point was not directly addressed by the vast majority of respondents. However, one respondent argued that all homicide cases should be included.

Changes to the Complex Crime Unit

Proposals for post-case audit were welcomed by the majority of respondents, as was the proposal to recruit more in-house lawyers to add expertise to the Complex Crime Unit. One respondent was concerned that it may be difficult to attract practitioners of the necessary experience, while another response suggested that referral panels be established on all circuits. These would consist of senior barristers and solicitors who could offer expertise when contract disputes arose, and who could perform an ongoing peer review function.

VHCC Budget

One firm questioned the benefits of setting a VHCC budget on an annual/panel basis, and suggested that this would compromise flexibility and disproportionately affect non-terrorist offences – particularly if the volume of terrorism offences prosecuted rose.

Peer Review

Concerns were expressed around the peer review process in two main areas. Firstly, a number of respondents argued that only VHCC casework should be considered in the peer review. Secondly, there were concerns that the number of appropriately qualified peer reviewers would be too low.

Wider Justice Issues

There were some responses that cited wider CJS issues as the cause of escalating costs in VHCCs.

Supporting Measures (for both Crime and Civil, Family and Immigration Legal Aid)

These questions, also apply to wider sections of the legal aid and criminal justice systems. The analysis below, therefore, contains elements and comments derived from all responses to the consultation, not just those referring to the proposals for Criminal Legal Aid.

5.1 Quality [Recommendations 3.1, 5.1, 5.2 and 5.3] – Do you have any comments on Lord Carter's proposals in chapter 3 paragraph 43 and chapter 5 paragraphs 11 to 29 for implementing a quality threshold for those who would like to undertake publicly funded work? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 143 responses that either answered this question or commented on relevant aspects of the proposed schemes.

As noted above, the majority of respondents expressed support for the introduction of a quality threshold for publicly funded legal work, with the caveat that sufficient money should be made available to ensure that quality levels are achievable. Whilst some respondents did raise concerns with elements of the peer review system, with some questioning how effective it would be and considering the benefits of the proposal to transfer the system to the Law Society, others suggested more specific changes, in particular that:

- provision should be made for practitioners to discuss concerns over the detail of a review with reviewers;
- sufficient incentive is given to ensure the appropriate capacity is maintained for a robust system of review;
- minimum IT requirements should be built into the system;
- the peer review criteria should be heavily weighted towards outcome rather than "file quality" and should be evidence based with practitioners inspected actively, not on paper; and
- there should be an independently reviewed system of Standard Quality Marking for firms, in addition to, or instead of, peer review.

Agreement was also noted with regard to the proposal to construct a system of comparative peer review for advocates, with the Bar Council already submitting their proposals for review by Lord Justice Thomas. An outline of these proposals can be found in the separate response document to this paper.

5.2 Transitional Arrangements [Recommendations 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9] – Do you have any comments on the transitional arrangements proposed by Lord Carter in chapter 5 paragraphs 90 to 141 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 81 responses that either answered this question or commented on relevant aspects of the proposed schemes.

Of these that responded to this question, the majority agreed that any transitional fund would be helpful to smooth the process to the market. However, many also argued that the fund would not be useful unless the level of fees for firms were pitched at a sustainable level, coupling this with the concerns that they have raised in the areas above. Similarly, some respondents argued that, due to the level of change suggested by the proposals, the level of funding proposed was too low and more money needed to be made available to allow firms to survive the transition. It was also encouraged that further details about the distribution of this funding should be made available as promptly as possible in order that firms could plan and budget effectively should the changes come into effect.

Some felt it unfair that the transitional arrangements would be administered by The Law Society as this would exclude the Not for Profit (NfP) sector who were also affected by the proposals and would need additional support.

5.3 Wider Justice System Efficiency [Recommendations 5.10, 5.11 and 5.12] – Do you have any comments on the arrangements to encourage optimal use of all resources within the justice system proposed by Lord Carter in chapter 5 paragraphs 160 to 166 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

There were 135 responses that either answered this question or commented on relevant aspects of the proposed schemes.

Few respondents addressed the specific proposals from Lord Carter's report in their returns, however, several did approach the broader theme, linking their comments to those made previously on the need to ensure that the defence was not penalised for inefficiencies elsewhere. The majority of these respondents agreed that the achievement of wider justice system efficiency was essential in managing costs in legal aid.

In general there was very little direct opposition to any of Lord Carter's proposals in this area, with the majority supporting the move to encourage wider efficiency. Some respondents questioned, however, what incentives would be in place for other agencies if solicitors were bearing the cost alone. To this end, it was suggested that wasted costs orders should be made against other bodies in the CJS.

5.4 DCA/LSC: External Engagement [Recommendations 6.1, 6.2, 6.3, 6.4 and 6.5] – What are your views on Lord Carter's proposals in chapter 6 on information management and sharing? Do you have any comments on the proposals regarding stakeholder relations and cross-justice system working arrangements.

There were 54 responses that either answered this question or commented on relevant aspects of the proposed schemes.

The majority of respondents to this question supported the suggestion for greater external engagement and collection of management data. The Legal Aid Practitioner's Group echoed this, noting their support for the idea of local sharing of information on causes of inefficiency. Similarly, The Law Society suggested that it could be of benefit if the major agencies, such as DCA, LSC, CPS, Customs and the Serious Fraud Office, could meet regularly and indicate which investigations were likely to evolve into major cases, and provide an estimate of time and cost.

It was also suggested that there should be greater representation for the defence on local criminal justice boards and local family justice councils to ensure best practice could be shared more widely and so that local problems could be worked out within an effective forum for discussion between all those involved in the system.

The importance of these recommendations to the overall success of the proposals was also noted.

Civil, Family and Immigration Legal Aid

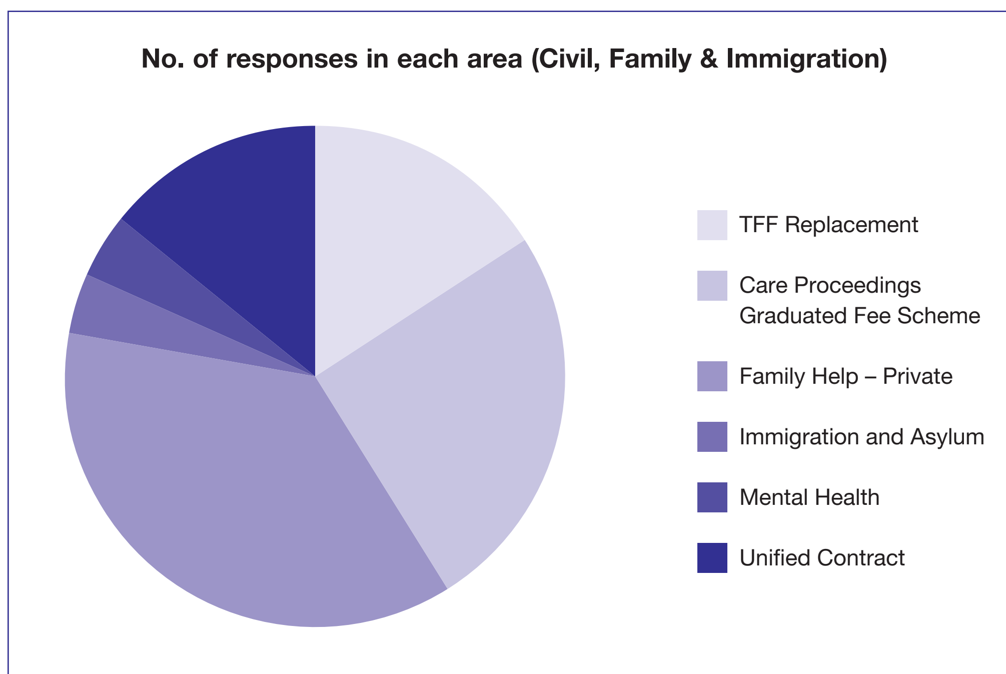
Lord Carter's report also provided recommendations for reform in the procurement of services in Civil, Family and Immigration Legal Aid. DCA and LSC consulted on these recommendations and other inter-related issues that were identified. The responses to the questions contained in the consultation paper are summarised below.

There were 1,392 respondents to the proposals for Civil, Family and Immigration Legal Aid. As some of these respondents addressed more than one scheme, there were 2,324 responses in total to these areas. This was broken down as outlined in Table 3 below.

Table 3: Table of response areas to Civil and Family Legal Aid proposals

Scheme	No. of responses
TFF Replacement	372
Care Proceedings Graduated Fee Scheme	587
Family Help - Private	854
Immigration and Asylum	91
Mental Health	95
Unified Contract	325

Fig 4 – Pie chart of response areas to Civil, Family and Immigration Legal Aid proposals



The majority of respondents did not format their responses in the manner of answering the specific questions provided in the consultation paper. All figures provided, therefore, are a best assessment of which questions were addressed by respondents. However, due to the more detailed nature of the consultation questions for Civil, Family and Immigration Legal Aid, it has been possible in this section of the analysis to provide a more detailed statistical breakdown of the number of respondents making specific points than for the consultation questions relating to Criminal Legal Aid.

CIVIL

Civil Controlled Work – Replacement for TFF

There were 372 responses received that related specifically to the proposals for replacement for Tailored Family Fees (TFF). The numbers indicate that approximately 20% of solicitor firms and 40% of NfP organisations that will be affected by these proposals responded to this part of the consultation. A breakdown by respondent type of those addressing the TFF Replacement section of the consultation shows that 44% of respondents were solicitors, 42% NfP providers, 9% Representative Bodies and 5% were from other respondents.

6.1 Do you consider that any other types of categories of work should be excluded from the scheme? If so please explain why.

There were 176 responses that either answered this question or commented on relevant aspects of the proposed schemes.

52% of respondents did not answer this question as part of their response. Of those responding, 29% felt that no categories should be excluded from the scheme. 65% of solicitor respondents and 79% of NfP respondents to the question considered that there were types of work that should be excluded from the scheme.

Of the 125 respondents who felt that some categories should be excluded, 42 felt that all Legal Help work was unsuitable for fixed fees. 23 felt that any form of fixed fee for Family Legal Help work was inappropriate due to the complexity of the work. 19 felt that Education work should be excluded from the fixed fee scheme, because of the range of costs associated with the different types of matter within this category.

It was argued by some respondents that the proposed approach would penalise specialist firms. 17 respondents felt that Housing work, and specifically Homelessness work, should be excluded from fixed fees because of the variation in the costs of each case. Additionally, it was suggested that fixed fees would be inappropriate in Homelessness cases because of the vulnerability of the clients involved. It was also felt that a fixed fee could offer an incentive to some providers to do the minimum amount of work. 8 respondents suggested that Employment should be excluded from the scope of the fixed fee scheme as paying a standard fee for all employment work would disadvantage employment discrimination specialists. 36 respondents suggested other categories on a similar basis.

Some NfP respondents expressed concerns that it was inappropriate to base fixed fee rates on solicitor claims only, as this did not in their view reflect the different nature of the work that NfPs do. Many NfP providers felt that any form of standard fees would have a negative impact on the quality of advice they currently provide, and could force them to either reduce the service they offer clients, or cherry pick simple cases. They expressed concern that clients with complex problems may not be able to access services.

The majority of respondents stated that the fees would impact on the quality of advice received by the client, and equated low costs with low quality. Some respondents suggested that the fees should have been calculated on the cost of delivering to Peer Review 1 and 2, the level of quality that the LSC wants to buy. Additionally 13 respondents suggested that the fees should be based around the type of client being given advice.

6.2 Which one of the 2 options set out for the replacement of TFF scheme do you prefer and why?

There were 293 responses that either answered this question or commented on relevant aspects of the proposed schemes. The responses to this question were fairly evenly split between the two proposed options, with 79 favouring the National fee and 89 favouring the Regional fee. Most respondents admitted that their response was driven by which fee offered them the higher rate of payment.

Respondents also suggested that a national fee would encourage the growth of rural advice services across the country. However, a number of respondents in favour of the national fee did recognise that there are higher costs involved in delivering services in London, and proposed a London/non-London fee structure, and 15 suggested that the most appropriate option was to have a London/non-London fee. Respondents in favour of a regional fee felt that this was most appropriate as it reflected the fact that local conditions vary.

110 respondents, half being NfPs, stated that the fees were too low to be viable. NfP respondents reiterated that, because the fees had been calculated only on the basis of solicitor costs, the proposed fee levels could result in a number of them withdrawing from provision of legally aided services, affecting access for the most vulnerable clients.

6.3 Do you agree with the proposals for payment of tolerance work? If not please explain why.

There were 215 responses that either answered this question or commented on relevant aspects of the proposed schemes.

177 respondents disagreed with the proposals for tolerance payments and 38 agreed. 78% of solicitor providers and 88% of NfP providers responding to the question disagreed with the proposals.

Respondents expressing concern about this proposal felt that, if implemented, it could significantly undermine the quality of advice delivered. They argued that this would be particularly true at a time when firms could be changing the categories of work they undertake in order to remain viable under the fixed fee regime. It was argued by 30 respondents that this approach would discourage suppliers from investing in the training required to develop a new specialism and deliver advice services in a new category of work.

87 respondents commented that the lower fee would also discourage suppliers from taking on cases for clients in tolerance categories and have a negative impact on client access, particularly in rural areas where there is a smaller number of suppliers and therefore fewer access points. Some NfP respondents suggested that this would cause referral fatigue for the client, and it would not be appropriate to refer all clients to CLS Direct.

35 respondents stated that there was no reason to pay less for this work, as the costs of delivering tolerance or non-tolerance work are the same. The 38 respondents that agreed with this proposal did so on the basis that the client should access quality assured specialist advice services.

6.4 Do you agree that the scheme should apply to work done by NfP providers? Do you agree that there should be a transitional scheme and what are your views on our initial proposals?

There were 218 responses that either answered this question or commented on relevant aspects of the proposed schemes.

The majority of solicitors agreed that both NfPs and solicitors should, in general, be paid under the same arrangements, and work to the same quality standards. Only 19% of NfP respondents shared this view.

23 respondents from all respondent types, felt that work undertaken by NfP suppliers is different from that done by solicitors firms, with different client groups being serviced in a different way. These respondents felt that organisations which took on more cases from these client groups would not be able to benefit from the swings and roundabouts of the fixed fee, since all their cases would be high cost. Respondents suggested that more flexibility in the system was needed to allow an uplift or increase in payments for these client groups. It was also mentioned that the LSC's guidance to NfPs on when to end one matter and start another differed from the guidance to solicitors. This had, respondents argued, led to NfPs using only one long matter where solicitors used several shorter ones, leading to NfPs having longer average case times.

49 respondents stated that the main issues were with the financial impact of the proposals. They felt that the proposed fees were too low and had been miscalculated. As Debt and Welfare Benefit work is mainly undertaken by NfPs, so their costs per case – which are generally higher than those of solicitors – should be included in the calculation of the standard fee.

Additionally, it was argued that payment in arrears for NfPs would not be sustainable as they do not have sufficient reserves to be able to continue work without advance payment. Some respondents stated that the Compact requires payment in advance whilst others argued that this part of the proposed changes was counter to HMT guidance.

19 respondents said that the proposals, if implemented, would mean that NfP organisations would be forced to close, or to cherry pick simple cases in order to survive.

Transitional scheme

17 respondents, mostly from the NfP sector, argued that, whilst solicitors have had time to adjust to working under a fixed fee scheme, these proposals would require the NfP sector to change its practice at a much faster pace. Some respondents suggest that either the fee scheme should be graduated to reflect the more specialist work they undertake, or that NfPs should be given TFF for a transitional period of at least two years.

FAMILY

Care Proceedings Graduated Fee Scheme

There were 581 responses which related to the Care Proceedings Graduated Fee Scheme. 425 of these were received from solicitor providers, representing approximately 20% of the solicitor firms affected by these proposals. There were 89 responses received from barristers, 38 from representative bodies and 30 from other respondent types. In addition, 2 responses were received from both NfP providers and Government bodies and 1 response was received from a client.

7.1 Which of the 2 options set out for the Care Proceedings Graduated Fee Scheme do you prefer and why?

Of the 288 responses answering this question, 56% stated that neither the London/non-London nor national fees option were suitable. There were a number of reasons cited to support this with the most common reasons being that this type of work was not considered suited to a fixed fee scheme, given the complexities involved and that the rates were felt to be too low. Several respondents made the point that it was unlikely that this question would generate many worthwhile responses from practitioners, as they would opt for the scheme that offered the higher payment with London practitioners preferring the London scheme and non-London practitioners opting for the national one.

The actual split in responses to this question was fairly even, with 19% of respondents to this question preferring London/non-London fees and 23% preferring national. The Legal Aid Practitioners Group (LAPG) favoured a structure that would include higher rates for London.

Several respondents queried why there were either London/non-London or national fees proposed for the Care Proceedings scheme but national or regional fees proposed for the Family Help – Private Scheme.

Some respondents commented that it would be fairer to adopt regional fees, as national fees do not necessarily take into account the variation in cost throughout the country. This was considered both in terms of rental or other costs of premises and staff costs. Others stated that regional fees were unfair in that they could give unsustainably low rates.

7.2 Do you agree with the proposals for this new level of service, Level 2? If not, how else might we encourage the provision of legal advice pre-proceedings?

There were 273 responses to this question with 74% of respondents disagreeing with this proposal. Whilst some agreed with the additional level of advice in principle, 29% of those responding viewed the proposed level of remuneration as too low and felt that it would not be possible to narrow the issues in the suggested six hours. It was also argued that there should be new funding available for what was effectively a new level of advice, rather than a redistribution of existing expenditure from certificated work.

5% of respondents made the point that, given the recommendations of the Child Care Proceedings Review are yet to be implemented, and it was therefore difficult to know whether the proposals were realistic with the introduction of this level of service considered to be premature. Primarily as a result of this, 7% of respondents commented that it would be more appropriate to pay for this service through hourly rates.

Respondents disagreeing with the proposals commented that discouraging parents from contesting interim early hearings could be considered an abuse of their human rights. They also queried the logic of Level 2, arguing that normally, by the time a client (particularly a parent) has sought legal advice, care proceedings are inevitable. 11 respondents commented that this work could be done under existing levels of service – Level 1 or General Family Help. 29 respondents were of the view that it was unlikely that extensive pre-proceedings work would happen unless additional money was found, owing to local authority budget constraints.

29% of respondents felt that the trigger of the local authority providing written notice of their intention to issue proceedings was an unworkable milestone as certain Local Authorities did not provide this. Instead, a number of respondents suggested that it would be better if Level 2 were available at the time the local authority started the process of deciding whether to issue proceedings, for example, for a legal planning meeting or case conference.

18% of respondents to the question also queried the proposed scope of Level 2, arguing that consideration should be given to extending it to older, Gillick competent children and guardians. However, one respondent said that, whilst it is desirable to have the child's interests represented pre-proceedings, it is difficult to see how this could be done unless the rules of CAFCASS engagement are changed. This would require a guardian to be appointed for a child as soon as it is the subject of a case conference, or some other level of local authority involvement, which would be both expensive and arguably impractical. An increase in the number of cases involving extended family members was viewed by some as justification that they should also have access to early advice.

There were concerns over the lack of information provided on the detail of the pre-proceedings guidance and liaison work, with 5% of responses to the question stating that the definition was unclear. 17 respondents wanted clarity on how emergency protection orders would fit with this level of service.

It was considered by 34 respondents that Levels 1 and 2 should be merged and include attendance at child protection conferences, which, it was commented, can be a lengthy process that could take six hours including travel time. An alternative suggestion was to have higher payments for Level 1 than Level 2.

7.3 Do you agree with the proposed fee structure for this level of service, in particular the distinction between client types? Are there any other factors that we need to consider in setting the fees?

There were 351 responses to this question with 296 from solicitors. 5 respondents agreed with these proposals, whilst 346 did not support the proposed fee structure. The majority of respondents had concerns around the level of funding for different types of clients and the proposed fee structure in this area.

Client types

37% of respondents answering this question disagreed with the rates proposed for different client types. Many felt that it was a more difficult task dealing with parents who often had complex needs and were extremely emotional. Conversely, those representing children were usually dealing with professional guardians. Many respondents commented that there was no justification for paying joined parties less, arguing they often involved a considerable amount of work in a short period or very early in the proceedings. Others responded that practitioners representing children and guardians should be paid more, as Children Panel solicitors acting for these client types directly are not permitted to delegate this work. It was envisaged by some that there could be difficulties in the distinction, such as where there are potentially two fathers involved prior to a DNA test, and those with intervener status.

There were mixed views as to whether the Protocol was the correct framework on which to base the fees. 10% argued that cases did not always follow the Protocol and that in reality there are often additional hearings, as contested issues emerge and listed hearings such as the Case Management Conference have to be adjourned. Others commented that it formed an unsuitable basis because it was applied differently in different areas of the country and would be subject to future reviews that might impact on the payment stages. 19% of respondents argued that, in spite of the Protocol, an *'average case'* did not exist due to the varied nature of the clients, and that this type of work would not therefore be suitable for a graduated fee scheme.

Fee Structure

22% of respondents claimed that the proposed fee structure was a set of standard fees rather than a graduated fee scheme, using the Bar's Family Graduated Fees Scheme to illustrate this, and failed to reflect the complexity of some of the cases involved. 16% of respondents queried why the fees were calculated on a per certificate rather than a per case basis, arguing that this skewed the figures. 11% of respondents felt that it would create a perverse incentive to represent multiple children. Respondents argued that this approach could breach the principle of equality of arms, as solicitors representing a parent with more than one child would receive only a fraction of the fee received by the solicitor acting for the children. A common query also raised by respondents was with regard to what fee would be received if a client transferred solicitors.

Many respondents argued that applications for placement orders should be paid for separately, as this represented additional work involving procedure and legal issues over and above the care proceedings. A number of respondents questioned basing the figures on data from 2004/05, as they did not feel this reflected current practice, particularly as there were no placement order applications prior to the start of 2006. 26% stated that the fees were too low to encourage experienced practitioners to undertake the work, and argued that this would impact on the quality of advice the client receives.

In terms of what was included in the fee, a number of respondents felt that travel should be claimed separately, arguing that otherwise, as with the proposals for Criminal Legal Aid there would be an adverse impact on rural practitioners. Many respondents felt that waiting should also be excluded from the advocacy fee, stating that it is outside the control of practitioners and affected by local listing procedures including multiple listings at one time. A number of respondents also raised the issue that experts' fees had been untouched and seemed almost entirely unregulated, despite a year on year cost increase.

Nearly all respondents felt that the four times exceptional case limit was too high as it was felt to pass too great a risk to the providers, with many preferring twice or three times the fee instead. 22% argued that the definition of an exceptional case should be based on complex factors, reflected in Special Issue Payments to the Bar, rather than a monetary value. A significant number of respondents asked for clarification on whether the exceptional limit related solely to profit costs and whether it included uplifts. The majority of respondents addressing the issue expressed a preference for courts to continue to assess cases in the County and High Courts over £2,500.

7.4 Do you agree with the proposals for payments under the scheme, particularly the removal of the uplift, the method of fee calculation, and our proposals for advocacy payments? If not what alternative methods can you suggest?

There were 453 responses to this question, 448 of which disagreed with the proposals.

Uplift

Respondents were particularly concerned about the proposal to remove the panel uplift. It was argued that this would remove the incentive to become a Panel member, and that it would create an issue when trying to attract new solicitors into this area of work, as there would be no incentive for career progression. Many respondents cited the Law Society figure that there are only 15 Children Panel members under 30. It was argued that increasing numbers of guardians would have difficulty in placing complex cases with Panel members as required by CAFCASS guidance, and that similar problems were likely to be experienced in appointing a Children Panel solicitor to represent a child in the absence of a children's guardian. Many respondents commented that cases were subjected to increased costs and delays where non-Panel members were used.

A significant number of respondents did not accept that quality would be sufficiently guaranteed via Peer Review. Many believed that the proposal would result in less qualified practitioners taking on this work, which would ultimately affect the quality of service provided to the client.

Method of fee calculation

The majority of suppliers estimated that they would lose a significant amount of their income if the proposed fees were implemented. A number of respondents questioned the management information used and the assumptions made in the calculation of the fees, with many querying the use of 2004/05 figures to set fees that would apply to cases from 2007/08 onwards. As most care proceedings cases start in the Family Proceedings Court (FPC) before transferring to the County Courts, some respondents were concerned that the data might be based on a number of small bills (FPC costs only), reducing the fees disproportionately.

Advocacy Payments

The majority of respondents felt it manifestly unfair that different remuneration rates were proposed for solicitors as compared to counsel. One example provided was that a newly qualified junior barrister could get paid £2-3000 for a hearing lasting a few days while a Panel member with 20 years' experience representing another party at the same hearing would only receive £502. The LAPG argued that this was contrary to the LSC's principle of paying for a service without regard to the nature of the provider.

Many respondents made the point that Child Panel members provide an undertaking to do their own advocacy where possible, however, they claimed that the scheme creates a perverse incentive for firms to instruct counsel. The ultimate impact of this was predicted to be a higher cost to the fund, as cases where counsel are instructed were felt to be more expensive. It was also argued that it would result in a lack of continuity of representation for clients.

Whilst some were of the view that barristers deserved higher fees because they did not have day-to-day conduct of the case, the extent of the variation in payments was questioned. Others said that the time taken by a solicitor to prepare for advocacy is usually much longer than counsel who is trained to prepare in a systematic way. It was considered that as counsel spend all of their time conducting advocacy they are generally much more in touch with relevant law and its presentation, whereas solicitors spend most of their time dealing face to face with clients and conducting negotiations. It was argued that solicitors conducting advocacy should be paid the equivalent fee for the preparation of the brief as well as the preparation for its presentation to the court, and that there is, in fact, little duplication.

In suggesting alternatives to the proposed solicitor advocacy payments, a number of respondents suggested that solicitors be paid under the Family Graduated Fee Scheme or continue to be paid hourly rates for this work. It was argued that it was undesirable to have a single fee expected to cover all cases from a single final hearing disposed of by consent in half an hour to a series of adjournments followed by a five-day contested final hearing.

A number of respondents queried why solicitors with higher rights of audience could claim a 30% uplift when conducting advocacy in the High Court, stating that in care proceedings, solicitor advocates regularly appear in the High Court without higher rights. It was suggested that it would therefore be more appropriate to remove this and instead retain the uplift for Panel members. More general queries were also raised about what constituted advocacy and how solicitor agents would be paid.

Family Help – Private

There were 854 responses to the proposed Family Help – Private scheme. 352 of these responses were from solicitors, representing approximately 13% of solicitor firms who have Family Contracts. 410 barristers responded to the proposals, and 31 Representative Bodies also responded.

7.5 Do you agree with the proposed scope of the scheme? If not what work do you consider should be included or excluded?

233 respondents answered this question, with 27 disagreeing with the scope of the scheme without further comment, whilst 206 disagreed but provided a more detailed response. Many of the comments did not relate specifically to the scope of the scheme but to the introduction of fixed fees generally and the rates proposed.

The most common areas of work that respondents felt should be excluded from the scheme are outlined below.

Trust Of Land and Appointment of Trustees Act (TOLATA) applications

13 respondents argued that these cases are excluded from the family proceedings in the Family Graduated Fees Scheme and therefore should not be included in the scheme. Additionally, respondents commented that because TOLATA cases follow the Civil Proceedings Rules they are more costly, take longer and have different costs rules.

Domestic violence

25 respondents requested clarification of how emergency certificates fit into the scheme. A number of others argued that domestic violence should be excluded due to the extreme vulnerability of the clients.

Rule 9 (5)

34 respondents addressed this issue. It was felt that these cases were inevitably more complex and difficult. They were claimed to often involve at least one litigant in person, which subsequently increases the burden on children's solicitors. When this type of representation will be ordered is currently the subject of a separate consultation that recognises its significance in securing effective and quicker outcomes for children.

Ancillary relief

14 respondents commented on this with several noting that these cases were often financially front-loaded and complex. It was felt that the proposed fee scheme would discourage practitioners from undertaking what can often be extensive forensic examination of assets to achieve an appropriate settlement for the client based on full disclosure.

Section 37 cases

8 respondents addressed this point, with some seeking clarification as to whether applications for contact with children in care would fall within this or the care proceedings fee scheme.

Other areas that were considered unsuitable were child abduction, adoption cases, cases involving additional complexities and cases involving children. Several mediation providers responded that the scheme did not provide an incentive to consider mediation at an early stage. It was argued that clients should have the opportunity to consider mediation before a case went to a certificate and the assessment of suitability should be between Levels 1 and 2 with a further trigger between Levels 2 and 3. It was also argued that the removal of the statutory charge exemption from Help with Mediation would deter clients from the mediation route, which would undermine Government efforts to promote alternative dispute resolution.

7.6 Which of the 2 options set out for the Family Help – Private Scheme do you prefer and why?

There were 168 responses to this question. 63 were in favour of National fees whilst 50 were in favour of regional fees. 55 respondents were not in favour of either option.

In most cases, respondents were in favour of the fee which gave them the higher payment. Respondents did, however, query why in Care Proceedings the choice is between London/non-London and national schemes while in Private Law it is based on regional fees.

The Law Society suggested that further analysis work should be undertaken to take account of regional and national priorities for service delivery, and the need to maintain adequate supply.

7.7 Do you consider that these are the appropriate points at which to differentiate between fees payable? If not what alternative structure would you recommend?

289 respondents answered this question. 23% considered the proposed points of differentiation appropriate provided that payment rates were higher; however 74% felt that the proposals were not appropriate.

The majority of respondents answering this question were of the view that there must be different fees for different types of private family work, at least as far as the Level 2 and 3 fees are concerned i.e. children, finance and injunctions. Some suggested that there should be separate fees payable for each issue a case includes which requires negotiations, mediation and/or proceedings.

Many respondents stated that Level 1 and 2 were probably the appropriate points to differentiate between fees payable. However, it was suggested that Level 3 would need to be adjusted to take into account the range of interim hearings that can occur, particularly finding of fact hearings when there are allegations of domestic abuse, which may be very lengthy. One suggestion was that consideration be given to full representation being provided at the point of any contested hearing, particularly fact-finding hearings.

5% of respondents suggested a Special Issue Payments type arrangement to recognise exceptional matters, including the volume of documents, complexity or the number of parties. One respondent suggested that a better point at which to differentiate would be the stage where proceedings are prepared and issued at Court, rather than from the date of the issue of proceedings.

Those respondents who had concerns about the proposed scheme questioned whether it the evidence base or lack thereof pointing to the fact that the outcome from the Family Help pilot is not yet known. They noted that the proposed scheme bears little resemblance to that for the pilot and expressed doubts that the pilot could therefore tell the LSC anything useful about the likely impact of this proposal. 8% of respondents said that there was no incentive to settle early, unlike the pilot, and there is an incentive to proceed to Level 3.

Respondents felt in general that Ancillary Relief cases do not fit within a graduated fee scheme, as the amount of work required could be anything from the division of a small balance in a bank account to the valuation of private companies, pension funds and houses. Many also felt that in these cases the statutory charge applies and the client has to repay their fees in any event.

It was argued that more inexperienced practitioners would undertake the work and be less likely to settle cases earlier. It was contended that, as a result of the removal of the Panel uplift, inexperienced practitioners doing straightforward cases would earn more per hour than experienced practitioners who would be undertaking the more complex work.

6% of respondents queried the differentiation in payment to Care Proceedings: under the Private Law scheme, payment is made for the level at which the work is completed, which is different to the Public Law scheme.

7.8 Do you agree with the proposals for removing the 15% uplift for panel members? If so how else might we encourage more experienced practitioners to undertake early work?

97% of the 289 respondents replying to this question did not agree with the proposal to remove the 15% uplift. Resolution suggested that a failure to give any financial reward to practitioners who specialise will drive more experienced practitioners out of legal aid work and will encourage legal aid practices to devolve legal aid work to the most junior fee earners. It was argued that this could increase costs to the fund as less experienced practitioners would do the work both less effectively and less efficiently.

Many respondents did not feel that Peer Review could be the sole measure of quality. It was felt that the quality of legal services had proved difficult to measure and that Peer Review had not yet been fully assessed or even rolled out in all areas of law. It was therefore felt premature to propose a reliance on Peer Review as the sole quality measure, with some respondents also questioning the experience of the peer reviewers.

Respondents felt that removing the uplift would no longer encourage young solicitors to undertake the necessary and expensive work to train for membership. This could mean that the current expertise of the panel may not be sustained in the long term, leading to its demise.

7.9 Do you agree with the proposals for payment of exceptional cases in Family Help – Private? If not please explain why.

There were 228 respondents who disagreed with the proposal arguing that four times the fee was too high. There were 15 suppliers who accepted exceptional cases in principle but also felt that four times the limit was too severe.

10 respondents felt that four times the limit was an arbitrary figure, but did not provide a further explanation on this point. 55 respondents commented that the proposal placed too much risk on the practitioner in terms of exceeding the costs in the hope that they will reach the exceptional level, only to find that they have failed and are not remunerated for the work carried out.

3 respondents suggested that 1.5 times the fee would be more appropriate, while 48 respondents suggested two times the fee, 14 suggested 2.5 times and 21 respondents suggested three times. There was concern expressed that an unrealistic exceptional case threshold would encourage cherry picking of cases. There was a suggestion that there should be no fixed level for, 'exceptional funding', and that it should be possible to make an application to the LSC at any stage requesting that the relevant limitations be stretched. Another suggestion was that exceptional cases should not be based on costs only but should also take into account the complexities of the case. Many respondents sent in figures that they argued demonstrated that it is rare for profit costs to reach four times the proposed fees but common for them to exceed the proposed fees by two or three times. Respondents were also concerned that the swings and roundabouts approach would not work and that they would lose considerably more than they would gain.

6 respondents stated that costs should be assessed by the Courts and not the LSC, as judges had the requisite expertise and there was the right of appeal.

7.10 Do you agree with the proposals for payment of advocacy? If not what alternatives can you suggest?

There were 631 respondents who disagreed with the proposals. There were 8 respondents who agreed but only 4 of those did so unconditionally. The LAPG accepted that solicitors should hold the budget for the case, and should choose where they need to purchase advocacy services.

366 responses were from members of the Family Law Bar Association, mainly disagreeing with the proposals. Their concerns regarding the consultation tended to be specific to this proposal and of a standard format. In particular they felt that the Bar did not appear to know about the proposals and had not been consulted prior to the publication of the consultation paper. 322 of these respondents said that counsel should continue to be paid separately under the Family Graduated Fees (FGF) scheme.

There was particular concern that this proposal could change the way that barristers are paid and will undermine the part of the Family Graduated Fees Scheme that relates to interim hearings and will result in Function 1, 2 and 3 becoming obsolete.

Those respondents expressing concern over the proposals felt that the fees were too low to either instruct counsel or for solicitors to undertake their own advocacy. It was argued that people would not be able to obtain representation at interim hearings because solicitors will not be able to afford to instruct counsel from the standard fee proposed. It was also claimed that solicitors would not be able to undertake their own advocacy or manage the increased caseloads needed to offset the fee reduction. Additionally, respondents felt that solicitors would not instruct counsel as they would only know at the end of a case whether it would be exceptional and that the risk would therefore be too high to take this additional cost on.

The FLBA did, however, accept the definition of Family Help contained in the Funding Code amendment, which would address a number of its concerns.

8 respondents queried why the proposals for paying counsel are different to those in the public law scheme. 12 respondents stated that they did not want to negotiate fees with counsel, as they felt this would compromise their professional relationship with them. Some were also concerned that larger firms would be able to negotiate better deals with counsel than smaller ones.

4 respondents suggested that the proposal could amount to sex discrimination or discrimination against part-time workers because solicitors who work part time (mainly women) are more likely to have to instruct counsel because they don't have the time to be in court.

8 respondents said it discriminated against firms in rural areas who often find it more economical to instruct counsel, as they are located far from the courts. Respondents said the proposal was not an incentive to solicitor advocates as the work they do often involves proceedings in distant towns and the time and cost of travel militate against solicitor advocacy and encourages use of counsel.

Alternatives

The suggestions were that either counsel should continue to be paid separately under the FGF scheme or that there be an additional sum for advocacy, which could be used by the solicitor to undertake their own advocacy or instruct counsel. Alternatively, solicitors should be paid for advocacy under a similar scheme to the FGF scheme.

7.11 Do you agree with the proposals for the assessment and collection of contributions?

There were 191 responses to this question, 177 from solicitors. 81% of respondents who answered this question disagreed with the proposals.

Most respondents said that they would need to see the detail of the process for the calculation, notification of contributions, and the consequence of incorrect assessments before commenting on whether it would be acceptable for solicitors to have this responsibility.

Respondents were divided on whether the LSC or suppliers should undertake the assessment. Some felt it would be good for the assessment of contribution to be moved away from the LSC although others argued that it was unreasonable to place this administrative burden on firms given the limited payments proposed.

Several respondents asked if they would be liable to the Fund if they got the assessment wrong. They also asked if the LSC would conduct regular reviews to ensure that assessments are being carried out correctly because this could prove more expensive to the Fund than the LSC calculating the assessments themselves.

A number of respondents argued that this could also create tension with clients and experience shows that assessing and evidencing eligibility can be time consuming and frustrating for the client.

LAPG said that it would support a scheme that minimises the administrative impact on both firms and the LSC, maintains the payments the LSC receives, and is fair to clients.

General comments

There were a number of general comments made in the consultation responses that did not directly relate to any of the specific questions contained within the consultation paper. The main theme of the responses was that the proposed schemes would lead to many family solicitors leaving the market. It was argued that experienced solicitors would no longer undertake this work as it would not be financially viable and firms would close their family departments because partners would not be persuaded to keep them open. Some commented that this would lead to an increased number of conflict issues in the system due to the number of represented parties in family proceedings. Others argued that clients would have to travel further for legal advice or represent themselves in person, which it was considered could be a breach of their Article 6 rights.

Respondents felt that they were being penalised for other problems in the Family Justice System. Wider issues and reasons for cost increases were considered to include a lack of suitably qualified social workers, the impact of the Human Rights Act, and inefficiencies in the court system.

Many respondents felt that it was unfair to single out legal professionals when experts' fees remain almost entirely unregulated and their costs have been increasing every year and will continue to increase. Respondents said that many savings could be achieved if there was more control over the increased use and cost of experts, although there was some acknowledgement that nothing could be done until the publication of the Chief Medical Officer's report.

Many respondents acknowledged that the legal aid budget needed to be brought under control. Some felt that money should be ring fenced from the criminal budget whilst others argued that a more effective way to control costs was through the spend on experts and counsel.

Harmonisation of solicitor legal aid rates

7.12 Do you agree with the proposal to harmonise the legal aid rates for private law family?

200 respondents answered this question with 65% in favour of harmonising the rates. Over half of these, however, saw the proposal as a rate cut, and noted that they would only be in favour if the rates for both were set at the current County Court rate.

Many respondents made the point that they would still not use the FPC despite higher rates. Respondents were of the view that harmonisation would remove one disincentive to use the FPC, however, 12 respondents commented that FPCs take more time to deal with cases, and paying a fixed figure, irrespective of tribunal, would encourage people to utilise the faster service available in the higher courts.

Others argued that the County Court can be more appropriate for cases for a number of reasons including that gathering a family bench in the FPC can take time and cause delay. It was also noted that County Court judges are more specialised than most family magistrates, bringing more experience to cases and often proving more successfully proactive in encouraging parties to compromise and settle cases. It was suggested that the County Courts also often have better facilities than the FPC and that the President's private law programme is not available in magistrates' courts. It was also noted that, in some instances, this programme is unlikely ever to be available as the buildings are not suitable for holding conciliation appointments.

61 respondents said that they were not attracted to harmonised rates, even though they are proposed as a transitional arrangement, as more complex cases are referred up to the County Court from the FPC and as such they should be appropriately remunerated.

7.13 Do you agree with the proposed intermediate level of rates? If not why not?

Of the 168 responses to this question, the majority (87%) disagreed, claiming that the proposals would lead to major cuts in income for all practitioners. This was due to the fact that the County Court is more efficient and that it is here that the majority of the work is completed as it is not affordable to do private cases in the FPC.

LAPG responded that there could be no justification for reducing the rates for any element of family work, and that, regardless of the fact that the intermediate rate may be cost-neutral for the system, it will not be cost-neutral for firms. Several respondents were also of the view that the calculation of rates may have been carried out in a misleading way because the sample of cases should reflect the current apportionment of work if the result is indeed to be cost-neutral.

IMMIGRATION AND ASYLUM

There were a total of 91 responses to the immigration and asylum section of the consultation document. Of those, 28 were from solicitor providers (representing approximately 13% of solicitor firms with immigration and asylum contracts); 20 were from NfP providers (representing approximately 26% of agencies with immigration and asylum contracts); 13 were from barristers; 8 from Representative Bodies and 22 were from other respondent types.

Some of the key arguments made by respondents included the following:

- The proposed timetable does not allow sufficient time for business planning;
- The fee regimes are seen by many to be set too low, in whole or in part, to allow for high quality services and / or business viability. The additional payments for substantive hearings are felt by some to be too low to allow for the instruction of specialist counsel;
- The exceptional fee threshold is seen by many as too low and placing too much risk with providers;

- There was some questioning of the cost-neutrality of the proposals and of other LSC assumptions;
- There was opposition to proposals to include interpreter and translation costs within the asylum graduated fees;
- Proposals to include travel and waiting costs within the fees in all circumstances may impact on access, especially in dispersal areas;
- There are concerns that the early resolution payment would not meet its stated objectives;
- There was a suggestion by some that graduated fees should be tested by way of a pilot based on tailored fees or a lower exceptional thresholds and / or that the scheme should be reviewed in light of the experience of operating under the New Asylum Model;
- There was a concern that a graduated fee scheme would lead to a change in behaviour amongst suppliers in order to maximise income;
- There was a mixed response to services outside of graduated fees but significant opposition to restricting client choice and to any suggestion of competition based on price; and
- There were calls for more detailed information to be made available on the proposed contract criteria for services excluded from the Graduated Fee

8.1 Do you agree with the proposed scope of the graduated fee scheme? If not please explain why.

There were 53 responses that either answered this question or commented on aspects of the question. Of those respondents, the majority did not actually comment on the scope of the fees, but expressed concerns with the immigration and asylum proposals in whole, or in part.

The most common concerns reported were the values of some or all of the fees and a concern that graduated fees were not suitable, or at least that they did not contain sufficient graduation. The overarching concern in respect of these comments was that there is no such thing as an average case.

21 responses to this question expressed concern over the values of some or all of the fees being proposed, or commented that the proposals may not be financially viable for all organisations.

18 responses to this question were concerned with the fact that there may be too much variation between different cases to allow for a graduated fee to work, or that greater graduation would be required within the scheme to allow for such variation.

Some respondents questioned whether there was indeed an actual need for graduated fees, preferring instead the controls provided by the current system of extendable financial thresholds. Few responses were specifically concerned with scope, but 7 respondents stated that the provision to perform NASS work within the immigration category should remain. They considered that this would prevent duplication, encourage a holistic service and utilise practitioners' expertise in an area closely linked with the substantive application.

A suggestion was made of an additional payment, possibly to the value of the relevant fee under TFF replacement. Some respondents also suggested that the proposals did not fully address certain scenarios including any change of adviser following dispersal, legacy cases, fresh applications, or clients moving in and out of detention.

The Law Society and other respondents expressed concern about whether the New Asylum Model (NAM) would be implemented on time, and suggested that any scheme should not be too reliant on proposed NAM driven processing changes.

ILPA also stated that they would like information on how New Matter Starts would be awarded in the future, as this would determine the maximum income that suppliers could receive under the proposals.

8.2 Do you agree with our approach to produce different forms of remuneration for those services outside of the graduated fee scheme? If not, what suggestions do you have for contracting these services?

There were 36 responses to this question, with the majority agreeing in principle to different forms of remuneration for those services outside of the graduated fee scheme.

However, there was also significant opposition to any restriction to a client's right to instruct a legal adviser of their choice, should they express a preference. Furthermore, many respondents requested further details on volumes and remuneration proposals before the proposals were finalised. Some respondents also saw potential problems and complexities with operating a multi-faceted system particularly where clients moved in and out of *'mainstream'* processes.

Some concerns were also raised that the potential administrative costs of running separate contracts schedules for services outside graduated fees may negate any expected efficiencies.

8.3 Are there any other services or client groups that should be outside the graduated fee scheme?

There were 34 responses to this question, with a variety of suggestions made by respondents as to which cases should sit outside the proposed scheme. However, there were a number of specific suggestions made by respondents including:

- criminal deportation cases;
- bail applications and detention work (where not subject to exclusive arrangements);
- victims of trafficking, domestic violence or torture;
- age disputed minors;
- clients with mental or physical health problems;
- fresh asylum claims; and
- cases where the client has received poor advice from a previous supplier.

8.4 Do you agree with the stages of the graduated fees and the services that we would expect to be provided in the majority of cases? If not, please explain why.

There were 43 responses that either answer this question or comment on aspects of the question.

Few respondents disagreed with the proposed stages of the graduated fees, but, as with question 8.1, many argued that the fees were too low to allow all the necessary work to be undertaken to an acceptable standard. An additional comment was that the scheme does not cater for the diversity of immigration and/or asylum cases, and that greater graduation was required to allow for this.

4 respondents, including ILPA and the Law Society, questioned any assumption that immigration cases uniformly required less input than asylum cases. There was also concern that the scheme may be open to abuse, for example by granting CLR and then quickly withdrawing or by suppliers, cherry picking simple cases.

Some respondents, including ILPA, stated that there was insufficient data available for them to be able to properly plot stages and their appropriate values. They suggested that this could be achieved by working through case profiles of those providers meeting the highest quality thresholds.

8.5 Do you agree with the proposals for additional payments? If not, please explain why.

There were 49 responses to this question. Concern was expressed that there were no allowances for certain types of work, particularly in relation to the substantive hearing, for example, taking full instructions, preparing a skeleton argument and attending pre-hearing conference with the client.

The majority of respondents agreed with the principles of the additional payments, but considered that the values were too low. In relation to payment levels, some respondents expressed concern that the value of the additional payments are insufficient to remunerate the work required.

There were specific comments that payments were insufficient to allow for counsel, or specialist in-house advocates to be used in substantive hearings, unless it was the same person who had conduct of the case at the initial stages and was familiar with it. Several respondents also suggested other services that should be considered for additional payments, most frequently, interviews not relating to asylum cases.

In relation to fees for adjourned cases, some respondents disagreed that the fee for adjourned cases should be lower than that for the substantive hearing. Reasons provided for this included the fact that:

- there are many different reasons why cases are adjourned, so it is therefore unfair to always ‘punish’ the advocate;
- cases often adjourn part-heard after lengthy evidence or submissions so there will be lengthy court hearings for both;
- substantive further preparation may be required to update the case; and
- in adjourned cases, most work is done at the re-hearing not the first hearing, so the substantive fee should be for the hearing at which the matter is concluded to be fair when different counsel is used for each.

In relation to travel and waiting costs, 15 respondents considered that the arrangements for calculating these are unsuitable, with most suggesting that these costs should be paid as incurred rather than being rolled into the graduated fee. This was due to the fact that there are a small number of hearing centres and IND offices making further travel necessary, and that AIT listing policy results in unpredictable waiting times. Respondents felt that suppliers were not able to control costs drivers, meaning that the proposed approach would impact on client access, especially in dispersal areas away from New Asylum Model (NAM) centres.

8.6 Do you agree with the proposals to include interpretation and translation costs within the fees in asylum cases? If not, please explain why.

There were 62 responses to this question with 61 of these specifically disagreeing with the proposal.

The main concerns identified with regard to the proposals included that:

- it may lead to cherry picking of cases where clients speak English or more common languages;
- it could lead to less advice time for clients who do not speak English as interpreter costs will take up much of the graduated fee;
- it may lead to greater use of unqualified interpreters and family members to the detriment of the case;
- it would be unfair and possibly discriminatory to propose this approach only in asylum cases;
- it could create particular problems for clients where travel is required as no separate travel payments for either representatives or interpreters can be claimed;
- there may be a reluctance to have vital documents translated;
- certain suppliers could gain an unfair advantage by specialising in particular countries over generalist firms; and
- as interpreter and translation costs are not reported to the LSC separately from other disbursements, there was no cost data on which to base the value of allowance for these services within the graduated fee.

8.7 Do you agree with the proposals for exceptional cases? If not, what other structures should we put in place to pay for these cases?

There were 55 responses to this question and 52 of these questioned the appropriateness of a 4 times the fee for the exceptional case threshold.

The majority of respondents felt that the exceptional case threshold is too high to allow for swings and roundabouts to work fairly, as many cases would come in significantly higher than the graduated fee but below the 4 required to escape whilst few would come in significantly lower. This makes the burden of financial risk on suppliers too great.

Respondents' opinion on escape threshold range from 1.5 – 3 times the fee. ILPA suggested that a pilot should be undertaken (with a significantly lower exceptional threshold) to enable further data to be gathered before the setting of a permanent exceptional threshold as some immigration practitioners do not have sufficient experience of TFFs to comment. It was also suggested that the exceptional case threshold should be calculated by stage rather than at conclusion. Some of the responses from barristers also argued that the exceptional case arrangements should be applied separately to representation elements, so as to apply to counsel separate from solicitors. Further clarification on how the operation of the arrangements will work in practice was also been requested by some respondents.

8.8 Do you agree with the proposals for an early resolution payment? If not, how else might we encourage positive outcomes for clients early in the process?

There were 48 responses to this question 37 of which did not agree with the proposal. The main reasons provided to support this were that:

- quality of work is not the main variable leading to a positive outcome. The facts of case and the calibre of decision making are the drivers for success at the initial stage and not the quality of case presentation;
- quality providers perform all appropriate work at the initial stage;
- there should also be success criteria for appeals and immigration cases as there is;
- success should not be defined as having achieved refugee status only, for instance, other criteria could be discretionary leave and humanitarian protection; and
- the proposals could lead to cherry picking of more straightforward cases.

Many respondents noted that they would prefer to see the funding intended for payment of early resolution payments to be recycled into the graduated fee levels. A few respondents also suggested alternative vehicles for encouraging early resolution and concentrated on supporting front-loading of funding – as per the upcoming LSC early advice pilot – to allow full early preparation and efforts to improve initial decision making. A small number of respondents supported or partially supported the idea of an early resolution payment saying that it would encourage detailed consideration at an early stage.

8.9 Do you agree with the proposed arrangements for stage claims? If not, please explain why?

The majority of respondents did not specifically address this question. There were mixed views from those that did respond, with 8 agreeing with the proposal and 18 disagreeing.

The main reason for disagreement related to delays in the progression of certain types of case, especially older cases with fresh applications and certain immigration cases outside the rules. These delays were detrimental to providers' cash flow as costs would be incurred for work that could not be claimed until a decision was made. There was also concern that the New Asylum Model would not proceed as planned and so the quicker processing of asylum claims would not happen as expected.

Suggestions from some respondents included:

- allowing the stage claim to be made when the matter is opened;
- allowing additional payments to claimed as incurred; or
- introducing a voluntary 6-month stage billing option.

A number of NfP respondents also emphasised the importance of appropriate transitional arrangements if they were to move to a retrospective funding regime.

8.10 Do you agree with our suggested approach to provide advice, information, and referral at the Asylum Screening Unit? If not, how else could these services be provided?

There were 36 responses that either answered this question or commented on aspects of the question. There were mixed views about the proposal. Some agreed with the suggested approach and some fundamentally disagreed. However, 21 broadly endorsed the suggested approach although this agreement was caveated in places.

Most respondents agreed that there should be an information, advice and representation service (where appropriate) at the ASU but that generic, as opposed to case-specific, advice should not be funded by the LSC. The majority also expressed concern about restricting client choice, particularly where the applicant had already made arrangements for legal representation. 7 respondents referred to concerns about the restriction of competition.

Some respondents highlighted the need to ensure that applicants perceived the referral process and suppliers receiving the referral as independent of the state. ILPA expressed concern that any referral service should be funded from the budget for immigration and asylum advice and representation. Their view was that as an administrative service it should be funded from either the LSC administration budget or the CLS Direct budget.

8.11 Do you agree with the proposal to restrict client choice and allocate clients to particular providers on a rota basis? If not, what alternative mechanisms do you think could be introduced to ensure that clients are guaranteed access to legal advice in the short period available between making their asylum application and their substantive interview?

This question relates directly question 8.10. There were 35 responses that either answered this question or commented on aspects of it. Of those who answered the question 15 agreed or partially agreed with the proposal and 19 opposed it.

17 respondents said that they would support the proposal for services at the ASU but only if it did not restrict client choice or reduce competition. Many expressed a preference for a voluntary rota system for unrepresented clients and clients with no provider preference. But where the client wished to choose their own provider they should be able to do so. A common view was that, as a minimum, there must be explicit exceptions to compulsory referral – as with current exclusive fast-track arrangements.

Several respondents emphasised the importance of transparency in the criteria for rota allocation. The RLC questioned what would happen if a provider made the work from the rota referral system their main source of income and, for whatever reason, fewer clients than expected were referred.

There were few suggestions for alternatives to the proposed arrangements other than a voluntary rota system for unrepresented clients or a sign-posting service to all current providers in the area.

8.12 Do you agree with our suggested approach to provide legal services to clients in Detention Centres? If not, what alternative arrangements do you think could be introduced to ensure that clients are guaranteed access to legal advice and representation whilst reducing the administrative burden on the LSC?

There were 36 responses that either answered this question or commented on aspects of it. Of those who answered the question, 16 broadly agreed with the proposal and 14 opposed it.

11 respondents expressed concern about the proposal, including:

- the extended use of exclusivity;
- contracting with a smaller number of providers;
- restrictions to client choice; and
- general concerns over reducing the supplier base and restricting competition.

There was also particular concern about reducing choice in light of questions over quality in fast-track cases as raised in BID's recent research.

Some respondents doubted that the proposed level of the ring-fenced budget for detention services was sufficient. And more information as to likely throughput volumes and remuneration rates for a piece of work was required. Also the opportunity should be taken to consider the evaluation of the current detention duty advice pilot before the new proposals were finalised. Others questioned how remuneration arrangements would apply to cases where clients move in and out of detention and between removal/detention centres.

8.13 Do you have any suggestions about how legal services could be provided to immigration clients held in prison?

There were 37 responses that either answered this question or commented on aspects of the question. Of these, 12 provided general suggestions such as that they should be paid by hourly rates with 21 making more specific proposals. These included:

- a service similar to the Police Station Advice Pilot;
- payment outside graduated fees on hourly rates with travel and waiting paid separately;
- a list of local suppliers in all prisons and prison staff to help foreign nationals find representatives and if not possible, a referral by LSC national panel that should not be exclusive;

- no special provisions bar referral service liaison with prison;
- similar arrangements to those in Removal Centres; and
- Duty scheme (not exclusive contracts) combined with funded information explaining right to legal advice and better access to telephone advice.

A commonly held belief expressed by respondents was that the variations in cases, low volumes and a lack of supply near some prisons, meant that graduated fees or block contracting would not be workable and payment by hourly rates should continue. There was also a common belief that sufficient payment for travelling time and cost was essential for the effective provision of services to clients in prison.

8.14 Do you agree with our suggested approach to provide legal services to unaccompanied asylum seeking children? If not, do you have any other suggestions about how we can ensure that providers delivering services to this client group have the necessary experience and expertise?

There were 39 responses that either answered this question or commented on aspects of it. Of those who answered the question 21 broadly agreed with the proposal and 8 opposed it.

Respondents who commented were broadly supportive of the suggested holistic approach for providing services to UASC and wanted to limit this work to suppliers with the appropriate skills and expertise. However, many respondents stated that further detail, especially of the criteria for selection to the specialist panel, would be required to allow for full comment.

Some respondents questioned whether client choice and/or competition should be restricted through exclusive arrangements and/or whether there was sufficient supply to do so. A number also questioned whether it was necessary or desirable to look for requirements significantly beyond the current accreditation arrangements. Many respondents rejected the assertion that there could be any asylum cases that would be more appropriately dealt with by child care specialists.

There were also suggestions that consideration should be given to special arrangements for other groups including age dispute cases, children granted discretionary leave to age18 and looked after children i.e. those in care and accommodated by Local Authorities, including non-asylum cases.

8.15 Do you agree with our proposed approach with remunerating work outside the graduated fee scheme? If not, what suggestions do you have?

There were 33 responses to this question or that commented on aspects of the proposal. Several were broadly supportive of the proposals for services outside the graduated fee scheme although many stated that further detail would be required before the question could be fully answered.

Those respondents that disagreed with the proposals, or raised concerns, referred to a range of issues, including a general concern over the length of the timetable, restrictions on market competition and opposition to any suggestion of competition based on price rather than quality. A number of respondents also expressed concern over a reduction in client choice as a result of the proposals. There was some explicit support for block contracting for certain services such as the Asylum Screening Unit, clients in detention and police stations.

8.16 Do you agree with our rationale for selecting reduced numbers of providers to provide these services? If not, do you have any suggestions about how to minimise the administrative cost to the LSC?

There were 34 responses that either answered this question or commented on aspects it. There was some support for the proposals for selecting reduced numbers of providers with the caveat that any competition must be based on quality and not cost.

However, 23 respondents disagreed with the proposal as:

- it could reduce supply and create access problems;
- it was contrary to principles of competition;
- it was against the principles of client choice; and
- there were questions over the administrative savings that would be achieved by contracting with fewer providers.

There was also some concern expressed by respondents that the proposals may prove unworkable should demand vary significantly from expectations, especially with reduced supply and ring fenced budgets.

8.17 Do you agree with our approach of extending the exclusive contracting arrangement for fast track clients to other services and client groups? If not, what other proposals do you have to help reduce duplication of advice?

Many respondents failed to answer this question. Of the 35 responses that either answered the question or commented on aspects of the detail, 5 supported or partially supported the proposals. However, the majority view was that client choice should remain unrestricted.

Some respondents, including LAPG and The Refugee Council, believed that there were still questions over the quality of some advisers. Therefore, the ability to change solicitor when unhappy with the one that had been allocated was essential. Others, including ILPA, commented that the right to obtain different, and in some cases better, advice should remain. 7 respondents commented that duplication was either inherent and/or beneficial. Several respondents, including ILPA and the Law Society, argued that duplication was unavoidable for many reasons including current dispersal policy. In particular, they questioned whether there was a problem that needed to be addressed and expressed the view that, if there was, exclusivity would not cure it.

Other points that were raised included the position of a client who was already represented being required to move to a supplier with an exclusive contract, for example if he or she moved into detention. In such situations duplication would be increased rather than reduced. The RLC referred to contract viability in the situation where a supplier was reliant on referrals from a rota for a significant proportion of their income and, for whatever reason, the referrals were not as plentiful as anticipated. Asylum Aid stated that any exclusive arrangements must allow for compliance with gender guidelines.

8.18 Apart from the generic criteria that we set for bid rounds, do you have any suggestions for specific criteria that we should use in bid rounds for the exclusive services to ensure that providers have the right level of experience and expertise?

There were 29 responses that either answered this question or commented on aspects of it. Of these, 2 provided a relatively generic suggestion about the need for criteria to be based on quality rather than cost, whilst 18 suggested more specific proposals.

These suggestions for additional criteria included:

- Peer Review rating;
- the ratio of supervisors to caseworkers;
- years of experience;
- compulsory CPD;
- gender balance;
- accreditation level;
- views of NGOs – for example in detention field;
- appeal success rates;
- number of legally qualified staff;
- tenure of staff; and
- specialist track record in a specific area.

8.19 Do you agree with our approach to develop national and regional providers? If so, are you a provider or part of a network that would be interested in becoming this type of provider?

There were 34 responses that either answered this question or commented on aspects of it. Of those that responded, 11 accepted that developing regional and national providers to enable quick and flexible response to changes in demand would be beneficial.

The Law Society was a notable exception saying that clients needed local services and that the proposed approach would not improve the level of service or lead to efficiencies. There were also a significant number of respondents who expressed concern over any proposal if it potentially reduced choice, interfered with free market competition or negatively impacted on small but good quality suppliers.

LAPG expressed concerns with the rationale for this approach on the basis that competition would be reduced and that there would be little opportunity for suppliers to enter the market. This meant that if one organisation failed it would take a considerable time to replace, creating an unstable supplier base.

Several respondents claimed that, although national and regional providers would be preferable, they doubted that there was sufficient incentive to expand due to the current uncertainty around reforms and the perceived financial risk to be borne by suppliers under current and proposed arrangements. Most respondents did not address the second part of the question but, of those that did, most stated explicitly that they would be interested in becoming national or regional providers provided that they felt it economically viable to do so.

MENTAL HEALTH

There were 95 responses which related directly to the mental health proposals. 77 of the responses were from solicitor providers; 4 from NfP providers; 7 from Representative Bodies; 4 from Government bodies, and 3 from other respondent types.

9.1 Do you agree that Controlled Work for Mental Health should be remunerated with a graduated fee rather than a single fixed fee? If not please explain why.

Of the 76 respondents answering this question, 70% disagreed with the implementation of the graduated fee scheme as it currently stands, though it is unclear whether they are opposed to any sort of graduated fee scheme.

28% of respondents disagreeing considered the proposed scheme to be too rigid with not enough flexibility to take into account the complexity of cases. Suppliers in particular felt that it did not reflect costs of work actually undertaken. There was also concern that particularly vulnerable or difficult clients would lose out.

9 respondents felt that hourly rates were the only appropriate way to pay for mental health work, particularly the travel and waiting element. Other concerns expressed in response to this question were that quality would reduce as a result of a fixed fee scheme, that it transferred too much risk to the supplier and that it was not a graduated fee scheme but rather a series of fixed fees.

9.2 Do you agree that we are justified in not paying a second level 2 fee for Negotiation and Preparation relating to a Tribunal hearing where the client has transferred from one section type to the current section type via a Tribunal hearing? Are there circumstances when the fee should be paid again? How would you suggest we define such cases?

96% of respondents answering this question disagreed with the proposal not to pay an additional payment for negotiation and preparation when a client is transferred to another section following a tribunal hearing. These respondents felt that an additional payment was necessary in these circumstances because the legal issues are different in each section type and additional preparation is therefore needed.

9.3 Do you agree with the proposed stages for setting the fees? If not what alternatives would you suggest and why?

There were many comments on the specific stages proposed, with 92% of the 84 respondents addressing this question disagreeing, often due to a lack of confidence in the assumptions made in the calculation of the fee scheme.

The most common comments made by respondents were:

- a concern about non-MHRT related work, which under current proposals is paid at Level 1 rate which would be insufficient to cover managers' hearings, CPA and s117 meetings and other work. It would also discourage early resolution and encourage unnecessary applications to the MHRT;

- there is a need to exclude travel and waiting time, and pay this separately as to include it in the fees would lead to a reduction in rural services, or discriminate against suppliers who need to travel a long way to their nearest hospital, or if a patient is transferred to another hospital. Many suppliers accepted that it is right for the LSC not to pay extra for suppliers who carry out work a long way from their offices for no justifiable reason;

- there is a need to pay separate payments when hearings are adjourned as this is not often the fault of the solicitor, or there may be a need to seek an adjournment for legitimate reasons for the client's case;

- concern that in most circumstances solicitors take on tribunal cases after application to the MHRT, so could never claim the Level 1 fee; and

- concern that fees are too low to cover the peer review guidance as to what is best practice in MHRT cases.

9.4 Which of the 3 options do you prefer for payment of forensic cases and why? Are there any other options we should consider?

Of the 58 responses to this question, 69% of respondents felt that forensic cases were fundamentally different from civil cases and should be remunerated differently, with the majority favouring an hourly rate as at option 3.

21% of respondents felt that there was no difference in complexity, and that many civil cases were at least as complex as forensic cases, so they should be remunerated with the same fee as outlined at option 1. There was little support for the idea of setting two separate graduated fees for forensic or non-forensic work as suggested at option 2.

9.5 Do you agree that it is neither justifiable to set different fees for different regions nor to set London and non-London fees? If not please explain why.

There was little comment on this question, with only 46 respondents addressing the issue. 19% of these supported London weighting, whilst 28% supported regional fees and 46% expressed a preference for national fees. 7% of respondents suggested alternatives, the most common being banding by hospital.

COMMON ISSUES FOR CIVIL, FAMILY AND IMMIGRATION LEGAL AID

10.1 Do you agree with the proposals for varying the fees? If not please explain why.

There were 158 responses that either answered this question or commented on relevant aspects of the proposed schemes. 50% were from solicitors, 39% from NfPs and 9% from representative bodies and 2% from other respondent types.

Whilst more than a quarter of respondents supported the proposals for varying fees, nearly half disagreed. Many took the opportunity to comment that fixed fees were completely unworkable or set too low, and expressed a concern that *'varying'* fees would in practice mean only reductions.

There was widespread support for establishing a fair system for revising fees. A number of respondents thought it unfair that they would not retain the benefits if they succeeded in managing their workload efficiently within the fixed fee. Others expressed concern at the impact varying the fees would have on financial planning. One of the most frequently occurring comments was that the fees would need to change to reflect changes in the law that either added to, or reduced, the work required of legal aid practitioners. There was also pressure for annual increases to fees to reflect inflation costs.

A very small proportion of respondents suggested alternative approaches to varying fees, such as linking fees to quality or outcomes achieved.

10.2 Do you agree with the proposed arrangements for payment of exceptional cases? If not how else might we manage these cases?

There were 194 responses that either answered this question or commented on relevant aspects of the proposed schemes. 49% were from solicitors, 35% from NfPs, 10% from representative bodies and 6% from other respondent types.

Over 75% of respondents disagreed with the proposed arrangements for paying exceptional cases, the overwhelming concern being that an exceptional case limit of four times the fixed fee was too high for all of the civil and family schemes. It was felt that this passed excessive risk on to the suppliers, who were unlikely to take on more complex cases given that there would be no guarantee that they would be remunerated fully, and there was a risk that their claims might be assessed down.

Others feared that suppliers might incur extra costs in order to ensure that a case reached the exceptional case limit, or elect not to take on cases that might be expensive but less than the limit. There was no consensus about where the limit should be more appropriately set, but the most common suggestions were two or three times the fixed fee. However, there seems to be a lack of understanding that if the exceptional limit were lowered the fixed fee would subsequently reduce. Several respondents also rejected fixed fees altogether.

A common criticism of the proposals around exceptional cases, particularly amongst family suppliers, was that the approach is overly simplistic and that there should be some form of graduated fee based on the work that the case required, or bolt-on payments, akin to special issue payments in the Bar's family graduated fee scheme, to take account of particular complexities. Others, largely NfPs, felt that there should be additional payments for particular client groups, such as those with mental health problems, whose needs were considered more complex. One respondent thought that fees should vary based on the expertise of the person doing the work.

Those supporting the proposal, or aspects of it, most commonly welcomed the fact that payments would be made in year rather than at the end of each financial year. Several suppliers agreed with the proposal but only provided that there was some kind of appeals process so that suppliers could contest where costs had been assessed down.

10.3 Do you agree with the arrangements for payment of disbursements? If not please explain why.

There were 172 responses that either answered this question or commented on relevant aspects of the proposed schemes. 49% were from solicitors, 38% from NfPs, 8% from representative bodies and 5% from other respondent types. Almost half of respondents agreed that disbursements should be reported separately and credited to providers in the normal way. Some commented that this was a marked improvement on the treatment of disbursements under the present TFF scheme. Less than one third said that they opposed the proposal.

There were, however, concerns expressed about some aspects of the proposed arrangements. A number of respondents felt that travel should be included in the fee for the majority of the schemes, as this was often a necessity that could not be avoided. Many Care Proceedings practitioners, amongst others, considered this approach a missed opportunity to control experts' fees, which were thought to be a significant driver for rising costs. A number of Asylum suppliers argued that interpreter and translation costs should be excluded from the fixed fee and allowable as a separate disbursement. A recurring comment from NfP agencies was that the approach outlined would result in cash flow problems if it replaced the disbursement float available under the current NfP contract.

A number of respondents asked for clarification of the procedure, including clarification of the definition of *'out of profile'*, and whether prior authority would be required for certain types and amounts of disbursements.

10.4 Do you agree with the proposed arrangements for the application of the statutory charge? If not please explain why.

There were 117 responses that either answered this question or commented on relevant aspects of the proposed schemes. 61% were from solicitors, 22% from NfPs, 12% from representative bodies and 5% from other respondent types.

Opinion on the proposals for the application of the statutory charge was fairly evenly divided. Many respondents agreed with the proposals, believing the suggested approach fairer to the client and a simplification of the current system. Those disagreeing largely expressed concerns that in some instances the charge incurred will be higher than the actual cost of advice and stated that it is unfair to apply a *'swings and roundabouts'* approach to clients. Others, particularly respondents to the family schemes, considered that the proposals removed the clients' financial incentive to adopt a conciliatory approach. One respondent suggests that if the charge were abolished at Levels 1 and 2 of Family Help – Private it would act as an incentive to avoid court proceedings. Other responses more generally expressed some issues about the way the LSC currently administers the charge and argued that it could be done more effectively to achieve savings.

10.5 Do you agree with the proposals for payment of VAT? If not please explain why.

There were 137 responses that either answered this question or commented on relevant aspects of the proposed schemes. 48% were from solicitors, 39% from NfPs, 7% from representative bodies and 6% from other respondent types.

More than half of respondents agreed with the payment of VAT in addition to the fixed fee. Those disagreeing with the proposals were almost all NfP providers who expressed concerns that the consequent changes to their systems would make this approach more complicated for them. Others felt that they would be unaffected by the proposals as they did not undertake asylum work. The question also opened up more general views that VAT should not be applicable to legally aided advice, and that the LSC should discuss and clarify the position with HMRC.

10.6 Do you agree with the proposal to remove payments for file review in order to fund more civil matter starts? If not please explain why.

There were 134 responses that either answered this question or commented on relevant aspects of the proposed schemes. 58% were from solicitors, 27% from NfPs, 8% from representative bodies and 7% from other respondent types.

75% of respondents disagreed with the removal of payments for file review. It was argued that this was time genuinely spent on a file and should be remunerated as such. Others stated that in order to maintain quality, file review should continue to be paid for, whether as a separate amount as at present, or through an increase in fixed fees. One respondent on the family schemes argued that, even if the additional money were used to fund more civil matters, it would be unlikely that firms would be willing to take this extra work on under the proposed rates.

Those few respondents agreeing with the proposal stated that it was part of a practitioner's normal professional duty and should not be paid for separately. Some wanted more information on how the additional money would be spent, and another respondent suggested that, rather than funding more matter starts, the money should be used to increase the fees.

10.7 Do you agree with the proposed amendments to the Funding Code set out at Annex C?

There were 83 responses that either answered this question or commented on relevant aspects of the proposed schemes. 58% were from solicitors, 28% from NfPs, 10% from representative bodies and 4% from other respondent types.

Some practitioners argued that there should be free access to legal aid for all parents and children where a local authority is seeking an Emergency Protection Order, Care Order or Supervision Order in respect of a child. Many respondents answering this question argued that, until the proposals were finalised, the amendments to the Funding Code could not be properly considered. Others argued that changes were not necessary, and over one third stated that they agreed with the proposed revisions.

PROPOSED UNIFIED CONTRACT

There were 325 responses received specifically around the proposals on a unified contract. 158 were from solicitor providers, 131 from NfP providers, 17 from Representative Bodies, 16 from other respondent types, 2 from other bodies and 1 from a family mediator.

11.1 Do you agree with our proposal that eventually all our providers, including NfP organisations, will be covered by the same contract terms? If not why not?

234 responses were received to this question 59% of solicitor respondents supported the idea of universal contract terms, largely as it would enable a level playing field in the legal aid market. The 60% of NfP respondents to the question that supported the proposals were keen to ensure that the transitional period for NfP organisations truly reflected the nature of their funding environment.

32% of respondents disagreed with the proposals with an almost equal number of NfP and solicitor providers providing this view. The main concern of NfP respondents in particular was that acceptance of this proposal would mean that fundamental funding differences within this sector would not be recognised. They argued that it was not fair to compare NfP and solicitor providers and that they cannot work under the same contract terms, due to the different way in which they operate. There was also some concern from solicitor providers that licence only contracts would end, affecting access to areas where historically little Legal Help work is done, with clinical negligence and public law children being cited in particular.

11% of respondents did not feel qualified to comment because the level of detail on the proposed contracts was not thought to be substantial enough. A number of providers also felt that the fee proposals were inadequate and were therefore doubtful of the contract terms.

11.2 Do you agree that there should be a minimum income requirement, if not why not? Do you agree with our proposal to introduce a minimum income requirement of (a) £25,000 or (b) £50,000? What do you think that the minimum income requirement should be and why? And if you do agree which of the proposed options for on the period over which the limit would be calculated do you prefer and why or do you have an alternative proposal?

256 respondents answered this question, 59% of respondents broadly disagreed that there should be a minimum income requirement, 22% agreed and 19% expressed a different preference. 67% of respondents agreeing were solicitor providers, many expressing a preference for £25,000 as the minimum income requirement. There were also calls for a retrospective approach to allow more certainty in terms of planning for the future, as a prospective calculation would cause confusion as it cut across a period of old and new payment systems.

Whilst the majority of respondents were against a minimum income level, many stated that, if compelled to choose, they would prefer the lower figure of £25,000. However, a variety of alternative figures between £5,000 and £250,000 were also suggested. There was some concern that this proposal was likely to have a negative impact on access, particularly in relation to urban areas, BME clients and providers of advice in niche areas.

48 respondents stated they could not answer definitively because of the lack of detail as to what the minimum income included e.g. VAT, disbursements and the concern that this proposal did not consider fees claimed from other parties.

11.3 Do you agree with our proposals for the future of the SQM? If not why not?

256 respondents answered this question, 59% disagreed, 22% agreed and 19% expressed a separate view. The majority of respondents disagreeing with the proposal were concerned by the possible cost, confusion and increased infrastructure which they argued alternative quality standards could bring and the lack of remuneration for this. There were also a number of concerns relating to client care and confidentiality, which these respondents believed should be an essential part of the contract. It was stressed that, where suppliers were expected to compete for contracts, there should be a level playing field.

57 providers welcomed the proposal to simplify the SQM and make it more accessible, as long as providers had a Quality Mark of some description. 48 respondents, however, did not give a definitive answer, arguing that the proposal was not detailed enough.

11.4 Do you agree with our proposals to introduce new provision on the length of the Unified Contract and powers to terminate the contract in order to introduce Lord Carter's reforms or CLACs and CLANs? What contract length would you like to see and do you agree with the proposals on termination?

70% of the 227 respondents answering this question disagreed with this proposal as a whole. Based on the fee proposals, Preferred Supplier, CLACS and CLANS and tendering, the majority of respondents wanted a contract for either a 3 or 5 year term to ensure some security for future business planning and security for employed staff.

The 91 NfP providers responding to this question were particularly concerned about the impact on funding from other suppliers, which they felt might be at risk if this proposal is implemented, as it suggests that their LSC funding is not secure. Similarly, the 112 solicitors responding were concerned about the impact on current and future banking arrangements as a result of this proposal.

The majority of respondents stated that 3 months notice was too short to properly consider operational concerns such as redundancies. Concern was also raised that this timeframe did not allow for appeals and reviews to be considered. Most responses suggested at least a 6-month termination notice.

11.5 Do you agree with our proposals on self-monitoring, approved personnel, an open book relationship and technology? Do you think that they will improve the working relationship between the LSC and its providers? If not why not?

226 respondents answered this question although 47 respondents felt unable to comment on the specific proposal in full because of what they stated was a lack of detail. A number of respondents expressed mixed sentiments on the suggested methods of improvement of the working relationship between the LSC and providers. Respondents recognised that the working relationship needed to be improved and strongly support the move in this direction, but did not support the methods outlined in the proposals.

Self-monitoring

Many respondents welcomed this method, stating that they were in principle already operating in this way. Those who did not support the proposal were concerned at the increased bureaucracy and unremunerated administrative costs that this would lead to.

Approved Personnel

In principle, the majority of providers who responded to this method noted their support. However, a significant number of NfP providers were concerned at how this would affect the volunteer sector that they employ to help run their organisations.

Open book relationship

The majority of respondents to this method disagreed with the proposal and expressed concern over the lack of detail in relation to what exactly the open book relationship would consist of.

Technology

NfP respondents were concerned that Lord Carter's report specifically referred to grants that could be made available for solicitor practices to enable necessary technology updates, but which did not appear to extend to the NfP sector. The majority of respondents express the need for a suitable and sensible transition period.

11.6 Do you agree with our proposal that all contracts will include a number of new matter starts thereby bringing to an end licenced only contracts? If not why not and are there circumstances where licenced only contracts should continue?

191 respondents answered this question with 27% agreeing with the proposal. A common reason for this support was that, at present, clients who qualify for Legal Help are sent to other firms, whilst licence only firms retain clients who will be eligible for certificates, resulting in some firms being paid to do work at an uneconomic rate.

59% of respondents, the majority of which were solicitors, disagreed with the proposal and were concerned that removing contracts from these providers would lead to access problems. There was also a concern that firms may take on too many Legal Help cases, causing the quality of advice to suffer.

Clinical Negligence and some Family respondents opposed this proposal because their client group does not generally require Legal Help, and it would not be economically viable to open a case. Many respondents also stated that the loss of licence only contracts would be detrimental because the areas of law were narrow, and not claiming for Legal Help would reduce costs to the LSC.

11.7 Do you agree with our proposals to publish information about contracts? If not why not?

Of the 189 responses to this question, 46% disagreed with the proposal. The main concerns were that this method would go against the Preferred Supplier route of being open with the LSC and that this would be a 'naming and shaming' exercise. It was also felt that information published about firms and organisations could be used to gain unfair competition in a tendering market, or negatively informs other funders against investing in businesses.

The 40% of respondents that agreed with the proposal tended to do so on the assumption that only information relating to Legal Aid work would be published, and that this data would be anonymous.

14% of respondents did not give a definitive answer because the proposal was not considered detailed enough to comment in full

11.8 Do you agree with our proposals on quality assurance and client service particularly the use of peer review and mystery shopping? If not why not?

219 respondents answered this question, 51% of whom agreed with the proposals, particularly that Peer Review would guarantee that standards are maintained where concerns are raised. However, most respondents advocated that Peer Review should remain under the control of the LSC rather than pass to another Representative Body. Solicitor respondents, in particular, expressed concern about costs being passed on to them if responsibility transferred to the Law Society. NfPs were also concerned about how they would be managed by organisations typically used to dealing with solicitor firms.

Some respondents agreed that quality assurance was important, but were concerned that no consideration has been given to the correlation between price paid and excellence. Clarification was also required that if a basic service was being paid for then a basic service will qualify for Category 1 or 2, thus enabling a firm to be a Preferred Supplier. Other respondents stressed the need to ensure that Peer Reviewers remain independent. There was also concern that if all work was given to a CLAC, which then fails quality assurance standards, there would be no alternative provision.

Many respondents were strongly against the introduction of mystery shopping due to the lack of knowledge of mystery shoppers in category areas and the lack of information as to how the process would work. Those that agreed with the mystery shopping proposal did so on the caveat that information from the exercise should be made readily available and that remuneration was forthcoming for the enquiry.

11.9 Do you agree with our proposals that under the contract all providers will be paid on the same basis? If not why not?

204 responses were received to this question, with 50% disagreeing with the proposals, 61% of which were NfP suppliers. There was concern over what were felt to be fundamental differences between solicitor organisations and NfPs, who operate in a different funding environment and would experience severe difficulties with reconciliation on a monthly level depending on how many cases are closed. It was argued that, unlike private practice, the NfP sector cannot easily cross subsidise payments at short notice because of lead-in times for grant funding, private practice has greater flexibility in being able to change income sources more quickly.

It was also argued that to introduce payment in arrears would not be viable for NfP agencies, and that the Compact recognises the need for a reasonable balance of risk between funders and suppliers. It was also considered unreasonable for NfP organisations to bear the greater burden of risk.

The majority of solicitor respondents to this question supported the proposals, but there were concerns about the payment levels and fixed fees.

11.10 Do you agree with the removal of level 1 work for NfP organisations? If not why not?

57% of respondents to this question were NfPs, 78% of whom were against the removal of Level 1 work. It was argued that the effect of removing Level 1 work would be that organisations would claim the full fixed fee. There was concern that there was no alternative funding for this type of work, which could result in a loss of service for those who otherwise may have no access to justice. Many respondents were against the concept of one contractor to fit all types of work.

The 14% supporting the proposals were mainly solicitor providers to whom removal of Level 1 work had no affect, but felt that if a unified contract was implemented, Level 1 work should not be available.

11.11 Do you agree with our proposals to change the way that contract sanctions are imposed and our proposed changes to the CRB?

151 respondents answered this question, 21% of whom agreed with the proposal although there was a general caveat that the process must be independent and include an objective right of review and/or appeal. There was also concern that the new sanctions proposals seem weighted in LSC's favour and could lead to challenges, but the need for a tough sanctions regime was accepted.

60% of respondents disagreed with the proposals; the majority of whom could not see any justification to change from the current practice. There were concerns over the appropriateness for a single member of the Commission's senior personnel to make decisions which could result in the removal of a provider's contract. There was an apprehension about inconsistency in decision-making where the relevant body is reduced to one member from a particular organisation who will, of course, be a different individual from time to time.

Representative Bodies were concerned at the suggestion that the Unified Contract will not require nominees of the Law Society and the ASA to be members. They see it as essential that representatives of the profession have a continued involvement in the decision making of the CRB, rather than it being simply an internal process restricted to Legal Services Commission personnel.

The 30 respondents who did not provide a definitive answer were concerned that any changes must ensure that there is no injustice, and that provision should be made to compensate firms and NfPs for time spent dealing with unjustified complaints.

11.12 Do you agree with our proposal for amending contracts and allowing the LSC to introduce contract amendments at times other than April and October?

Of the 188 responses to this question, 74% disagreed with the proposal. The most common concern was about the time needed to implement amendments. Many respondents expressed a preference to keep the current system of April and October to reduce bureaucracy, increase simplification and ensure a degree of continuity for providers.

There were also concerns that implementing this proposal would remove the certainty in terms of work undertaken and how this work was managed. These respondents were of the opinion that the LSC should be bound to a long-term contract as well as providers, arguing that they did not experience as many amendments to other funding or commercial contracts.

13% of respondents who agreed to this proposal did so on the proviso that consultation would take place before any proposed changes are brought into effect. Additionally, it was argued that a reasonable period of notice should be given to suppliers, and, where proposed amendments or changes might affect the fundamental delivery or sustainability of the service, a minimum of 3 months notice should always apply.

13% of respondents expressed alternative views or felt unable to answer the question fully from the detail provided.

11.13 Are there any other points that you either agree or disagree with that have not been specifically addressed in these questions? Please give your reasons for either agreeing or not agreeing.

The majority of the 148 respondents to this question took the opportunity to address other areas of the consultation as opposed to the proposed Unified Contract. In particular, many respondents called for rethinking on the fixed fee proposals where they were concerned that, if implemented, it would have a detrimental effect on supply and access to justice for the most vulnerable.

Conclusion and Next Steps

1. We welcome the interest, dedication and engagement that all stakeholders have shown throughout both the process of Lord Carter's review and subsequent consultation and events. This paper forms only part of the ongoing process of consultation with the professions that DCA and LSC have engaged in since the publication of Lord Carter's report. Vera Baird, QC, MP the Minister for Legal Aid has met, along with officials from both DCA and LSC, practitioners at all levels from around the country throughout the summer months. Similarly the LSC have conducted a number of road shows in which they have discussed with practitioners the rationale behind Lord Carter's proposals and to gather as many views as possible on the best way forward.

2. In addition to the significant level of engagement and feedback outlined above, it has been extremely beneficial to receive the numerous written responses to the consultation paper. We are grateful to all those who took the time to provide their professional expertise, knowledge and personal experience to inform this process, the results of which have helped to inform the way forward following Lord Carter's review.

3. DCA and LSC have produced an accompanying document to this analysis entitled *Legal Aid Reform: the way ahead*, which can be found on both the DCA website at www.dca.gov.uk and the LSC website at www.legalservices.gov.uk. This document outlines in detail the Government's response to consultation and indicates the key next steps of the reform programme including a full timetable for implementation.

4. However, this does not mean that Lord Carter's proposals will be implemented verbatim. It is accepted that a number of the comments and suggestions made by respondents to the consultation need to be addressed in order to ensure that a system is in place that strikes the right balance between fairness for the client, fairness for the practitioner and fairness for the taxpayer.

Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622 or email him at consultation@dca.gsi.gov.uk Alternatively, you may wish to write to the address below:

Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Annex A – List of Respondents

The consultation paper *Legal Aid: a sustainable future* received 2372 responses. As well as individual practitioners, responses were received from a wide variety of stakeholder groups, including:

- Access to Justice Alliance
- ACPO
- Advice Services Alliance
- Advice UK
- Amnesty International UK
- Association of Law Costs Draftsmen
- Association of Lawyers for Children
- Association of Major Criminal Law Firms
- Association of Personal Injury Lawyers
- Association of Sri Lankan Lawyers
- Bar Council
- Bar Equality and Diversity Group
- Bar Union
- Black Solicitors Network
- British Association for Adoption and Fostering
- CAFCASS
- Carter Diversity Group
- Child Poverty Action Group
- Children's Commissioner for Wales
- Citizens' Advice
- Civil Justice Council
- Criminal Law Solicitors' Association
- Disability Rights Commission
- Education Law Practitioners' Group
- Families Need Fathers
- Family Justice Council
- Family Policy Alliance
- FLBA
- FMA
- Housing Law Practitioners' Association
- Immigration Advisory Service
- Immigration Law Practitioners' Association
- Institute of Legal Executives
- LAPG
- LASA
- Law Centres Federation
- Law Society
- Legal Action Group
- Legal Software Suppliers' Association
- LGA
- Liberty
- London Criminal Courts Solicitors' Association
- Magistrates" Association
- Mental Health Lawyers' Association
- MIND
- Police Actions Lawyers' Group
- Public Interest Lawyers
- Refugee Council
- Resolution

- Shelter
- Social Welfare Law Coalition
- Society of Asian Lawyers
- Sole Practitioners' Group
- Solicitors' Association for Higher Rights Advocates
- Special Immigration Appeals Commission
- Specialist Fraud Association
- Supreme Court Costs Office
- The Children's Society
- The Family Sub-Committee of the Council of HM Circuit Judges
- UK College of Family Mediators
- Welsh Assembly Government
- Young Legal Aid Lawyers Association
- Youth Access

A full list of respondents can be made available upon request in line with the obligations placed upon public bodies under The Freedom of Information Act (2000) and The Data Protection Act (1998)-.