

Regulatory Impact Assessment

1. Magistrates' Court Revised Standard Fees

2. Purpose and intended effect

- 2.1. The objective of the proposal is to introduce magistrates' court revised standard fees, as described in 'Legal Aid: A market-based approach to reform' and 'Legal Aid Reform: The Way Ahead', in the 16 main urban areas.
- 2.2. The proposal also contributes to the following PSA and corporate objectives:
 - CJS PSA targets:
 - PSA 1: To improve the delivery of justice by increasing the number of crimes for which an offender is brought to justice to 1.25m by 2007/8
 - PSA2: Reassure the public, reducing the fear of crime and anti-social behavior, and building confidence in the Criminal Justice System without compromising fairness
 - LSC corporate priority 3: To deliver a sustainable scheme within the resources available and demonstrate real value to government in terms of effective financial control, improving value for money and positive outcomes for clients

Background

- 2.3. Magistrates' Court standard fees have been in place since 1994, with an increase in rates in 2001. Under this system travel and waiting are paid at hourly rates in addition to the standard fees.
- 2.4. Lord Carter was commissioned to undertake a comprehensive review of legal aid procurement by the Lord Chancellor in July 2005, following the publication of the command paper 'A Fairer Deal for Legal Aid'. In his final report 'Legal Aid: A market-based approach to reform', Lord Carter observed:
- 2.5. 'This system has worked well in containing cost, with relatively little increase in the cost per case in profit cost terms. However, there has been a substantial and disproportionate increase in travel and waiting costs. The system does not incentivise firms to minimise these costs.'¹
- 2.6. Lord Carter recommended that travel and waiting be included in the fees nationally from April 2007 (recommendation 4.8).

¹ Page 25

3. Consultation

- 3.1. There have been two full public consultations on this proposal:
- Legal Aid: a sustainable future (2006) DCA and LSC
 - Amendments to General Criminal Contract and Duty Solicitor Arrangements: For Consultation and Proposed Implementation in April 2007 (2006) LSC
- 3.2. These consultations closed on 12th October 2006 and 9th February 2007 respectively. Both consultation papers are available from the LSC website at www.legalservices.gov.uk
- 3.3. The government and LSC response to the first consultation was published in 'Legal Aid Reform: The Way Ahead' (2006). This document sets out the government's acceptance of the magistrates' court proposals and the adoption of a phased approach to implementation, beginning in the 16 main urban areas in April 2007.
- 3.4. A final Regulatory Impact Assessment (RIA) to support 'Legal Aid Reform: The Way Ahead' is also available from the LSC website. This document supports and builds on that RIA.

Implementation of Magistrates' Court Revised Fees in the 16 main urban areas

4. Costs and benefits

4.1. Sectors and groups affected

- Solicitors' firms undertaking magistrates' court work in the 16 main urban areas, and their clients will be affected by this scheme.
- Solicitors choosing to take on cases in those 16 areas from outside will also be affected.
- The 16 main urban areas were selected based on population and population density, and volume and value of magistrates' court work. They are considered most suitable for implementation, as there is greater scope for efficiency savings in these areas. The areas are:
 - Brighton and Hove
 - Bristol
 - Cardiff
 - Derby & Erewash
 - Greater Manchester
 - Kingston upon Hull
 - Leeds & Bradford
 - Leicester
 - London
 - Merseyside
 - Newcastle upon Tyne, including Gateshead, Sunderland, North Tyneside, South Tyneside and Blyth Valley

- Nottingham
- Portsmouth & Gosport
- Sheffield
- Southampton
- West Midlands

Benefits

- 4.2. The projected savings to legal aid expenditure are at least £8m in a full year.
- 4.3. Moving to standard fees for travel and waiting provides incentives to reduce non-productive expenditure, and will allow firms to benefit from any efficiency savings they are able to make.
- 4.4. This is consistent with the wider aims of the criminal justice system to streamline practices in magistrates' courts, and will be directly supported by the national roll out of Criminal Justice: Simple, Speedy, Summary (CJSSS).
- 4.5. The proposal will introduce greater certainty of payment and reward the most efficient, encouraging providers to manage cost across their entire caseload. The revised fees will therefore allow providers to realise the cost of working in their local markets, and prepare the market for future competition.
- 4.6. 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 areas, and make any necessary arrangements before rolling out the fees to other areas. In addition, we believe that there is currently greater scope for efficiency savings to be made, and for providers to adapt their working practices, in the main urban areas.

Costs and impact

- 4.7. The cost to the LSC of introducing these amendments to the Magistrates' Court Scheme is estimated be a one off administration cost of £251,000.
- 4.8. The financial impact on providers will vary depending on the types of work undertaken and current average costs. The fee rates, excluding VAT, are:

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

- 4.9. We have undertaken a counter-factual impact analysis for the proposals, based on 2005/6 LSC financial data. However, we would expect firms to adapt their working practices to benefit from standard fees and the impact for many firms may be more positive than predicted.

- Overall, expenditure in the 16 urban areas would fall by 8%

- 13% of urban providers, accounting for 16% of expenditure, would have their fee income increased (average increase 4%)
- 86% of urban providers accounting for 84% of current expenditure, would have their fee income reduced (average decrease 12%)

4.10. The predicted impact on providers' income of the scheme varies between the urban areas.

Table1: Impact by area	Claims	% Impact
Brighton and Hove	3,669	-7%
Bristol	8,218	-7%
Cardiff	8,197	-5%
Derby & Erewash	5,251	-9%
Greater Manchester	40,644	-5%
Kingston upon Hull	4,818	2%
Leeds & Bradford	18,757	0%
Leicester	6,867	-6%
London	81,172	-16%
Merseyside	20,243	-1%
Newcastle upon Tyne	5,752	-6%
Nottingham	8,942	-7%
Portsmouth & Gosport	6,196	-1%
Sheffield	6,444	5%
Southampton	3,623	-1%
West Midlands	40,855	-5%
All Areas	269,648	-8%

4.11. 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 greater scope for improvement in efficiency. For this reason rather than distribute travel and waiting payments between national and London rates in proportion to the existing value of claims, they were allocated by volume of cases.

4.12. Providers will also incur some transition costs in preparing for the new scheme, including amendments to software systems and minor training for staff. However, these costs are not anticipated to be significant, and should be offset against the benefits of moving to a simpler, more predictable fee structure.

4.13. The implementation of Lord Carter's reforms will support efficient practices throughout the wider criminal justice system. We will continue to work closely with Her Majesty's Courts Service, the Crown Prosecution Service, the Office of Criminal Justice Reform, other government departments, and the judiciary to achieve greater efficiency throughout the whole system.

4.14. In particular, CJSSS represents a real opportunity to improve the speed and effectiveness of magistrates' courts. CJSSS pilots in Coventry, Camberwell, Thames and West Cumbria have demonstrated significant potential to reduce the

number of wasteful hearings and improve the speed of the magistrates' courts. The use of video-links at remand centres is another example of how new working practices, in this case through the use of technology, can reduce the cost of service delivery.

- 4.15. These wider system efficiencies will enable providers to adapt their working practices, reduce the time spent travelling and waiting, and benefit from the revised fees.

Race Equality Impact Assessment

- 4.16. The LSC takes seriously its obligations under the Race Relations Act 1976 and has conducted annual surveys examining the ethnic mix of its supplier base. These surveys, conducted by the Legal Services Research Centre (LSRC) examine the diversity of those working within LSC contracted and quality marked organisations. The surveys are conducted at the organisation level. The LSRC has conducted surveys on diversity of the supplier base since 2000 and published annual diversity reports².
- 4.17. The LSC has decided to collect diversity information for all service providers, and this is a contractual requirement outside of London. London providers work under a different contract, and will be encouraged to submit this information. This will allow us to collect comprehensive data on providers and increase our confidence in the conclusions that we are able to draw on the impact of policy interventions.
- 4.18. The LSC has also set up a Supplier Diversity Reference Group, which includes a wide range of representative and practitioner based groups, including the Commission for Racial Equality, Bar Council and the Law Society. The aim of the reference group is to help advise and act as a critical friend to the LSC as we develop our vision and strategy for the promotion of diversity in all its forms in and amongst the providers and clients of legally aided services and in meeting our statutory duties.
- 4.19. Respondents to the consultation on the contract amendments did not raise concerns that there would be a disparate impact on BME firms as a result of this scheme.
- 4.20. Information collected by the LSRC was used to classify firms by majority ownership or control³ into majority BME and majority white. Most BME owned and controlled firms, as defined in this way, are located within the major urban areas, which have been chosen as most suitable for implementation, and so will fall under the revised fees.
- 4.21. The financial impact analysis was compared with the classification of firms based on the LSRC data. Data was held on 39% of the firms based in the 16 urban areas.

² Available from www.lsrc.org.uk

³ The LSRC equal opportunities monitoring form asks respondents 'How many people **Own** or have **Managerial Control** of your **office**' (emphasis in original) and requests gender, age and ethnicity information about these people. Ownership and control is therefore self-defined.

- 4.22. Nationally the impact on white owned and controlled firms is an 8% reduction in income from magistrates' court work, whilst the impact on BME owned and controlled firms is a 15% reduction.
- 4.23. It is currently possible to analyse the impact in two of the areas in which the fees will apply, London and the West Midlands. Outside these areas the small number of BME firms and the corresponding lack of data does not allow for a statistically valid analysis to be made.
- 4.24. In London, which has the largest concentration of BME-owned and controlled firms, a small disparity in impact was observed, with an average reduction of 19% in income from magistrates' court work for BME owned and controlled firms, compared to a 17% reduction for white firms.
- 4.25. In the West Midlands the disparity in impact was a reduction in income of 10% from magistrates' court work for BME firms, compared to 4% for white firms.
- 4.26. However, examining potential impact by ethnicity of ownership and managerial control does not take account of the ethnicity of other fee earners in the firm. To gain a fuller picture of the potential impact of the scheme on BME fee earners and clients, further analysis was undertaken based on the proportion of BME fee earners at a firm.
- 4.27. On a national level, the impact on firms with at least one BME fee earner is a reduction of 12%, whilst the impact on firms with no BME fee earners is a 5% reduction.
- 4.28. In London, there was no statistically significant difference in percentage impact between firms that had at least one BME fee earner and those that had no BME fee earners. This may be the result of there only being a small number of firms in London with no BME fee earners.
- 4.29. In the West Midlands, the impact on firms with at least one BME fee earner is a reduction of 6%, whilst the impact on firms with no BME fee earners is a 3% reduction.
- 4.30. While looking at firms employing at least one BME fee earner is a useful indicator of potential impact on fee earners, it does not take account of the distribution of BME fee earners between firms. To gain a greater understanding of the possible impact of the scheme on BME fee earners, analysis was also carried out to compare the impact on firms with 20% or more BME fee earners to the impact on firms with less than 20% BME fee earners.
- 4.31. Nationally, the reduction for firms with 20% or more BME fee earners was 14%, compared to a 6% reduction for firms with less than 20% BME fee earners. The national impact may be affected by the concentration of BME fee earners in London, where the impact of the scheme will be larger.
- 4.32. In London, firms with 20% or more BME fee earners experienced a 19% reduction compared to a 14% reduction for firms who employed less than 20% BME fee earners.

4.33. In the West Midlands, the reduction for firms with 20% or more BME fee earners was 7%, compared to a 3% reduction for firms with less than 20% BME fee earners.

4.34. We will continue to monitor the ethnicity impact of the scheme as part of our wider commitment to equality proof the legal aid reform programme.

4.35. The new fee structure aims to encourage more efficient and more local working. These are aims which will also apply to BME-owned and controlled firms. These fee proposals are essentially those proposed by Lord Carter and were endorsed by the Government and the LSC. As Lord Carter's review stated:

'There may be some disparity of impact at regional level. It is considered, however that the recommendations are justified by the need to control legal aid spending and to promote efficiency of service in the public interest. It is considered that the recommendations constitute a proportionate means of securing a legitimate aim.'⁴

4.36. Following our analysis of the likely impact and benefits of the scheme, the Government and the LSC endorse this view. Criminal legal aid expenditure has risen considerably under the current system, placing unsustainable pressure on both criminal and civil expenditure. This reform is required to bring travel and waiting expenditure under control, as part of the wider reform programme to re-balance legal aid spending and put the system on a sustainable footing. If we do not do this services to clients will suffer as scope and eligibility come under increased pressure.

4.37. When considering the impact of the scheme it was noted, as stated above, that respondents to the consultation on the contract amendments did not raise concerns that there would be a disparate impact on BME firms as a result of this change.

4.38. It should be borne in mind that the impact is solely on the travel and waiting elements of cases. These are costs which can be controlled in part by providers and in part by the bodies that make up the criminal justice system.

4.39. The LSC and DCA are determined to reduce unnecessary costs imposed on providers by the criminal justice system. Both bodies are taking vigorous action at both national and local level to achieve this. These will benefit all providers and help reduce the impact of change.

4.40. A substantially larger proportion of criminal legal aid lawyers are BME (16%) than the proportion of all solicitors who are BME (9%)⁵. The LSC attaches particular importance to promoting and protecting this group. The amendments to the general criminal contract include requirements that all providers do not unlawfully discriminate and use reasonable endeavours to assist the LSC to comply with its statutory obligations. The contract also includes an Equality and Diversity Annex setting out specific requirements including the need for contractors to have an equality and diversity policy which is actively monitored, an equality and diversity

⁴ Page 114

⁵ Law Society: Minority ethnic group solicitors 2004, Fact sheet information series

training plan and a communications plan. The LSC is expanding its internal resource and expertise in this area so that it can monitor, assess and promote diversity in providers.

- 4.41. To enable BME clients to access services the LSC continues to make interpretation facilities available everywhere. Where there are communities which may require particular services, (e.g. lawyers from the same group), contractors' equality and diversity plans will be expected to address the provision of services to those groups.

5. Small Firms Impact Test

- 5.1. All of the firms supplying legal aid are classed as small firms under the standard Small Business Service definition. This classifies organisations having fewer than 250 employees as small firms.
- 5.2. Therefore, there will be no disparate impact on small firms, and this Regulatory Impact Assessment applies exclusively to small firms.

6. Competition assessment

- 6.1. Having applied the Cabinet Office competition filter test, we do not consider that the proposal will have a significant effect on competition.
- 6.2. The affected market is served by over 1,200 firms with no single firm accounting for more than 2% of total spend.
- 6.3. Supply characteristics vary between the 16 urban areas:
 - In 5 of the 16 urban areas no single provider accounted for more than 10% of spend
 - Only 3 areas contained more than 3 providers with 10% or more of spend.
 - Only 3 of the areas contained a provider that accounted for more between 20% and 30% of spend.
- 6.4. We do not consider that the proposals will impose considerable operating costs on firms, or create additional barriers to entry for new firms.

7. Enforcement, sanctions and monitoring

- 7.1. We will closely monitor travel and waiting time in the implementation area to assess the impact of the scheme. The ongoing quality of the service will be ensured by peer review.

8. Implementation and delivery plan

- 8.1. Changes to the general criminal contract, revised reporting arrangements, and IT changes will facilitate the implementation of the scheme.

9. Post-implementation review

- 9.1. We will continue to monitor the costs of travel and waiting in remote and rural areas, to which the revised fee scheme has not yet been applied. When the scheme is rolled out in other areas we will take account of our findings.

10. Summary and recommendation

- 10.1. The current magistrates' court scheme has worked well in containing profit costs, however there has been an unsustainable increase in travel and waiting costs. Lord Carter recommended moving to standard fees for travel and waiting nationally from April 2007.
- 10.2. Following consultation, we have accepted this proposal and will adopt a phased approach to implementation, beginning with the main urban areas. This will allow us to monitor exceptional costs outside these areas before implementing more widely.
- 10.3. Impact assessment shows that this may result in a reduction in income for many providers. However, we believe that there is scope for significant efficiencies to be made through adapting working practices, supported by wider CJS improvements, which will allow providers to mitigate any negative impact. Following the implementation of the scheme, we will continue to closely monitor the impact on all service providers.
- 10.4. We recommend implementing the Magistrates' Court Revised Standard Fees in the 16 main urban areas from April 2007.