

Regulatory Impact Assessment:

Legal Aid Reform: the Way Ahead (Legal Aid: A Sustainable Future) Quality Relationships Delivering Quality Outcomes (The Preferred Supplier Scheme)

1. Introduction

1.1 This document provides a final regulatory impact assessment (“RIA”) for those proposals set out in the Department of Constitutional Affairs (“DCA”) and Legal Services Commission (“LSC”)’s paper, *Legal Aid Reform: the Way Ahead*, that have been finalised so far, as follows:

- Magistrates’ Court Scheme to be introduced April 2007
- Harmonisation of solicitor legal aid rates in the Family Proceedings Court (“FPC”) and county court to be introduced April 2007
- A Unified Contract for solicitor and not for profit (“NfP”) providers of family and civil legal aid services from April 2007 (preliminary assessment only; further discussion is ongoing regarding the details of the contract terms)
- Tailored Fixed Fee (“TFF”) Replacement Scheme (excluding family and mental health) to be introduced October 2007

1.2 It also sets out the LSC’s RIA for the Preferred Supplier Scheme.

1.3 It does not cover proposals to promote market stability in criminal legal aid services, which are subject to a separate consultation from 28th November 2006. A consultation paper and RIA will be published in February 2007, covering boundary changes, fixed fees and new working arrangements for police station advice and assistance for implementation in October 2007. Details of the remainder of the changes to be implemented after April 2007, as set out in *Legal Aid Reform: the Way Ahead*, will be published in due course, with separate RIAs.

2. Titles of Proposals

2.1 Legal Aid Reform: the Way Ahead (following on from an original paper titled “Legal Aid, A Sustainable Future”)

2.2 Quality Relationships Delivering Quality Outcomes (The Preferred Supplier Scheme)

3. Purpose and Intended Effect

3.1 Objectives

Legal Aid Reform: the Way Ahead

3.1.1 The proposals are intended to create:

- A more open and responsive market, with risks shared between provider and purchaser;
- Incentives for swift conclusions and minimal costs to other parties; and
- A diverse and competitive market of lawyers and others offering quality publicly funded advice and advocacy services.

Quality Relationships Delivering Quality Outcomes (The Preferred Supplier Scheme)

3.1.2 There are four overarching needs underpinning the implementation of Preferred Supplier. These are the need to:

- Improve the overall quality and value of legal services supplied
- Create a more constructive, genuine partnership relationship between the LSC and legal aid providers, which will enable both to develop and improve the legal aid scheme for the benefit of clients
- Ensure the legal aid scheme is sustainable and demonstrates improved value for money, whilst maintaining access for clients
- Work more efficiently to reduce costs and minimise bureaucracy for both the LSC and providers.

3.2 Background

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

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

value for money, whilst ensuring quality and the fairness of the justice system.

- 3.2.2 Lord Carter published his interim findings on the procurement of criminal defence services on 9th February 2006, recommending a move towards competition to reward good quality, efficient practitioners by providing them with the opportunity to grow through access to increased volumes of work.
- 3.2.3 The LSC then published a consultation paper *Quality Relationships Delivering Quality Outcomes* on 20 March 2006, inviting comments on proposals to establish a Preferred Supplier Scheme to secure consistently higher quality services for clients, better value for taxpayers and simpler and clearer relationships with legal aid service providers. The consultation period for this paper closed on 12 June 2006 and a summary of responses has been published by the LSC: *Quality Relationships Delivering Quality Outcomes - The Preferred Supplier Scheme: Response to Consultation*.
- 3.2.4 Lord Carter published his final report on 13 July 2006². The DCA and LSC simultaneously published a joint consultation paper on the proposals, *Legal aid: a sustainable future*³. This latter paper also included detailed proposals for reforms to the civil, family and immigration schemes and high-level proposals for a Unified Contract. The consultation period lasted until 12 October. In addition, the LSC published a consultation paper in October 2006 setting out detailed proposals for a Unified Contract, with consultation running until 21st November 2006, with further discussions with key stakeholders likely to conclude mid December.
- 3.2.5 Consultation on these preliminary papers has now closed, and on 28th November 2006 the DCA and LSC published an analysis of responses to *Legal Aid – a sustainable future*, together with a paper setting out next steps (*Legal Aid Reform: the way ahead*) and the first of a planned series of further consultation papers, *Market Stability Measures*.

3.3 Rationale for Government Reform

General

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

² Lord Carter of Coles, *Legal Aid: A market-based approach to reform* (2006)

³ Department for Constitutional Affairs and Legal Services Commission, *Legal Aid: a sustainable future* (2006)

- 3.3.2 The Government has concluded that it is essential to move towards a competitive market as soon as practicable, so that the market can determine the best price of providing services. It has also concluded that fixed fees provide the best way to manage the transitional period, both to prime the market and stabilise spending.
- 3.3.3 The specific changes considered within this impact assessment represent the first step towards achieving the Government's objectives. Taking a staged approach to implementation will give providers more opportunity to improve efficiency and restructure their businesses to take advantage of the opportunities that competition will offer, and will ensure sustainability both in the transitional period and in the long term.

3.4 Rationale for specific changes

Magistrates' Court Scheme

- 3.4.1 Revised standard fees for the magistrates' court will be introduced in 16 main urban areas, in April 2007, based on a combination of population density, legal aid spend and number of cases. The DCA and LSC believe that paying separately for travel and waiting on hourly rates does not encourage efficiency from criminal legal aid providers. The revised system will bring an element of travel and waiting payments within the standard fee, encouraging firms to become more efficient and reducing legal aid fund expenditure. Initially introducing the revised fees only in the main urban areas will allow DCA and LSC to gain a better understanding of the costs drivers for travel and waiting outside these urban areas.

Tailored Fixed Fee (TFF) Replacement Scheme (excluding Family and Mental Health)

- 3.4.2 The Tailored Fixed Fee Scheme, which introduced fixed fees for civil Controlled Work provided by solicitors based on their own 2004/5 average costs has, during its first year of operation, contained the increases in average case costs experienced over the previous 5 years and has generally operated well. This has allowed us to make available more acts of assistance without any additional cost to the Controlled Work budget. The scheme covers all civil Controlled Work performed under solicitor contracts except immigration, family work undertaken by FAInS suppliers, and some mental health work. Following consultation, the TFF scheme was extended for a further year through to the end of March 2007.
- 3.4.3 During this period, civil Controlled Work provided by NfP providers was remunerated using a separate funding formula based on a number of elements, including caseworker salaries.
- 3.4.4 Continued payment on a different basis for what should be the same services is unjustifiable. Failing to move NfP providers onto the

discipline of fixed payments by case may even put them at a serious disadvantage in future competition.

- 3.4.5 The DCA and LSC now intend to apply national fixed fees for all providers (both solicitor and NfP) from October 2007 for civil Controlled Work, excluding mental health, family, and immigration & asylum (these excluded categories will be addressed in separate papers). Setting national fees for work will be fairer, more consistent, and simpler to administer and understand.
- 3.4.6 The DCA and LSC will continue to make payments in advance to NfPs, though these will move to monthly rather than quarterly, putting them on the same footing as solicitors. These payments will be reconciled against claims, but the DCA and LSC are likely to allow reconciliation over a longer period than the first year of the contract in order to assist with transition. These arrangements will be discussed with the representative bodies through the life of the new contract to ensure that the DCA and LSC maintain sustainable services. This approach will be particularly important for agencies that are expanding the work that they do or coming into legal aid for the first time.
- 3.4.7 The allowance for up to 10% of contract hours for clients whose legal aid eligibility is not assessed ("Level 1 work") under the current NfP contract will not continue. The DCA and LSC consider this step to be necessary to enable us to focus legal aid on eligible clients and specialist advice. Level 1 funding will be refocused to increase the rates in the welfare benefits and housing categories by an additional £18.72 excluding VAT per case, to ensure that supply is retained in these key categories. It will be open to NfP providers to increase their work for eligible clients to replace work previously conducted under the Level 1 allowance.
- 3.4.8 There will be a separate fee for tolerance work (matter starts allocated in addition to those in specific categories of work, that may be performed in any category with a few exclusions), based on the average costs of those cases. The DCA and LSC want to encourage providers undertaking large amounts of tolerance work to obtain contracts in the categories of work covered, which would provide greater levels of quality assurance and therefore improved services to clients.
- 3.4.9 The statutory charge will no longer apply to any recovery or preservation of property in the categories covered by the new fees where the case ends at the Legal Help level. Legal Help costs (calculated on the basis of costs paid to the provider under the scheme, rather than actual costs incurred as now) in all categories of work will form part of the statutory charge where recovery or preservation occurs after a legal aid certificate has been granted. The DCA and LSC consider that this approach will be simpler to administer, and fairer for clients across different categories of work.

Harmonisation of Solicitor Legal Aid Rates

- 3.4.10 The impetus to implement harmonised legal aid rates in the Family Proceedings Court (FPC) from April 2007 is the DCA Judicial Resources Review recommendation to encourage more cases to start in the FPC by equalising the rates between the county court and the FPC. The majority of respondents who commented on our proposal to introduce harmonised fees were in favour of harmonising the rates in principle. Some, however, made the point that they would still be unlikely to use the FPC as the county court is more appropriate for a variety of reasons, including the availability of the President's Private Law Programme and the experience of county court judges over family magistrates. There were respondents who suggested all work should be paid at the county court rates, however this would not be consistent with cost neutrality.
- 3.4.11 The DCA and LSC consider that it is important that legal aid rates do not act as a barrier to effective management of judicial resources. It is also important that rate changes do not lead to increased expenditure. We have therefore decided to introduce the harmonised rates as consulted upon for all work in FPCs and county courts in advance of the introduction of the Family Help - Private scheme, which will cover all tiers of court. We believe that this will better fit with and support any changes by HMCS around the allocation of proceedings.

Unified Contract

- 3.4.12 The current General Civil Contract for both solicitors and Not-for-Profit (NfP) providers expires on 31 March 2007. The General Criminal Contract was also due to expire on the 31st March 2007, but the automatic one-year extension clause available has been invoked, and contracts will now end in March 2008.
- 3.4.13 The LSC currently purchases legal services through a number of different contracts, and a single provider may operate under several different types of contract simultaneously. The DCA and LSC wish to reduce the administrative burden and complexity of the contracting arrangements by introducing a single Unified Contract applicable to all providers that will be compatible with key strategic initiatives including the Carter Review, Preferred Supplier and the CLS Strategy, and the general move to procure services from within a market using best value tendering.
- 3.4.14 The new contract will take effect on 1st April 2007 for providers of civil and family legal aid services. It will take effect from 1st April 2008 for providers of criminal legal aid services.
- 3.4.15 The Unified Contract will contain revised Standard Terms, but the Contract Specification will remain largely in its current form until the introduction of new fee schemes in October 2007.

3.4.16 Discussions are ongoing with key stakeholders regarding the detail of the contract terms, and these are not likely to conclude before mid December. However, the DCA and LSC have set out our initial decisions on some issues of broad principle in *Legal Aid Reform: the way ahead*. These may be summarised as follows:

- Civil and family legal aid providers will work under a single Unified Contract that will cover all their offices. The Specialist Quality Mark (“SQM”) will no longer be a contract document but key elements of it will be included in the Unified Contract. This will simplify our contracting relationships, and provide greater clarity regarding requirements.
- Once we move to a Unified Contract, quality assessment and contract management will be conducted on a “whole organisation” basis rather than office by office. Solicitor and NfP providers will work under the same contract. This will enable us to take a holistic approach to assessing provider performance.
- We will no longer issue Licence only contracts. The focus on providing early advice (for example in family cases) means that providers should be able to provide Legal Help to their eligible clients. Current Licence-only contract holders will be offered a Controlled and Licensed work contract from 1 April 2007.
- The minimum required standard for quality of services provided will remain level 3 at peer review, as before. A higher level will be required to achieve Preferred Supplier status (peer review level 1 or 2). Whilst most respondents to the consultations supported peer review as a measure of quality, many felt that raising the standard required for all to level 2 or above from April 2007 would be too early, and that we should give providers longer to improve their performance to ensure continuity of supply.

3.4.17 The new contract is likely to be for three years with an option for the LSC to extend the contract by up to two years, but with a clause that allows termination on notice to implement competition. The LSC has agreed to extend the notice period from the proposed 3 months to 6 months (the same as in the current contract) in the light of responses to consultation. This will allow a level of stability for providers and maintain access to services as we roll out the reforms.

Preferred Supplier Scheme

3.4.18 Preferred Supplier provides a platform to deliver changes that underpin Lord Carter’s recommendations. More stringent quality assurance will help consolidate the market and improve value for money. Through relationship management, Preferred Supplier supports providers to manage their performance better, thus allowing them to compete in the

market more effectively. LSC relationship managers will work with providers to ensure that services are developed and delivered to meet client need as new service specifications and remuneration structures are implemented. Preferred Suppliers will be rewarded with greater autonomy, simpler processes and lower transaction costs. By only intervening when necessary, the administrative burden on the LSC and providers will be reduced.

3.4.19 To support the future rollout of the Preferred Supplier Scheme, we also consulted on proposals to introduce a Unified Contract for legal aid services. This takes forward and develops a number of proposals in the previous Preferred Supplier Consultation paper, including contracting with whole organisations instead of issuing separate contracts for each office, removing the Specialist Quality Mark as a contract document, and requiring providers to use our electronic data facilities in future.

3.4.20 The Preferred Supplier Scheme strongly enables the move to fixed fees, as it delivers a formalised method to ensure the quality of the work undertaken under the fixed fee is maintained. New fee structures recommended by Lord Carter will reduce transaction costs for both the LSC and providers, directly reward efficiency and provide budgetary certainty and control.

4. Consultation

Legal Aid Reform: the Way Ahead

Lord Carter engaged with the professions and key stakeholders during the course of his Review. His full report, and a joint response by the DCA and LSC containing proposals for consultation were published on 13th July 2006, with consultation running until 12th October 2006. In addition, the LSC published a consultation paper in October 2006 setting out detailed proposals for a Unified Contract, with consultation running until 21st November 2006.

The Minister responsible for Legal Aid, Vera Baird, met approximately 1000 solicitors, barristers, and other legal aid practitioners over 25 face-to-face meetings across 11 different cities to encourage practitioners to take part in the consultation process, and to listen to their views.

In addition, the LSC held fourteen “Carter Information” events for providers of legal aid services across England and Wales during the consultation. These were divided into civil and crime events. There were also five specific events for rural providers in Cardiff, Birmingham, Cambridge x 2 and Yeovil.

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

The DCA and LSC received 2372 written responses to the consultation, the highest response on record at the LSC for a consultation exercise.

Quality Relationships Delivering Quality Outcomes (The Preferred Supplier Scheme)

The consultation paper 'Quality Relationships Delivering Quality Outcomes' was published on 20 March 2006. The consultation period closed on 12 June 2006.

As part of the consultation process the LSC held a series of 55 solicitor events and 11 NfP events across England and Wales. These were well attended by over 50% of solicitors' firms and 80% of NfPs. The LSC received over 800 feedback sheets from those events.

A total of 117 written responses were received from 69 solicitor firms, 24 not for profit (NfP) agencies, 15 representative bodies and 9 'other' organisations.

4.1 Impact of Consultation

4.1.1 The DCA and LSC carefully considered all responses to the consultation papers published, as a result of which we accepted that changes to the detail and timing of the proposals were necessary. A full analysis of the issues raised on consultation, and our response, is contained in the papers *Legal Aid – a sustainable future – analysis of responses* and *Quality Relationships Delivering Quality Outcomes - The Preferred Supplier Scheme: Response to Consultation*.

4.1.2 Summaries of key changes made following consideration of consultation responses for the proposals covered in this paper are also set out below:

Legal Aid Reform: the Way Ahead

4.1.3 The most significant amendment in response to the consultation has been to defer implementation of the majority of proposals intended to commence in April 2007. This will allow providers more time to prepare for the transition, and will enable us to make amendments to the details of the schemes to take into account concerns raised. The following summary focuses on those changes that will be implemented from April 2007, and the TFF Replacement Scheme, which will be implemented in October 2007.

Magistrates' Court Scheme

4.1.4 We have taken into account the arguments put forward that some rural and remote providers would be disadvantaged by the proposals, in particular to incorporate an element of travel and waiting in the

standard fee. Consequently, the new magistrates' courts fees will initially be introduced in April 2007 in 16 main urban areas, based on a combination of population density, legal aid spend and number of cases. The areas include the Greater Manchester, London, Merseyside and West Midlands Criminal Justice Areas, as well as the Local or Unitary Authority areas of Brighton & Hove, Bristol, Cardiff, Derby & Erewash, Kingston-Upon-Hull, Leeds & Bradford, Leicester, Newcastle-upon-Tyne & Sunderland (including Gateshead, North Tyneside, Blyth Valley and South Tyneside), Nottingham, Portsmouth & Gosport, Sheffield and Southampton. Initially introducing the revised fees only in the main urban areas will allow DCA and LSC to gain a better understanding of the costs drivers for travel and waiting outside these urban areas.

Tailored Fixed Fee (TFF) Replacement Scheme (excluding Family and Mental Health)

4.1.5 Following consultation, the DCA and LSC have amended the proposals as follows:

- We have deferred implementation of the proposals from April 2007 to October 2007.
- We have listened carefully to the views of the NfP sector and agree that it is appropriate that a common set of fees should be based on costs data from NfPs and solicitors. We have therefore included in that data the cost of cases conducted by the NfP sector in 2005/6 (the value of their funding adjusted to remove under-performance on hours and level 1 work). Amended fee rates have been published, and their impact is considered in this assessment paper.
- We have revised our approach to setting fees for tolerance work, and rather than pay 15% less than category specific cases, the fee for tolerance cases will be based on the historic average cost of those cases.
- A majority of respondents commented that the proposed escape set at four times the fee was too high. We have amended this to three times the fee rate, but this has required us to also adjust the fee rates to ensure that the proposals remain cost neutral.

Harmonisation of Solicitor Legal Aid Rates

4.1.6 Although we have carefully considered the responses to the consultation, the DCA and LSC have decided to implement the changes as proposed without amendment.

Unified Contract

4.1.7 Following consultation, the DCA and LSC have amended the proposals as follows:

- The DCA and LSC will not introduce minimum contract sizes from April 2007, but intend to introduce the power to do so at a later date.
- The Unified Contract will not require providers to achieve a peer review rating of 2, instead of the rating of 3 under current contracting arrangements. This will be a requirement for achieving Preferred Supplier status.

Further discussions are ongoing regarding the detail of the contract terms.

Quality Relationships Delivering Quality Outcomes (The Preferred Supplier Scheme)

4.1.8 Key features of the proposals as consulted on were:

The award of Preferred Supplier status to whole organisations (rather than individual offices) based on:

- A good history of compliance with existing legal aid requirements such as the contract and SQM, and with additional category specific criteria where appropriate
- Value for money criteria based on the Carter procurement proposals
- An assessment of financial performance and sustainability
- A good quality of legal advice as measured by peer review and file assessment. This required a peer review score of 1 or 2 in key categories (or a file assessment quality pass for categories under £50,000) plus satisfactory bill assessment rates
- E-business: use of existing LSC electronic facilities (SPOCC and SPAN) and agreement to deliver all data electronically as facilities become available.

4.1.9 In return, the LSC proposed to assign Relationship Managers to Preferred Suppliers, and give Preferred Suppliers a greater range of devolved decision-making powers, and simplified billing and claiming processes.

4.1.10 The DCA and LSC have reviewed these proposals in light of both the consultation responses and other developments, including Lord

Carter's Review and consultation on the Unified Contract. Following this, we have designed a simplified assessment process, which will be less onerous on providers. The new process, which will become operational from April 2007, will use two performance measures as an initial filter, namely key performance indicators under the new Unified Contract (currently under discussion with key stakeholders) and file assessment value for money. Peer review will still be used but later in the process to confirm Preferred Supplier status. A simplified financial assessment process will be used to enable relationship management, but will no longer form part of the entry criteria for Preferred Supplier.

4.1.11 A detailed timetable will be published shortly setting out how Preferred Supplier fits with the key milestones for the civil and criminal schemes following the outcome of consultation on Lord Carter's proposals. Civil and family legal aid services are likely to be competed from April 2009 over a two to three year period. Criminal legal aid services are likely to be competed sooner in some areas. Preferred Supplier will ensure that the services the DCA and LSC buy will be of good quality.

4.1.12 For civil the DCA and LSC will be consulting in early 2007 on new methods of commissioning services for mental health and asylum. Our family strategy will be published in spring 2007 and we will consult on our future strategy for purchasing low volume categories in the first half of 2007. The DCA and LSC will build the move to a Preferred Supplier approach into each of these areas.

4.1.13 Award of Preferred Supplier status will trigger a range of devolved powers, devolved client administration, simplified working, improved customer service from the LSC and faster turnaround on those civil applications and amendments that still need to be referred to the LSC. Preferred Suppliers will be eligible to enter any future best value competition process, although the award of future contracts would be subject to the outcome of any bid round.

4.2 Regulatory impact assessments

4.2.1 The DCA and LSC also received comments on the draft RIAs in both consultation papers, which have been considered when drafting this document. These are summarised in the section titled *Equity and Fairness: Race Equality, Disability Equality, Gender Equality, and Rural Impact*.

5. Options

The following options were proposed in the consultation papers:

Legal Aid: A Sustainable Future	Quality Relationships Delivering Quality Outcomes (The Preferred Supplier Scheme)
Option 1: Do nothing	Option 1: Do nothing
Option 2: Move immediately to competition	Option 2: Invite all providers to apply for Preferred Supplier status from the outset
Option 3: A phased approach with interim measures such as the introduction of standard or graduated fees paving the way for future competition	Option 3: Staged Approach to assessment (waves) to support rollout of Lord Carter's proposals (for example as part of best value competitions)

These may be summarised and combined as follows:

- Option 1: Do nothing
- Option 2: Implement all proposals immediately
- Option 3: Phased approach to implementation

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

6.1 Sectors and Groups

Sectors and groups affected include:

- Client users of legal aid services
- Providers of legal aid services
- Employees of providers of legal aid services
- Counsel and experts
- The LSC and DCA
- Partners in the wider justice system, for example HMCS, other funders of legal services such as local authorities
- Suppliers of software systems to legal aid providers

- Costs draftsmen

6.2 Analysis of Costs and Disbenefits, Risks and Benefits

Magistrates' Court Scheme

Option 1: Do nothing

6.2.1 Costs, disbenefits and risks:

- Expenditure on legal aid will continue to rise. The legal aid budget cannot support further growth in expenditure.
- There are no incentives to providers to improve their efficiency or prepare for future competition.

6.2.2 Benefits:

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

6.2.3 This option is not recommended.

Option 2: Implement all proposals immediately

6.2.4 Costs, disbenefits and risks:

- The DCA and LSC could roll out the new magistrates' courts fees nationally with immediate effect. However, the risks to quality and adequate supply of such a rapid and large-scale transformation, particularly for rural providers and clients are such that this is not considered a viable option.

6.2.5 Benefits:

- Savings to the legal aid fund would be brought forward.

6.2.6 This option is not recommended.

Option 3: Phased approach to implementation

6.2.7 Costs, disbenefits and risks:

- The cost to the LSC of introducing amendments to the Magistrates Court Scheme is estimated at £0.251m.
- The financial impact on providers will vary depending on the types of work undertaken and current average costs.

- The fee rates, excluding VAT, are as follows:

Type of fee	National	London
Lower standard fee (cat 1)	£221.59	£284.35
Lower standard fee (cat 2)	£378.46	£484.60
Higher standard fee (cat 1)	£477.41	£611.15
Higher standard fee (cat 2)	£792.71	£1,005.49
Lower standard fee (cat 3)	£357.87	£406.46
Higher standard fee (cat 3)	£734.56	£888.85

- While the LSC has calculated from 2005/6 data that firm income for magistrates' court work in the main urban areas would be reduced overall by 8%, we would however expect firms to benefit from standard fees as it will allow them to benefit from improvements in their own efficiency. 13% of providers, accounting for 16% of expenditure would have their fee income increased by the new scheme by an average of 4%, and 86% of providers accounting for 84% of current expenditure, if they made no adjustments to working practices, would have their fee income reduced by an average of 12%.
- The three largest areas are CJS areas and the others are Local or Unitary Authority areas. The impact by area is as follows:

	Area	Current Value	Change
CJS areas	Greater Manchester	£18,481,098	-5%
	London	£53,645,331	-16%
	West Midlands	£19,222,497	-5%
	Sub Total	£91,348,926	-11%
Local and Unitary Authority areas	Merseyside ¹	£9,153,647	-1%
	Leeds & Bradford	£7,739,108	0%
	Nottingham	£6,277,908	-7%
	Leicester	£3,933,023	-6%
	Bristol	£3,680,846	-7%
	Cardiff	£3,650,596	-5%
	Derby & Erewash	£2,993,137	-9%
	Portsmouth & Gosport	£2,667,191	-1%
	Brighton & Hove	£2,649,893	-7%
	Sheffield	£2,595,259	5%
	Newcastle upon Tyne ²	£2,234,945	-6%
	Kingston-upon-Hull	£1,962,650	2%
	Southampton	£1,688,148	-1%
Sub Total	£52,226,351	-4%	
TOTAL		£143,575,277	-8%
¹ Merseyside CJS area ² Includes Sunderland, Gateshead, Blyth Valley, North Tyneside and South Tyneside			

- The impact on different types of providers is considered in the section on Equity and Fairness.
- Providers will also incur some transition costs in preparing for the new scheme, including amendments to software systems and minor training for staff. These costs are not anticipated to be significant however, and should be offset against the benefits of moving to a simpler, more predictable fee structure.

6.2.8 Benefits:

- The projected savings to legal aid expenditure are £10m pa.
- The impact of the changes is deliberately higher in London (16%) as travel costs reported by London firms are much higher than the rest of the country and we believe there is even greater scope for improvement in efficiency. For this reason, rather than redistribute an element of travel payments between national and London rates in proportion to the existing value of claims they were reallocated by volume of cases.
- The introduction of standard fees that include travel and waiting will give providers greater certainty over the payments they will receive and provide greater reward for the most efficient providers.
- Initially introducing the revised fees only in the main urban areas will allow DCA and LSC to gain a better understanding of the costs drivers for travel and waiting outside these urban areas.
- A phased approach will allow providers to innovate to improve the efficiency with which they provide their services, thereby increasing their ability to profit from legal aid work and ensure a sustainable future.
- Taking a phased approach will also enable us to learn from and refine the process between stages, and to ensure that clients continue to have access to services with a minimum of disruption.

6.2.9 This option is therefore recommended.

Tailored Fixed Fee (TFF) Replacement Scheme (excluding Family and Mental Health)

Option 1: Do nothing

6.2.10 Costs, disbenefits and risks:

- Paying NfPs and solicitor providers on a different basis for what should be the same services is unjustifiable. Failure to move NfP

providers onto the discipline of fixed payments by case may even put them at a serious disadvantage in future competition.

- The DCA and LSC will continue to pay different rates to solicitors for what should be the same services.
- The DCA and LSC will continue to spend up to a 10% allowance on clients that have not been assessed as financially eligible for legal aid under the NfP contract, rather than focusing expenditure on eligible clients and specialist advice.
- There will be no, or lower incentives for providers to improve their efficiency.
- There will be no incentive for providers undertaking large amounts of tolerance work to obtain contracts in the categories of work covered, which would provide greater levels of quality assurance and therefore improved services to clients.

6.2.11 Benefits:

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

6.2.12 This option is not recommended.

Option 2: Implement all proposals immediately

6.2.13 Costs, disbenefits and risks:

- The combined administrative cost to the LSC of the remaining work to introduce the Unified Contract and the TFF Replacement Scheme is estimated to be £0.5m (whether implemented immediately or on the proposed dates of April 07 and October 2007 respectively).
- The impact on provider income, transition costs for providers and the impact on clients would be as set out under option 3 below, however, these impacts would be brought forward.
- Rises in average costs per cases (particularly under the NfP contract) would be controlled immediately.
- There is no money available for an increase in legal aid fee levels, but no money was taken out overall when calculating the fees. All the schemes were put forward on the basis of redistributing case costs in the data used amongst the new fees. The fees are calculated on a composite of NfP and Solicitor provider costs and

the scheme will therefore be cost neutral for the legal aid fund overall based on 2005/2006 expenditure.

- The key risk would be that providers would not have sufficient time to adjust to the new fees (particularly NfP providers, who have not had the benefit of an interim period working under Tailored Fixed Fees) and to implement necessary changes, for example to their software systems.

6.2.14 Benefits:

- The benefits would be as for option 3, but brought forward.
- In addition, the key benefits of moving immediately to the TFF Replacement Scheme would be the ending of a period of uncertainty for providers, and the immediate alignment of payment arrangements for different types of providers, controlling increases in average costs.

6.2.15 This option is not recommended.

Option 3: Phased approach to implementation

6.2.16 Costs, disbenefits and risks:

- The combined administrative cost to the LSC of the remaining work to introduce the Unified Contract and the TFF Replacement Scheme is estimated to be £0.5m.
- There is no money available for an increase in legal aid fee levels, but no money was taken out overall when calculating the fees. All the schemes were put forward on the basis of redistributing case costs in the data used amongst the new fees. The fees are calculated on a composite of NfP and Solicitor provider costs and the scheme will therefore be cost neutral for the legal aid fund overall based on 2005/2006 expenditure.
- The financial impact on providers of the TFF Replacement Scheme will vary depending on the types of work undertaken and current average costs. It is important that providers consider the new schemes on the basis of what they will receive as a whole organisation, across all categories of work. Fixed fees should be seen as a tool for encouraging efficiency, and this means looking at providers' overall caseload, instead of how the fee applies in any one particular case. As the DCA and LSC have made clear, providers will need to take on a variety of cases which can be handled by individuals with the most appropriate level of experience and expertise, whilst ensuring that appropriate training and supervision are given, in order to meet the required quality standards.

- The table below sets out the new fee rates, exclusive of VAT. Fees will be paid on a national basis for all provider types.⁴

Category	Contracted		Tolerance	
	Fixed fee	Exceptional threshold	Fixed fee	Exceptional threshold
Actions Against the Police	£261	£783	£151	£453
Clinical Negligence	£213	£639	-	-
Community Care	£290	£870	£175	£525
Consumer General Contract	£174	£522	£146	£438
Debt	£196	£588	£121	£363
Education	£296	£888	£149	£447
Employment	£225	£675	£147	£441
Housing	£171	£513	£135	£405
Miscellaneous	£86	£258	-	-
Personal Injury	£204	£612	-	-
Public Law	£282	£846	£203	£609
Welfare Benefits	£164	£492	£133	£399

- Current average costs vary depending on a number of different factors, including category of work, efficiency of delivery, providers' selection of cases and billing practices, and location of the provider. In anticipating the possible effects of the new system, it is necessary to model based on what would have happened had the fees applied to existing caseload. However, this can only be the starting point – as future caseloads may vary. Our headline analysis indicates that 61.36% of providers would have been paid more for their 2005/6 caseload under the new fees, and 38.64% would have been paid less. This equates to 1393 solicitor providers out of 2153 with contracts in the affected categories of work potentially improving their income, and 190 of 427 NfP providers. Although the proportion of NfPs who would have been paid less on the same caseload is greater, the extent of decrease is less significant for NfPs. Only 0.7% of NfPs would have been paid more than 33% less, compared to 5.16% of solicitors. The position varies by category of work, as set out in this table:

⁴ An explanation of how the fees were calculated can be found in **Appendix A – TFF Replacement Modelling**.

Work Category	Current No. of Providers	No. of Providers whose fees would have increased
AAP	394	268
COM	193	109
CON	769	506
DEB	1363	866
EDU	266	184
EMP	669	426
HOU	1558	999
MED	189	117
MSC	1324	894
PI	657	432
PUB	192	124
WB	964	565

- Impact also varies by region, as summarised in this table:

Region	Current No. of Providers	No. of Providers whose fees would have increased	% with decrease
Birmingham	233	145	37.77%
Brighton	139	87	37.41%
Bristol	319	195	38.87%
Cardiff	247	191	22.67%
Cambridge	213	121	43.19%
Leeds	237	160	32.49%
Liverpool	69	52	24.64%
London	385	124	67.79%
Manchester	241	164	31.95%
Newcastle	213	171	19.72%
Nottingham	224	153	31.70%
Reading	124	64	48.39%
Total	2644	1627	38.46%

- Further tables showing where the TFF Replacement Scheme fees will fall within current costs ranges by category of work, and regional average costs ranges for categories of work covered by the TFF Replacement Scheme are set out in **Appendices B** and **C** respectively.
- It can be seen from this that the most affected region will be London, with 67.79% of providers potentially experiencing a

decrease in legal aid income if their case numbers and profile remain exactly the same. Whilst the DCA and LSC would accept that the cost of operating in London may be higher than in many parts of the country (although not necessarily higher than in other city centres), this does not appear to justify or explain the much higher average prices in London, which lead to a higher differential from the new fees. Around 32% of London providers already operate on the basis of average costs that are at or below the new fee levels. Creating a London rate would effectively require the lowering of the fee rates in the rest of the country in order to benefit all London providers, including that 32%, despite the fact that fewer concerns have been raised regarding availability of supply in London than in the regions. Nevertheless lowering the exceptional escape level to three times the fee will benefit London providers; who would tend to have more exceptional cases. As a transitional measure, we will also continue to allow the London uplift to the hourly rates for exceptional cases. Moving to national fees may encourage the growth of supply across the country, rather than concentrating supply in London. It will also encourage London providers to become more efficient, and to prepare for future competition.

- Further analysis of impacts on different provider groups and their clients is set out in the Equity and Fairness section of this report.
- However, these comparisons need to be treated with caution as they assume that providers will spend exactly the same amount of time on cases as they did in the past, and that they will conduct exactly the same number and type of cases. Changes to these assumptions would impact on the assessment. It may, for example, be open to providers to increase the numbers of cases undertaken, which would increase their legal aid income overall. In addition, moving to a national fee will allow us to re-allocate funds to support the development of CLS services across many of the harder to reach communities in England and Wales, potentially changing the case mix of providers to ensure that the needs of communities are met.
- As indicated above, the NfP sector is the most affected. The DCA and LSC will therefore set NfP contract funding for 07/08 at a level that will allow them the opportunity to maintain the same income – for example by increasing their case-load where that is necessary. In terms of NfPs we have already seen a 19% improvement in numbers of cases for the same investment so far in the 2006/7 year - which if sustained will significantly improve their position.
- Providers will also incur some transition costs in preparing for the new scheme, including amendments to software systems and training for staff. These costs are not anticipated to be significant

however, and should be offset against the benefits of moving to a simpler, more predictable fee structure.

- NfP providers will need to assess financial eligibility for all legal aid clients once the 10% allowance for level 1 work is removed. It will be open to NfP providers to increase their work for eligible clients to replace work previously conducted under the Level 1 allowance. The DCA and LSC have estimated the current spend on level 1 work (2005/6) to be in the region of £3.5million pa.
- The key impacts on clients will be firstly that some clients previously receiving assistance under the Level 1 allowance without demonstrating financial eligibility for legal aid will no longer receive this assistance unless they are eligible. The amount of assistance permissible per case is however small, and the likely numbers affected low compared to total numbers assisted under the Controlled Work scheme. Removing this allowance will also allow us to focus legal aid funds on financially eligible clients and specialist work. The second key impact will be changes to the rules regarding the application of statutory charge. Under the new proposals, the statutory charge will no longer apply to any recovery or preservation of property at the Legal Help level. Legal Help costs (calculated on the basis of costs paid to the provider under the scheme, rather than actual costs incurred as now) in all categories of work will form part of the statutory charge where recovery or preservation occurs after a legal aid certificate has been granted. The DCA and LSC consider that this approach will be simpler to administer, and fairer for clients across different categories of work.
- The move to fixed fees overall allow more clients to be helped – by providing a purchasing mechanism that encourages this and by restricting cost increases per case which have to be funded within a fixed budget.
- A key risk for the LSC and clients of a procurement system based on fixed fees and ultimately competition is that quality of service and outcomes of some cases may be adversely affected by providers seeking to maximise profits. The LSC will manage this risk by requiring providers to meet quality standards, by monitoring a range of key performance indicators and by taking action where necessary, including terminating contracts.
- A system of fixed fees also requires providers to take a more active approach to managing cases, to ensure that overall amounts paid reflect work done even though individual cases may cost more or less to complete. The LSC proposes to mitigate this risk to a certain extent through the operation of escapes such as remuneration by hourly rates in exceptional cases.

6.2.17 Benefits:

- A system of national fees for all providers will be fairer, more consistent, simpler to administer and understand, and will provide greater certainty and predictability in funding and payment for the LSC and providers.
- Moving to national fees will allow us to re-allocate funds to support the development of CLS services across many harder to reach communities in England and Wales, and provide potentially the best platform for the introduction of managed competition.
- The scheme will allow providers to innovate to improve the efficiency with which they provide their services, thereby increasing their ability to profit from civil legal aid work and ensure a sustainable future.
- The scheme will improve risk sharing between the LSC and providers.
- A separate fee for tolerance work, based on the average costs of those cases will encourage providers undertaking large amounts of tolerance work to obtain contracts in the categories of work covered, which would provide greater levels of quality assurance and therefore improved services to clients.
- Removal of the Level 1 allowance will enable us to focus legal aid on eligible clients and specialist advice. Level 1 funding will be refocused to increase the rates in the welfare benefits and housing categories by an additional £18.72 excluding VAT per case, to ensure that supply is retained in these key categories. It will be open to NfP providers to increase their work for eligible clients to replace work previously conducted under the Level 1 allowance. In addition, ineligible clients will be able to access free information provided by CLS Direct, and other services provided by Government Departments and others, such as Consumer Direct.
- Changes to the rules relating to the application of the statutory charge will make it simpler to administer, and fairer for clients across different categories of work.

6.2.18 This option is therefore recommended.

Harmonisation of Solicitor Legal Aid Rates

Option 1: Do nothing

6.2.19 Costs, disbenefits and risks:

- The current system does not support the DCA Judicial Resources Review recommendation to encourage more cases to start in the FPC by equalising the rates between the county court and the FPC, and may act as a barrier to the effective management of judicial resources.

6.2.20 Benefits:

- There would be no transition costs.
- Stakeholders are already familiar with the current arrangements.

6.2.21 This option is not recommended.

Option 2: Implement all proposals immediately

6.2.22 Costs, disbenefits and risks:

- The cost to the DCA and its partners in the judicial system of introducing these proposals has not been quantified.
- The financial impact on providers will vary depending on the types of work undertaken, and their choice of venue; some will benefit from the change and others may see a decrease in income. However the proposal is intended to support other measures to encourage the use of the FPC. A system which encouraged cases towards the FPC without harmonising the rates would have led to a greater reduction in income for provider. The new rates will be:

	Outside London	London
Preparation	£61	£66
With counsel	£36	£36
Hearing	£63	£66
Travel	£31	£32
Waiting	£31	£32
Letters out	£6	£6
Letters in	£3	£3
Phone calls	£6	£6

- The proposed rates are designed to be cost neutral, and will not therefore impact negatively on the legal aid fund.

6.2.23 Benefits:

- The proposals support the DCA Judicial Resources Review recommendation to encourage more cases to start in the FPC.
- The new fees will be fairer, simpler and easier to administer.
- The scheme will improve the management of judicial resources.

6.2.24 This option is therefore recommended.

Option 3: Phased approach to implementation

6.2.25 Costs, disbenefits and risks:

- The cost to the DCA and its partners in the judicial system of introducing these proposals has not been quantified.
- The financial impact on providers will vary depending on the types of work undertaken, and their choice of venue; some will benefit from the change and others may see a decrease in income.

6.2.26 Benefits:

- Delaying implementation would negate the benefits identified under option 2, as the scheme would be superseded by the introduction of the Family Help - Private scheme.

6.2.27 This option is not recommended.

Unified Contract

Option 1: Do nothing

6.2.28 Costs, disbenefits and risks:

- The current civil and family legal aid contracts expire on 31st March 2007 and would need to be extended in any event.
- LSC and providers would continue to incur transaction costs associated with managing the current contracts for legal aid services.
- The current contracts will not support the implementation of key strategic initiatives including the Carter Review, Preferred Supplier and the CLS Strategy, and the general move to procure services from within a market using best value tendering.
- There would be no incentive for holders of Licence-only contracts to provide Legal Help to their eligible clients.

6.2.29 Benefits:

- Transition costs of extending current contracts without amendment may be lower as stakeholders are already familiar with the contract terms.

6.2.30 This option is not recommended.

Option 2: Implement all proposals immediately

6.2.31 This is not a viable option pending conclusion of discussions on the details of the contract terms with key stakeholders. This option is not therefore recommended.

Option 3: Phased approach to implementation

6.2.32 Costs, disbenefits and risks:

- The combined administrative cost to the LSC of the remaining work to introduce the Unified Contract and the TFF Replacement Scheme is estimated to be £0.5m.
- There will be some cost to providers in familiarising themselves with the new contract, however our aim is to ensure that the contract is easier to understand and provides greater clarity regarding requirements. In any event the changes to Standard Terms to be introduced from 1 April 07 should not substantially affect the day-to-day running of the contract by providers.
- A risk for providers is that we will be moving to contracting on a whole organisation basis, as opposed to issuing contracts by office. Poor performance under the contract, or at peer review, by one or more offices within a multi-office organisation will affect the rating of the whole organisation rather than individual offices.

6.2.33 Benefits:

- The Unified Contract will be easier to understand and provide greater clarity regarding requirements.
- The Unified Contract will support the implementation of key strategic initiatives including the Carter Review, Preferred Supplier and the CLS Strategy, and the general move to procure services from within a market using best value tendering.
- The Unified Contract will enable the LSC to take a holistic view of providers' performance and focus on areas for improvement.

- Requiring current Licence-only contract holders to move to a Controlled and Licensed work contract from 1 April 2007 may encourage them to provide a more holistic service across different levels of service.
- The Unified Contract will make it easier to move to an e-business approach.

6.2.34 This option is therefore recommended.

Preferred Supplier Scheme

Option 1: Do nothing

6.2.35 Costs, disbenefits and risks:

- In the past the DCA and LSC have attempted to ensure that services procured are of sufficient quality and provide value for money through a system of relatively low up front criteria followed by checking and audit. This has high transaction costs for both the LSC and providers, and has not wholly addressed the issue of the poorest performers, whilst alienating and getting in the way of a constructive and effective relationship with the best.
- Peer review data shows that 35% of all providers are currently providing advice and information to clients at Excellence (1) or Competence Plus (2). However, one in five providers do not meet the Threshold Competence standard (3) and is therefore giving clients a substandard service. If the DCA and LSC do not take steps to improve quality the risk will be that clients do not receive the help they need, and the LSC will continue to pay not only for work done well, but also for work done below acceptable quality standards, which may lead to rework and duplication of costs.

6.2.36 Benefits:

- There are no obvious benefits of continuing with the current system, except that there would be no transition costs.

6.2.37 This option is not recommended.

Option 2: Implement all proposals immediately

6.2.38 Costs, disbenefits and risks:

- The anticipated transition costs and risks to quality and adequate supply of such a rapid and large-scale transformation are such that this is not considered to be a viable option.

- There would be less time for providers to prepare, and fewer opportunities for the LSC and providers to learn from the rollout of the process.
- There would be a risk of disrupting to access to services for clients.

6.2.39 Benefits:

- Delivers a full Preferred Supplier provider base at the earliest opportunity.
- Quality of services for clients will improve.
- There may be savings as a result of less rework and duplication of costs because of improvements in quality.
- The LSC will be able to deliver simpler processes, greater devolution of decision-making, more constructive and risk-based performance management, lower transaction costs, improved customer service, better and clearer information to facilitate service delivery and planning and partnership working which is open, innovative and responsive.

However, the three latter benefits are equally applicable to option 3.

6.2.40 This option is not recommended.

Option 3: Phased approach to implementation

6.2.41 Costs, disbenefits and risks:

- The implementation costs for the LSC will depend on the speed and nature of the rollout of Lord Carter's recommendations, which the Preferred Supplier Scheme will support. However, our preliminary modeling suggests that the average cost of file assessment will be in the region of £350 per category of work per provider, with an average peer review costing of £1600 (including representations) per category of work per provider.
- There is no evidence to suggest that increasing quality will result in higher costs. There is no evidence to suggest that work at Competence Plus or above is more expensive than work at Threshold Competence. Preliminary data based on a small sample of peer reviews conducted in 2005/6 is attached at **Appendix D**.
- Providers will incur some costs in preparing for and undergoing the assessment process, which would need to be offset against projected reductions in transaction costs once Preferred Supplier status has been obtained.

- The risk of taking a phased approach is that some services will continue to be provided at below Competence level. The LSC will manage this risk by monitoring a range of key performance indicators and by taking action where necessary, including terminating contracts.

6.2.42 Benefits:

- Quality of services for clients will improve.
- There may be savings as a result of less rework and duplication of costs because of improvements in quality.
- It provides a clear link to the Unified Contract, identifies good performance and encourages high performing organisations to move to the Preferred Supplier scheme first.
- It allows high performing organisations to gain the benefits of Preferred Supplier status at an earlier point, bringing forward the transaction savings associated with increased e-business, simplified business processes and devolved powers.
- It provides a level playing field based on objective measures of performance and does not exclude any provider arbitrarily on the basis of size.
- It provides a clear map of how an organisation will be working with the LSC in the future and allows lead-in time in preparation for the future method of working, which will include fully electronic processes, an electronic case management system and devolved powers.
- It supports the implementation of Lord Carter's proposals through ensuring that services provided are of sufficient quality.
- It allocates a relationship manager to work with the provider to help prepare for the quality assessment, electronic working etc.
- It allows time for providers to prepare for the quality assessment process, and to innovate to improve the efficiency with which they provide their services, thereby increasing their ability to profit from legal aid work and ensure a sustainable future.
- Taking a phased approach will also enable us to learn from and refine the process between stages, and to ensure that clients continue to have access to services with a minimum of disruption.
- The LSC will be able to deliver simpler processes, greater devolution of decision-making, more constructive and risk-based performance management, lower transaction costs, improved

customer service, better and clearer information to facilitate service delivery and planning and partnership working which is open, innovative and responsive.

- Enables the LSC to reduce its own transaction costs through a more risk-based approach to performance management.

6.2.43 This option is therefore recommended.

6.3 Summary of recommendations

6.3.1 Our preliminary recommendations on the basis of an analysis of costs, disbenefits, risks and benefits are to take a phased approach to implementation (option 3) for all proposals except the harmonisation of solicitor legal aid rates in the FPC and County Court, where immediate implementation from April 2007 is recommended (option 2). However, before a final recommendation may be made it is important to assess the impact of the recommended options on equity and fairness, small firms and competition. These are considered in the following sections.

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

7.1 Our Duties:

Race Equality

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

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

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

Disability Equality

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

7.1.4 When carrying out our functions, the DCA and LSC must have due regard to the duties placed upon us by the Disability Discrimination Act 2005. These are to:

- promote equality of opportunity between disabled people and other people;
- eliminate discrimination that is unlawful under the Disability Discrimination Act;
- eliminate harassment of disabled people that is related to their disabilities;
- promote positive attitudes towards disabled people;
- encourage participation by disabled people in public life; and
- take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.

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

Gender Equality

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

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

This general duty will come into effect on 6th April 2007.

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

Rural Proofing

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

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

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

7.2 Current Position

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

7.2.2 Research conducted by the Legal Services Research Centre (“LSRC”) in 2006, to be published in a forthcoming report has provided information on the ethnicity, gender, age and disability profile of providers of legal aid services, their employees and their clients based on the results of diversity monitoring forms completed by 44.7% of providers with legal aid contracts, and data from the LSC corporate information system. In early 2007 the LSC will also publish its 4th Equality Annual Report, which provides information on a number of areas including numbers of clients assisted in different groups. Headline data from both reports is set out below, together with other data collated for this impact assessment.

7.2.3 Clients of legal aid services

Magistrates Court Scheme

- We are not able to provide data showing matters completed for different client groups at this stage.

TFF Replacement Scheme

- We are able to provide data showing the number of Legal Help matters completed by ethnicity of the legal aid client and category of law. The figures do not include the 48,062 (6.4%) of matters where the ethnicity of the applicant was unknown. Family, mental health and immigration cases are outside the scope of the TFF

Replacement Scheme but are included here to provide additional context:

Legal Help matters completed by category of law and ethnicity of client

Categories of law	White %	BME %	Total
	2005/06	2005/06	2005/06
Actions against the police	69.9	30.1	3,730
Clinical negligence	87.8	12.2	3,146
Community Care	53.0	47.0	3,319
Consumer	81.0	19.0	3,634
Debt	85.3	14.7	62,702
Education	67.3	32.7	2,511
Employment	74.0	26.0	9,704
Family	87.7	12.3	259,247
Housing	68.8	31.2	85,420
Immigration – asylum	8.8	91.2	98,936
Immigration – non asylum	9.8	90.2	43,928
Mental Health	74.2	25.8	31,862
Personal Injury	85.1	14.9	3,287
Public law	64.4	35.6	1,410
Welfare benefits	72.5	27.5	76,899
Miscellaneous	89.4	10.6	8,727
TOTAL	66.2	33.7	698,462

Legal Help matters completed by region and ethnicity of client⁵

- The table below shows the regional variations in Legal Help matters completed for white and BME clients.

⁵ This table discounts 46,018 or 6.6% of legal help matters completed where the ethnicity of the legal aid client was not known.

Region	White %	BME %	Total
	2005/06	2005/06	2005/06
Birmingham	65.7	34.3	62,839
Brighton	82.9	17.1	28,904
Bristol	88.9	11.1	51,864
Cambridge	78.3	21.7	46,890
Cardiff	90.8	9.2	43,405
Leeds	75.6	24.4	61,418
Liverpool	87.3	12.7	33,736
London	26.1	73.9	175,482
Manchester	76.2	23.8	68,990
Newcastle	85.3	15.6	48,902
Nottingham	79.2	20.8	46,985
Reading	77.2	22.8	29,047
TOTAL	66.2	33.8	698,462

- From the LSRC survey, there appears to be a strong relationship between ethnicity of managerial control and client ethnicity - 30.1% of civil BME clients were assisted by BME majority managed providers. 93.3% of civil white British clients were assisted by white British managed providers. The percentage of BME clients using BME providers was however considerably lower for NfPs than for solicitors.
- The LSC has analysed current average costs for civil work within the scope of the TFF Replacement Scheme for different client groups. This analysis suggests that the following client groups are most likely to have higher cost cases: Mixed White Asian (by 46%), Indian (by 34%), Mixed White Black African (by 27%), Pakistani (by 25%) and White Irish (23%). However, stronger indicators for whether cases are likely to be higher cost are geographical location of provider (cases in London are 53% more likely to be higher cost, across different client groups) and whether disbursements are incurred (where incurred, cases are 259% more likely to be higher cost).

Legal Help matters completed by category of law and disability status of client

- The table below shows percentages of Legal Help matters completed for disabled and not disabled clients in 2004/5.

Category of law	Disabled %	Not disabled %	Unknown %	Total number
Actions against the police	9.0	52.2	38.8	4,198
Community care	33.7	40.2	26.1	3,683
Consumer	12.4	48.4	39.2	4,096
Debt	18.4	61.0	20.6	64,875
Education	9.8	60.0	30.3	2,723
Employment	7.6	67.3	25.1	10,186
Housing	13.4	54.5	32.2	92,108
Immigration asylum	0.9	70.1	29.0	104,141
Immigration other	2.7	72.8	24.5	44,917
Family	3.8	58.7	37.5	281,571
Clinical negligence	18.9	32.8	48.3	3,386
Mental health	24.4	48.0	27.6	34,110
Miscellaneous	9.2	54.7	36.2	9,703
Personal injury	8.3	50.5	41.2	3,600
Public law	13.5	52.8	33.7	1,569
Welfare benefits	49.9	31.1	19.0	79,614
TOTAL	12.1	57.1	30.8	744,480
TOTAL 2004/05	11.2	57.6	31.2	722,686

- The LSC has analysed current average costs for civil work within the scope of the TFF Replacement Scheme for different client groups. This indicates that disabled clients are significantly more likely to have costs in excess of £1000.

7.2.4 Providers of legal aid services

- 11.2% of solicitors' offices with legal aid contracts had BME majority managerial control (9.2% of offices with a civil contract and 11.8% with a criminal contract). 9.1% of NfPs with civil specialist level contracts have BME majority managerial control. This varies by region, with far higher rates of BME majority managerial control in London, and West Midlands.
- The proportion of providers with majority-disabled control is very low. 2.4% of NfPs with a civil specialist contract have majority disabled managerial control. 0.7% of solicitor offices with a contract (crime or civil) have majority disabled managerial control (7 offices in the sample).
- 17.4% of offices with a civil contract have female majority managerial control. 49.7% of NfPs with civil contracts have female majority managerial control. There is less regional variation in respect of gender.

7.2.5 Staff employed by legal aid providers, and volunteers

- According to the LSRC 2006 survey, 16% of solicitor fee earners working within solicitors' firms holding criminal legal aid contracts were BME (905 solicitors out of a total of 5,673 covered by the survey). It is not possible however to determine how many of those solicitors were working on legal aid cases, as opposed to privately funded ones. 59.1% of the offices undertaking criminal legal aid work contained no BME solicitors. 8.5% of the offices contained no white solicitor fee earners. A majority of offices with BME majority managerial control contained a majority of BME employees.
- According to the LSRC 2006 survey, 13% of solicitor fee earners working within solicitors' firms holding civil legal aid contracts were BME (1050 solicitors out of a total 8,093 covered by the survey). It is not possible however to determine how many of those solicitors were working on legal aid cases, as opposed to privately funded ones. 63% of the offices undertaking civil legal aid work contained no BME solicitors. 6.8% of the offices contained no white solicitor fee earners. A majority of offices with BME majority managerial control contained a majority of BME employees.
- According to the LSRC 2006 survey, 19.5% of paid employees working within not for profit providers holding civil legal aid contracts were BME (757 out of a total of 3,878 covered by the survey). It is not possible however to determine how many of those employees were working on legal aid cases, as opposed to cases funded from other sources. 47.1% of the organisations undertaking civil legal aid work contained no BME paid employees. 2.3% of the organisations contained no white paid employees. 242 NfP

organisations covered by the survey with civil legal aid contracts had volunteers. Of these, 92 (38.0%) contained no BME volunteers and 17 (7.0%) contained no white volunteers. The 242 NfPs holding contracts contained 4,582 volunteers – an average of 18.9 per organisation. Of these volunteers 705 (15.5%) were BME.

- 3% of solicitors and 22.4% of not for profit providers covered by the survey reported one or more solicitors or paid employees long term ill or disabled.
- Females make up the majority of paid employees and volunteers in NfPs (74.9%) compared to 47.5% of solicitor fee earners.

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

Legal Aid Reform: the Way Ahead

7.3.1 Preliminary assessment

- The DCA and LSC's preliminary assessment of the impact of the Magistrates' Court Scheme was that:
 - (i) The proposals will improve the quality of services provided to clients, through the use of Peer Review. Firms will be required to deliver appropriate services to BME clients and communities. The DCA and LSC will ensure that there is an adequate supply of services to clients in rural areas. Whilst it is possible some very small providers may leave the criminal legal aid market, the DCA and LSC will ensure that adequate coverage remains in all communities.
 - (ii) Chapter 5 of Lord Carter's Report contained information on the potential impact of all the proposed fixed fees arrangements (not just magistrates' court fees) being introduced in line with the recommendations. On the basis of a set of assumptions it showed the potential increase in profits which could be achieved by firms of varying sizes:

On the assumption firms can achieve a 5% reduction in time per case, the following % increase in profits were projected:

- sole practitioner: 9%
- 11 fee earners, 1 equity partner: 33%
- 47 fee earner, 3 equity partners: 38%

On the alternative assumption that firms can make a 5% saving on overheads and non-fee earner costs, the following profit increases were projected:

- sole practitioner: 3%
 - 4 fee earners, 1 equity partner: 9%
 - 47 fee earners, 3 equity partners: 13%.
- The DCA and LSC's preliminary assessment of the impact of the Tailored Fixed Fees Replacement Scheme, Harmonisation of Solicitor Legal Aid Rates and Unified Contract was that:
 - (i) We believed our proposals would be beneficial to clients of legal aid services. In particular the proposal to pay for disbursements separately under the TFF Replacement Scheme will encourage providers to use expert services where necessary, for example to assist clients with disabilities. The DCA and LSC believed their proposals would maintain and even increase access to publicly funded services for most clients in rural areas at no additional costs to themselves. Providers would be required to deliver appropriate services to BME clients and communities. Whilst it was possible that some providers with smaller legal aid contracts might leave the legal aid market, the LSC would manage the transition to ensure that adequate coverage is provided in all communities.
 - (ii) We accepted that proposals to introduce a minimum contract size would impact on a greater proportion of BME majority managed providers, who tended to have smaller legal aid contracts. However we considered that this would be mitigated by transitional support to be given to providers.
 - (iii) We modelled the impact of introducing the TFF Replacement Scheme for both solicitors and NfPs and concluded that if the national rates proposed were introduced, roughly equal proportions of solicitor providers would increase and decrease their legal aid income. This varied by region, and given the higher historical average costs in London, moving to a national rate would result in a greater proportion of providers in the London region decreasing their income. As there is a higher proportion of BME owned providers and clients in London, the BME group would be impacted to a higher degree if providers did not take other steps, for example increasing numbers of cases and/or improving efficiency.
 - (iv) Applying the same fee regime to solicitors and NfPs would have a significant impact on NfP providers, with 92% experiencing significant decreases in legal aid income and the total spend with the NfP sector decreasing by 50% (£21million pa). We proposed to mitigate this through transitional arrangements.

- (v) The impact of harmonising solicitor rates for private law family work will be short term only (6 months) and was not therefore been modelled.

7.3.2 Summary of responses to RIA and other diversity issues raised

- The majority of respondents commenting on the draft impact assessment or raising issues relating to diversity focussed primarily on proposals to introduce minimum contract sizes, with many considering that such a requirement may have the effect of reducing the number of small providers able to compete successfully for contracts, and thus may indirectly disadvantage BME and female majority managed providers, which are more likely to have lower legal aid incomes. Some suggested that this would lead to BME providers withdrawing from legal aid work and that this could result in a denial of access to justice for some communities. It was argued by others, however, that as long as service coverage remained complete a special provision for BME providers should not be an overarching concern, as the aim should be, and currently was, that all providers provide a high standard of service to all clients. There were also concerns about the possible impact on the BME Bar since, it was argued, there is a connection and interdependence between BME solicitors and BME barristers.
- The Black Solicitors Network and others also pointed out that BME firms do not only represent clients but are important mentors and employers within the communities they serve, and their removal will have a negative impact on BME practitioners and students.
- The Disability Rights Commission, the Discrimination Law Association and others raised particular concerns in relation to access to justice for disabled clients, who may not be able to travel to see advisors, and whose cases may take longer to complete, for example where the client has learning difficulties. The DRC and others also identified a possible negative effect of reducing rates for tolerance work, since they believed a number of discrimination cases to be handled under tolerance, particularly Disability Discrimination Act claims. Even where discrimination advice is provided outside tolerance, it was argued that the proposed category rates (for example in employment law) are too low for discrimination matters, which are more complex, and for discrimination clients, who often require disproportionate amounts of time from their advisor because of disabilities.
- Many respondents, particularly from the NfP sector, expressed concerns about the impact of the proposed fees changes on not for profit agencies, and the lack of time NfPs would have to adjust to working on a fixed fee basis compared to civil solicitors, who have benefited from the experience of working under the current Tailored Fixed Fees Scheme.

- Concerns were also raised regarding the impact of proposals on rural providers and clients. Key issues raised included the likelihood that rural providers currently undertake low volumes of legal aid work, potentially excluding them from future legal aid contracts if minimum volumes are introduced; higher travel costs, and an inability to manage fixed fees on a “swings and roundabouts” principle because so few cases are undertaken. Many respondents argued that the proposals had been based on an “urban” model that did not reflect the realities of legal practice in remote rural communities. Concerns were also raised about rural clients’ ability to access justice if fewer rural firms provide legal aid services in future, particularly where clients were less mobile because of disability or illness, and/or where public transport links were poor. CLS Direct was not seen as a viable alternative for complex matters, or vulnerable clients, for example those with learning difficulties.

7.3.3 Amendments to proposals, further analysis of impact and assessment of equity and fairness for Legal Aid Reform: the Way Ahead

Minimum contract size

- The DCA and LSC accept that issues of access and impact need to be considered carefully before a minimum contract size is introduced. The DCA and LSC will therefore include a power to introduce a minimum contract size in the Standard Terms for the Unified Contract, but there will be no minimum introduced from April 2007.

Calculation of TFF fees to include NfP data

- The fees under the TFF Replacement Scheme have been recalculated on the basis of a composite of NfP and Solicitor provider costs, and the implementation of the scheme has been deferred by six months to October 2007 to allow all providers to prepare for the transition. 190 of 427 NfP providers were already operating in 05/06 at a level that would have increased their income under this fee scheme. Only 0.7% of NfPs would see a decrease of more than 33% in their income if they do not take other steps for example increasing the numbers of cases undertaken and/or improving efficiency. The DCA and LSC consider that this will address concerns raised by the NfP sector regarding the impact of excluding their costs data in calculating the fees.

Tolerance work

- There will be a separate fee for tolerance work, based on the average costs of those cases rather than the original proposal of

15% below the category fee. The DCA and LSC considers that this will answer some of the concerns raised by the DRC and others regarding the impact of the TFF Replacement Scheme on work done under tolerance. The DCA and LSC do not accept that advising on discrimination law is necessarily more complex than other matters within specific categories of work, for example Employment. In any event, providers will be expected to take a “swings and roundabouts” approach to the new fee scheme, to balance out costs of cases across their total caseload. The escape for exceptional cases costing three times or more the fixed fee will ensure that any cases that are significantly more expensive will be remunerated outside the fixed fee scheme. In addition, the move to paying disbursements in addition to the fixed fee will ensure that this significant costs driver does not impact on providers or clients.

Rural services

Magistrates’ Court Scheme

- The DCA and LSC have taken into account the arguments put forward that some rural and remote providers would be disadvantaged by the Magistrates’ Court Scheme proposals, in particular to incorporate an element of travel and waiting in the standard fee. Consequently, the new magistrates’ courts fees will initially only be introduced in the main urban areas from April 2007 to allow DCA and LSC to gain a better understanding of the costs drivers for travel and waiting outside these urban areas.

TFF Replacement Scheme

- Current average costs show no significant difference in costs per case in the civil categories of work covered by the TFF Replacement Scheme between those in urban and rural areas. Where these differences do occur, they are slightly more marked for NfPs than for solicitors, and suggest that the cost of cases is higher in urban areas.

The only marked difference in the profile of clients served between rural and urban providers of civil legal services was the higher number of ethnic minority clients served by urban providers.

There is no noticeable difference in the types of cases undertaken by rural and urban providers, or in the relative costs of differing case types, when defined by matter type, end point and outcome.

More tolerance work is conducted in rural areas than in urban areas. The difference in costs between tolerance and non-tolerance work varies, in terms of both magnitude and direction, across categories.

The LSC has analysed average distances clients need to travel to the nearest provider's office, by category of law for different ethnic groups nationally, and within Wales only. We have also analysed average distances travelled across all client groups, by region. The data is summarised in tables in **Appendix E**. Key findings include:

- (i) The highest average distances travelled are within the Public Law and Clinical Negligence categories.
 - (ii) Clients who need welfare benefits advice travel the shortest distance with an average of 3.38 miles whereas clients who need Public Law advice may have to travel up to an average distance of 34.30 miles.
 - (iii) Average distance travelled by client ethnicity ranges from 2.86 miles for Asian or Asian British Bangladeshi to 9.29 miles for Mixed White & Asian, across all categories and regions.
 - (iv) In Wales, clients who need Welfare Benefit Law advice travel an average distance of 4.28 miles whereas clients who need Public Law advice may have to travel up to an average distance of 38.73 miles. An Asian or Asian Bangladeshi client who requires legal advice travels an average of 2.87 miles whereas a White Irish client may need to travel an average distance of 10.76 miles.
 - (v) On average, clients in the London region travel the shortest distance at 3.88 miles whereas clients from the South East region travel the most distance at 7.39 miles.
- The DCA and LSC therefore believe that moving to national rates for civil work under the TFF Replacement Scheme will not impact differentially on rural services.

Further analysis of rural and urban costs of civil cases is set out in **Appendix F**.

Supplier Diversity Reference Group and Equality and Diversity Annex

- In addition, the DCA and LSC will take a number of steps to ensure that diversity issues are addressed in the development of future proposals. The LSC will expand its internal resource and expertise in this area so that it can monitor, assess and promote diversity in providers. The LSC has set up a Supplier Diversity Reference Group that includes a wide range of representative and practitioner based groups, including the Commission for Racial Equality, Bar Council and Law Society. The aim of the reference group is to help, advise and act as a critical friend to the LSC as it develops its vision and strategy for the promotion of diversity in all its forms

amongst the providers and clients of legally aided services and in meeting its statutory duties by setting up a diversity reference group to inform the LSC's vision and strategy for diversity.

- The draft Unified Contract includes a proposed Equality and Diversity Annex setting out specific requirements for contractors.

7.3.4 Further analysis of impact of Magistrates' Court Scheme for different groups

The revised scheme will only apply initially in the main urban areas and will not therefore impact on rural communities.

The impact of the changes is deliberately higher in London (16%) as travel costs reported by London firms are much higher than the rest of the country and we believe there is even greater scope for improvement in efficiency. For this reason, rather than redistribute an element of travel payments between national and London rates in proportion to the existing value of claims they were reallocated by volume of cases.

However, because the scheme applies in urban areas, some of which have higher proportions of BME majority owned providers and BME clients, the proposals may have an impact on the BME group.

Clients

We believe the proposals will be beneficial to clients in the magistrates' court, as they will help ensure a sustainable legal aid scheme where providers are encouraged to be efficient. The LSC has recently introduced monitoring of the ethnicity, gender and disability of clients in the magistrates' court and will monitor the impact of the revised scheme post implementation.

Providers

The affect of the proposals was considered by ethnicity of the majority ownership of the firms in the urban areas. Because of the small number of BME majority managed firms outside London and the West Midlands regions, we have focused on data for these two areas.

- **London CJS Area:** Data was held on 159 firms (34% of firms affected). 78 (49%) were white majority managed, 62 (39%) were BME majority managed, and 19 (12%) were split. A statistically significant difference was found in the impact in financial terms between white and BME majority managed firms. If firms made no adjustments to their working practices, then on previous caseloads, white majority managed firms will have their legal aid income reduced by an average of £26,100, compared to £14,800 for BME majority managed firms. However, in percentage terms the impact

was greater on BME majority managed firms, who saw an average negative impact of 19%, compared to a 17% impact for white majority managed firms.

- **West Midlands CJS Area:** Data was held on 77 firms (48% of firms affected). 51 were white majority managed, 22 were BME majority managed and 4 split. Again, only a very small number of firms could be matched with the LSRC data, and the results should be treated with caution. Again, however, a significant difference was found, with white majority managed firms experiencing an average decrease of £4,400 (4%), and BME majority managed firms an average decrease of £10,700 (10%).

Due to the very small number of firms that could be matched with ethnicity data in the other urban areas further analysis could not be undertaken.

The impact on firms by gender and disability of management is not anticipated to be statistically significant.

Impact on staff employed by legal aid providers

- We anticipate that the fees scheme will also have an impact on staff employed by legal aid providers.
- From the information gathered for the LSRC 2006 Survey it would appear that BME majority managed providers are significantly more likely to contain a majority of BME staff, and therefore impacts on BME providers are likely to have an impact on BME staff. This will vary depending on whether they are employed by a provider that would have been paid increased or decreased amounts on their 2005/6 caseloads. A proportion of BME staff also work for white majority managed organisations, and the impacts on them will vary similarly depending on the outcome for the employing organisation.

7.3.5 Further analysis of impact of TFF Replacement scheme for different groups

Client Ethnicity

Nationally, around 50% of clients of BME origin were served by providers who would have been paid increased amounts based on their 2005/6 caseloads under the new scheme, and therefore 50% were served by providers that would have earned less. This compares to 32% of white clients served by providers who would have been paid decreased amounts, and 68% served by providers who would have earned more.

Ethnicity	BME	Unknown	White
Current number served	65,449	15,040	197,285
Number served by providers with 05/06 increase	32,480	9,586	133,020
% with 05/06 decrease	50.37%	36.26%	32.57%

- A key reason for this differential is the impact of national fees on London providers, who have higher costs on average in most (but not all) categories and serve a higher proportion of BME clients than the regions. However, cases involving BME clients in the main social welfare categories (debt, welfare benefits and housing) in London are no more expensive than those involving clients of white origin in London.
- Lowering the threshold for exceptional cases from 4 to 3 times the fixed fee will make it easier for London cases to escape the fixed fee. As a transitional measure, we will also continue to allow the London uplift to the hourly rates for exceptional cases. Moving to national fees may encourage the growth of supply across the country, rather than concentrating supply in London. It will also encourage London providers to become more efficient, and to prepare for future competition. In addition, the move to paying disbursements in addition to the fixed fee will ensure that this significant costs driver does not impact on providers or clients.

Client Gender

The impact is the same across genders, as shown below.

Gender	Male	Female
Current number served	121,439	156,335
Number served by providers with 05/06 increase	77,069	98,017
% with 05/06 decrease	36.54%	37.30%

Client Disability

Although a slightly higher percentage of disabled than able-bodied clients are served by providers whose income may decrease, the difference is not significant, as shown below:

Disability	Yes	No	Unknown
Current number served	68,753	136,885	72,136
Number served by providers with 05/06 increase	40,469	85,869	48,748
% with 05/06 decrease	41.14%	37.27%	32.42%

Paying for disbursements separately under the TFF Replacement Scheme will encourage providers to use expert services where necessary, for example to assist clients with disabilities. Disbursements

are a key costs driver across all categories of work, increasing average costs by 40-150%.

In addition, lowering the threshold for escape for exceptional cases from four times the fixed to three will ensure that disabled clients with high cost cases are not impacted by the new scheme, as these cases will continue to be paid at hourly rates.

Urban/Rural

Current average costs show no significant difference in costs per case in the civil categories of work covered between those in urban and rural areas, with the exception of welfare benefits conducted by NFPs. A detailed analysis can be found in **Appendix F**.

The impacts of the new scheme are fairly evenly split between rural and urban areas, as shown below:

Rural/Urban	Current No. of providers	No. of providers with increase	% with decrease
Rural	363	242	33.33%
Urban	2,256	1,369	39.32%

Wales

In the majority of categories, moving to national rates as set out for the TFF Replacement Scheme represents an increase on the fees previously proposed, as set out below:

Work Category	TFF Replacement Scheme – Proposed Wales Regional Fees (Published July 2006)	TFF Replacement Scheme – Proposed National Fees (Published July 2006)	TFF Replacement Scheme – Final National Fees (Published Nov 2006)
AAP	£138	£239	£261
CLIN. NEG. /MED	£244	£219	£213
COM	£420	£292	£290
CON	£128	£156	£174
DEB	£126	£127	£196
EDU	£204	£293	£296
EMP	£113	£229	£225
HOU	£141	£163	£171
HOMELESS	£162	£188	
MSC	£79	£88	£86
PI	£166	£210	£204
PUB	£200	£284	£282
WB	£127	£143	£164

In addition, lowering the threshold for exceptional cases from four to three times the fee will make it easier to escape the fixed fee.

Impact on different provider groups

The table below shows the number of providers nationally, whose fees would have increased or decreased following the implementation of TFF Replacement Scheme⁶. Since information on ethnicity is provided on a voluntary basis, the table below is based on a sample of only 1113 providers nationally. These include 987 (88.7%) White British, 80 (7.2%) BME and 46 (4.1%) Split managerial controlled providers.

	Ethnicity of majority managerial control			Total
	White British	BME	Split	
Number & % of providers whose fees would have decreased	309	46	19	374
	82.6%	12.3%	5.1%	100.0%
Number & % of providers whose fees would have increased	678	34	27	739
	91.7%	4.6%	3.7%	100.0%
Total	987	80	46	1113
	88.7%	7.2%	4.1%	100.0%

- The number of providers whose fees would have increased is made up of 678 White British, 34 BME and 27 Split managerial controlled providers.
- The number of providers whose fees would have decreased is made up of 309 White British, 46 BME and 19 Split managerial controlled providers.
- Out of the total 1113 providers, 739 (66.4%) of them would have their fees increased.
- Out of 987 White British providers in the data, 678 (68.7%) of them would have their fees increased.
- Out of 80 BME providers, 34 (42.5%) of them would have their fees increased.
- Out of 46 Split providers, 27 (58.7%) of them would have their fees increased.

⁶ Conducting a simple chi-squared test on the 3X2 table above indicated that there were highly significant differences in ethnicity of majority managerial control between winners and losers; $\chi^2_2 = 24.03$, $p < 0.001$. There were higher percentages of BME and split firms that lost, proportionally.

Impact on staff employed by legal aid providers

- We anticipate that the fees scheme will also have an impact on staff employed by legal aid providers.
- From the information gathered for the LSRC 2006 Survey it would appear that BME majority managed providers are significantly more likely to contain a majority of BME staff, and therefore impacts on BME providers are likely to have an impact on BME staff. This will vary depending on whether they are employed by a provider that would have been paid increased or decreased amounts on their 2005/6 caseloads. A proportion of BME staff also work for White majority managed organisations, and the impacts on them will vary similarly depending on the outcome for the employing organisation.

7.3.6 Revised assessment of equity and fairness

- The DCA and LSC's final assessment of the impact of the Magistrates' Court Scheme is that:

Clients

- We believe the proposals will be beneficial to clients in the magistrates' court, as they will help ensure a sustainable legal aid scheme where providers are encouraged to be efficient. The LSC has recently introduced monitoring of the ethnicity, gender and disability of clients in the magistrates' court and will monitor the impact of the revised scheme post implementation.

Providers

- Because the scheme applies in urban areas, some of which have higher proportions of BME majority owned providers and BME clients, the proposals may have an impact on the BME group. Our analysis of data from the London and West Midlands' regions, which have higher proportions of BME majority management, indicates a differential impact on BME firms compared to white majority managed firms. However, given the small size of the data sample this finding should be treated with caution.

Staff employed by legal aid providers

- We anticipate that the fees scheme will also have an impact on staff employed by legal aid providers. From the information gathered for the LSRC 2006 Survey it would appear that BME majority managed providers are significantly more likely to contain a majority of BME staff, and therefore impacts on BME providers are likely to have an impact on BME staff. This will vary depending on whether they are employed by a provider that would have been

paid increased or decreased amounts on their 2005/6 caseloads. A proportion of BME staff also work for White majority managed organisations, and the impacts on them will vary similarly depending on the outcome for the employing organisation.

Rural impact

The revised scheme will only apply initially in the main urban areas and will not therefore impact on rural communities.

- The DCA and LSC's final assessment of the impact of the Tailored Fixed Fees Replacement Scheme, Harmonisation of Solicitor Legal Aid Rates and Unified Contract is:

Clients

- We believe our proposals will be beneficial to clients of legal aid services. In particular the proposal to pay for disbursements separately under the TFF Replacement Scheme will encourage providers to use expert services where necessary, for example to assist clients with disabilities. Refocusing Level 1 funding will allow us to increase the rates in the welfare benefits and housing categories by an additional £18.72 excluding VAT per case, and will ensure that supply is retained in these key categories. Changes to the rules relating to the statutory charge will make it simpler to administer, and fairer to clients across different categories of work. Paying a separate fee for tolerance work will encourage providers to obtain contracts in the categories of work covered, which would provide greater levels of quality assurance and therefore improved services to clients. Requiring Licence-only contract holders to move to a Controlled and Licensed Work contract from 1 April 2007 may also encourage providers to deliver a more holistic service across different levels of service.
- On overall figures there is a differential under the TFF Replacement Scheme between clients of BME origin served by providers who would have earned less based on their 05/06 caseloads, compared to clients of white origin. However, it is important to understand the background to this national figure. A key reason for this differential is the impact of national fees on London providers, whose costs for clients are higher on average in many (but not all) categories, and who serve a higher proportion of BME clients than the regions. However, within London itself the distribution of case costs for white and BME clients in the three main social welfare categories (debt, welfare benefits and housing) are almost identical, as are the average costs. This shows that cases involving BME clients in those categories in London are no more expensive than those involving clients of white origin. Lowering the threshold for exceptional cases from 4 to 3 times the fixed fee will make it easier for London cases to escape the fixed

fee. As a transitional measure, we will also continue to allow the London uplift to the hourly rates for exceptional cases. Moving to national fees may encourage the growth of supply across the country, rather than concentrating supply in London. It will also encourage London providers to become more efficient, and to prepare for future competition. In addition, the move to paying disbursements in addition to the fixed fee will ensure that this significant costs driver does not impact on providers or clients.

- Although a slightly higher percentage of disabled than able-bodied clients are served by providers whose income may decrease, the difference is not significant. Paying for disbursements separately under the TFF Replacement Scheme will encourage providers to use expert services where necessary, for example to assist clients with disabilities. Disbursements are a key costs driver across all categories of work, increasing average costs by 40-150%. In addition, lowering the threshold for escape for exceptional cases from four times the fixed to three will ensure that disabled clients with high cost cases are not impacted by the new scheme.
- The impact of the TFF Replacement Scheme is even across different client genders.

Providers

- We believe our proposals will be beneficial to providers of legal aid services. In particular a system of national fees for all providers will be fairer, more consistent, simpler to administer and understand, and will provide greater certainty and predictability in funding and payment for the LSC and providers. Moving to national fees will allow us to re-allocate funds to support the development of CLS services across many harder to reach communities in England and Wales, and provide potentially the best platform for the introduction of managed competition. The scheme will allow providers to innovate to improve the efficiency with which they provide their services, thereby increasing their ability to profit from civil legal aid work and ensure a sustainable future. The scheme will improve risk sharing between the LSC and providers.
- We do however accept that there is likely to be a differential impact on BME majority managed providers. This is a reflection of the fact that there are more BME providers in London. The potential impact has been measured based on 2005/6 caseload. Inevitably caseloads will vary to some degree from year to year, and organisations will adapt to the new scheme. This means that the fact that a provider would have been paid less had this scheme existed in 2005/6 does not necessarily mean they will be paid less next year. As set out above, we have introduced a number of measures including lowering the threshold for exceptional cases to mitigate this differential to a certain extent.

- Creating a London rate would effectively require the lowering of the fee rates in the rest of the country in order to benefit all London providers, including the 32% that currently operate within the fees, despite the fact that fewer concerns have been raised regarding availability of supply in London than in the regions. Delaying the implementation of the scheme until October 2007 will also give providers more time to improve their efficiency prior to its introduction.
- It is also important to note that, at around £30m, the expenditure on the work covered by the TFF Replacement Scheme for solicitors represents less than 5% of their overall fee income for civil legal aid – and any impact on providers needs to be seen in that light. For the NfP sector, we will be setting their payments at the start of the year at a level that will give them the opportunity to earn the same money as last year – for example by increasing their caseload.

Rural impact

The impacts of the new scheme are evenly split between rural and urban areas.

Conclusion

Although the DCA and LSC accept that the TFF Replacement Scheme will impact on different groups in the ways set out above, we believe that the benefits to stakeholders, particularly clients, outweigh the disbenefits. The DCA and LSC will monitor and evaluate the impact of the proposals post implementation and report on findings in accordance with our statutory duties and the LSC Equality Scheme. As part of this review, we will also be considering special measures from October 07 (such as focusing the use of funded outreach) to encourage access for potentially disadvantaged groups.

Quality Relationships Delivering Quality Outcomes (The Preferred Supplier Scheme)

7.3.7 Preliminary assessment

- Our preliminary assessment of the impact of the proposals on access to legally aid services by different client groups was that they would have the potential to improve the quality of services provided, through the use of Peer Review and File Assessment, and the efficiency of services delivered through simplified processes and a greater range of devolved powers.
- Our preliminary assessment of the impact of the proposals on different provider groups was that BME and female majority managed providers were more likely to have smaller average

values of legal aid work, which may have meant that they would be lower priorities for assessment if applications were prioritised on the basis of contract size. However, it could equally be argued that such providers would be able to benefit from any changes made to our approach as a result of our experience of implementing the scheme and would have more time to reach the required quality standard. The DCA and LSC also suggested that it would be open to providers to expand, and/or form consortia to ensure that their applications received higher priority.

- The DCA and LSC noted LSRC findings that BME majority managed providers were more likely to receive a category 3 civil costs compliance audit rating and thus would be potentially less likely to satisfy the proposed requirement that providers attain a rating of 1 or 2 for CCA. The DCA and LSC committed to model the potential impact further should this requirement be retained.
- The DCA and LSC also noted that on a review of data available at the time of the assessment (March 2006) BME majority managed firms were also significantly more likely to achieve a rating of 3 or below at Peer Review and thus would be potentially less likely to satisfy the proposed requirement that providers attain a rating of 1 or 2 for Peer Review. The DCA and LSC committed to take steps to “equality proof” the Peer Review process to ensure that the assessment is fair and transparent, including monitoring and reporting on outcomes (see section 7.3.9 below for further information).
- Our draft assessment of the impact of the proposals on access for clients in rural areas to legally aided services was that access would be maintained, and in some cases improved, at no additional expense to them through a combination of measures including the introduction of consortia, the development of new service delivery mechanisms such as Community Legal Service Direct, and the use of Community Legal Advice Centres and Community Legal Advice Networks.
- The DCA and LSC noted that it was not possible to identify whether the impact on providers based in rural areas or delivering services to clients in rural communities would be significant.

7.3.8 Summary of responses to RIA and other diversity issues raised

A relatively small number of respondents commented specifically on the draft impact assessment, or raised issues relating to diversity. Key issues and concerns were as follows:

- Attaining Preferred Supplier status was seen as potentially conferring significant commercial advantage to providers, and there was concern that the application process should be as open and

transparent as possible. In particular, some respondents were concerned that proposals to prioritise applications on the basis of contract size would potentially exclude smaller providers, potentially impacting on BME and female majority owned providers, rural providers and their clients. The option to form consortia was not seen as practicable by many.

- The future relevance of costs compliance audit results was questioned, particularly if superceded by the introduction of new fee regimes following Lord Carter's Review.
- There was strong support for Peer Review, but some respondents suggested that further support and guidance should be given to providers seeking to improve, particularly those with smaller contracts.
- The Bar Council suggested that the LSC could do more through contracting to actively promote equality for opportunity, for example by requiring providers, as a future condition of the grant of any legal services contract, to have diversity policies (and detailed implementation plans); have in place arrangements directed at securing proportionate representation (according to their geographical and work locality) from the BME communities, as well as women and disabled persons, at all levels of staff and partners; have in place service arrangements which reflect the communities they are servicing and ensure proper accessibility; have in place 'briefing' policies; and monitor the impact of such policies (i.e. ethnicity, gender, disability status of service users, partners, staff, counsel etc) and to report on the same.

7.3.9 Amendments to proposals, actions taken and final assessment of equity and fairness

- All providers will be eligible to attain Preferred Supplier status. The DCA and LSC will, however, prioritise Preferred Supplier roll out to support the implementation of Lord Carter's reforms.
- Costs compliance audit performance will not form part of the assessment process for Preferred Supplier.
- The LSC is committed to supporting providers to improve the quality of advice provided to clients. Best practice workshops have been delivered in partnership with the Law Society and Advice Services Alliance and led by peer reviewers, focused on improving quality. The LSC has also published general findings from the peer review process, which highlight common problem areas with suggested identification mechanisms to enable improvement on a category specific basis. These are available via the LSC website at www.legalservices.gov.uk. File assessment questions for each

category of law will be available on the LSC website in Spring 2007.

- The DCA and LSC are monitoring the rollout of Peer Review. LSRC have analysed a further sample of 364 peer review scores for reviews conducted after April 2005, onto which the LSRC diversity dataset was merged where possible. Our preliminary findings on the basis of this small sample are that:
 - (i) BME majority managed providers have a far higher rate of 'below competence' scores (peer review 4) than white majority managed firms
 - (ii) Differences in rating by gender of majority management were not statistically significant
 - (iii) Given the relatively small number of peer review scores, it was not possible to examine peer review scores by disability status of majority managerial control
 - (iv) Peer review scores were related to legal aid fund take. Essentially, as peer review rating decreased from excellence towards failure in performance, both mean and median fund take fell.
- The DCA and LSC are committed to continuously improving our equality proofing of the process, and are taking steps to improve data collection regarding the ethnicity of peer reviewers and providers and to ensure that peer reviewers are aware of diversity issues through the provision of written guidance.
- The DCA and LSC are committed to promoting equality and tackling discrimination to ensure access to legal services for vulnerable clients and that services take account of the diversity of local populations, without compromising quality of service. We are also committed to promoting equality and contributing to tackling discrimination that creates barriers to career progression within the legal and advice sector, and have therefore proposed a number of additional requirements relating to equality and diversity be included in the new Unified Contract. The draft Unified Contract includes a proposed Equality and Diversity Annex setting out specific requirements for contractors. Discussions with key stakeholders regarding the detail of the contract terms are ongoing and final details will be published in due course.
- Our final assessment of the equity and fairness of the Preferred Supplier Scheme is therefore:
 - (i) The DCA and LSC consider the proposals will have a beneficial impact on access to legally aided services by

different client groups and in different locations (rural and urban) because it has the potential to improve the quality of services provided, through the use of Peer Review and File Assessment.

- (ii) The DCA and LSC consider the proposals will have a beneficial impact on providers of legal aid services through improvements in quality, and the efficiency of services delivered through simplified processes and a greater range of devolved powers. Whilst we note that there are differentials in performance at Peer Review by different provider groups, we do not consider that this is because of any inherent bias in the process itself. The DCA and LSC will continue to monitor the process and report periodically on our findings.

8. Small Firms Impact Test

- 8.1 Many providers of legal and advice services are small organisations. The Law Society, the Legal Aid Practitioners' Group, the Advice Services Alliance and other representative bodies with whom the DCA and LSC consult represent their interests.
- 8.2 The economic research supporting the Carter Report suggests that many smaller organisations should be able to compete on a cost basis with larger providers in the short-term. The research does however suggest that over the longer term smaller organisations may struggle to remain sustainable, because for example, they face problems recruiting qualified staff. The period of transition, and the decision not to introduce a minimum contract size from April 2007 will allow such organisations to either grow and/or address issues of sustainability.

9. Competition Assessment

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

10. Legal Aid Impact Test

- 10.1 The Magistrates' Court Scheme proposals have a direct impact on criminal legal aid. As mentioned above, the estimated annual saving to the criminal legal aid budget will be £10m at an administrative cost of

£0.251m from 2006/7 to 2008/9. The workload of the court staff and the costs to HMCS will be unaffected by these proposals.

- 10.2 The TFF Replacement Scheme and the harmonisation of solicitor fees are intended to be cost neutral and there should therefore be no additional costs to the Legal Aid Fund.
- 10.3 There is no evidence to suggest that increasing quality under the Preferred Supplier Scheme will result in higher costs. There is some emerging evidence to suggest that Threshold Competence (3) work can be more expensive than work at Competence Plus or above.

11. Compensatory Simplification

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

Magistrates' Court Scheme, TFF Replacement Scheme and Harmonisation of Solicitor Fees

- 11.2 These schemes are based on fixed fees systems, which will be clearer, simpler and easier to understand and administer.
- 11.3 The DCA and LSC therefore anticipate that the proposals will make a positive contribution to the Government's objectives to simplify and reduce the burdens of regulatory systems.

Unified Contract

- 11.4 The LSC currently purchases legal services through a number of different contracts, and a single provider may operate under several different types of contract simultaneously. The LSC wishes to reduce the administrative burden and complexity of its contracting arrangements by introducing a single, Unified Contract that will be easier to administer and understand.

Preferred Supplier Scheme

- 11.5 Key aims of the Preferred Scheme are to simplify and remove systems of monitoring and checking, and to introduce simpler processes, greater devolution of decision-making, lower transaction costs, more constructive and risk-based performance management, improved customer service, better and clearer information to facilitate service

delivery and planning and partnership working which is open, innovative and responsive.

12. Enforcement, sanctions and monitoring

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

13. Implementation and Delivery Plans

- 13.1 Please refer to **Appendix G**.

14. Post Implementation Review

- 14.1 The DCA and LSC will monitor and evaluate the impact of the proposals post implementation and report on findings in accordance with our statutory duties and the LSC Equality Scheme. As part of this review, we will also be considering special measures from October 07 (such as focusing the use of funded outreach) to encourage access for potentially disadvantaged groups.


15. Summary and Recommendation

- 15.1 After full consideration the DCA and LSC recommend taking a phased approach to implementation (option 3) for all proposals except the harmonisation of solicitor fees where we recommend immediate implementation from April 2007 (option 2).

16. Declaration and Publication

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

Signed:



Date: 19 January 2007

Minister's name, title & department: Vera Baird QC MP, Parliamentary Under-Secretary of State, Department for Constitutional Affairs

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Appendices:

Appendix A: Background paper on TFF Replacement Scheme modelling

Appendix B: TFF Replacement Scheme – Cost Ranges

Appendix C: TFF Replacement Scheme: Regional average costs ranges by category

Appendix D: Peer Review Quality and Cost Data

Appendix E: Average Distances Traveled by Clients Seeking Civil Legal Advice

Appendix F: TFF Replacement Scheme – An Analysis of Urban v. Rural Cases

Appendix G: Implementation and Delivery Plans