

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



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## 1 Introduction

- 1.1 This document is a draft regulatory impact assessment of the proposals outlined in our consultation paper “Police Station Reforms: Boundaries, Fixed Fees, and New Working Arrangements” which was published on 12<sup>th</sup> February 2007. The proposals outlined in that paper are currently the subject of a public consultation that closes on 10<sup>th</sup> April 2007. A response to the consultation will be published by the Commission including a full regulatory impact assessment of these proposals soon after the public consultation ends.
- 1.2 This consultation paper outlined a number of proposals to implement Lord Carter’s proposals for new boundary areas, fixed fees and new working arrangements, governing delivery of criminal defence work and police station and court duty slot allocations.
- 1.3 The key changes that have been proposed are:
- Firstly, the introduction of fixed fees for police station and related attendances in England and Wales;
  - Secondly, the redrawing of boundary areas covering police station schemes;
  - Thirdly, to introduce new working arrangements governing slot allocation and volumes of allowed work outside of the boundary area in which a contract is held; and
  - Finally, that a varying minimum contract size be introduced as an eligibility requirement for contract awards from October 2007.
- 1.4 The proposals are outlined in the consultation paper “Police Station Reforms: Boundaries, Fixed Fees, and New Working Arrangements” and follow on from Lord Carter’s recommendations in relation to these areas.

## 2 Title of Proposals

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

## 3 Objective of proposals

- 3.1 There are 5 key objectives for the implementation of these proposals
- To ensure the sustainability of the provider base of legal service providers
  - To provide greater certainty as to the volumes of work available to providers
  - To control expenditure in police station attendance cases
  - To rationalise police station schemes and promote efficiencies for providers delivering within those schemes

- To enable firms to commence the restructuring process and thereby compete in the market more effectively

## 4 Purpose and Intended Effect

### Background

- 4.1 The command paper, 'A Fairer Deal for Legal Aid', set the terms of reference for Lord Carter's Review of Legal Aid Procurement, which began in July 2005 and published its findings in July 2006.
- 4.2 Lord Carter's review was tasked with setting out a plan to deliver fundamental reform that would ensure access to justice, deliver greater value for money and a sustainable provider base.
- 4.3 Lord Carter's final report, 'Legal Aid: A market-based approach to reform' recommended a number of changes to the way publicly funded legal services are structured and remunerated.
- 4.4 The Legal Services Commission (LSC) and the Department for Constitutional Affairs (DCA) issued a joint consultation paper 'Legal Aid: A Sustainable Future' in response to Lord Carter's report. That consultation closed on 12th October 2006. The joint response to that consultation, "Legal Aid: the Way Forward, was published by the Commission and the DCA on the 28th November 2006.
- 4.5 This paper is focused solely on the impact of the specific proposals set out in the consultation paper "Beyond October 2007: Boundaries, Fixed Fees and New Working Arrangements". A full regulatory impact assessment will be published after the close of this consultation.

### Rationale for Intervention

- 4.6 The proposals contained within the paper are designed to simplify the market in advance of competition. By reducing the number of boundaries overall, increasing size to ensure adequate volume within a given area, and focussing delivery within the new geographies, we are seeking to create market conditions that lend themselves more readily to competition than current arrangements.
- 4.7 Currently there are high numbers of providers in many areas competing for access to volumes of work, with the LSC unable to guarantee this access. These proposals address that issue by limiting the number of providers operating within a given area, and awarding duty rota slots based on historical volumes of work.
- 4.8 Criminal legal aid expenditure has spiralled in recent years. By introducing fixed fees for police station and related attendances we can exercise far greater control over the budget and ensure that the legal aid scheme is sustainable in future years.

### Fixed Fees

- 4.9 The LSC will be introducing fixed fees as of October 2007. In doing so, we will be able to bring a level of control to Police Station expenditure and maintain that control in future years. Fixed fees also pave the way for providers to understand

their delivery price in advance of competition and as a result make informed bids when best value tendering begins to roll out in October 2008.

### **New Boundary Areas**

- 4.10 As outlined in Lord Carter's report<sup>4</sup> the primary driver in redefining boundary areas is to secure greater volumes for providers within a locality, and to allow providers to secure travel efficiencies within the new boundary areas as a result of the areas themselves and the proposed rules under new working arrangements.

### **New Working Arrangements**

- 4.11 The proposals seek to offer providers greater certainty as to the volumes of duty work available to them, through offering greater market share by restricting the number of providers operating within a given area, and promoting efficiency by limiting the amount of 'out of area' work a provider can deliver, focusing the majority of delivery within the locality in which a provider is based. By focusing delivery providers will have a clearer idea of their costs in delivering within the new boundary areas, and consequently a clearer idea of the price they can bid when their area is competitively tendered.

### **Minimum Contract Threshold**

- 4.12 Lord Carter proposed the introduction of a minimum threshold of £50,000 for access to Criminal Legal Aid work, and suggested that the LSC should consult on whether this threshold should be varied according to local market sensitivities. We are therefore consulting on:

- Whether to introduce a minimum threshold in any area; and
- If one is to be introduced, whether it should be variable to a lower level to ensure that market coverage remains complete, and in some cases whether a higher minimum threshold would be appropriate in high value areas.

- 4.13 If implemented, the effect of this proposal would be to exclude some providers from the market. The threshold was set at this level by Lord Carter to ensure that small, efficient firms could re-structure their business in advance of competition, and that only those providers delivering a very low volume of publicly funded criminal work would be excluded. The advantage of introducing a low threshold would be to remove those firms that deliver very small volumes in the legal aid market, with the proposed level representing just over half of the work of one fee earner. This would allow additional volume to be redistributed amongst eligible providers some areas, allowing them to benefit from any economies of scale that may be available.

## **5 Consultation**

- 5.1 As stated above, the current proposals are under a public consultation that will end on the 10<sup>th</sup> April 2007. The Commission has and will engage with stakeholders prior to and during the consultation period and has specifically

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<sup>4</sup> Legal Aid: A market based approach to reform

asked for alternative suggestions to achieve our objectives. Comments on this draft impact assessment are also welcomed to help determine the way ahead and inform the full impact assessment.

5.2 We will provide an analysis of the responses to the consultation in a separate document to be published soon after the closing date. This will include a full regulatory impact assessment.

## **6 Sectors Affected**

6.1 Sectors and groups affected include:

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

## **7 Options**

7.1 Below is a summary of the options that are presented in the consultation paper. Greater detail about each option can be located in the consultation paper. This paper also asks whether respondents have alternative proposals that would achieve the same objectives. The options will be reviewed in the full impact assessment later this year.

<b>Recommendation</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
Fixed fees	Fees based on new schemes	Fees based on existing schemes	Fees based on CJS areas	
New working arrangements	Award slots based on historical volumes; introduce out of area rule limiting volumes of work delivered outside of the scheme in which the office is based.	Do nothing		

Boundaries	New boundaries where appropriate outside of London, London boundaries grouped to merge 3 existing schemes to form new boundaries.	As option 1 but London boundaries created by merging 4 existing schemes.	As option 1 but London boundaries created to reflect proposed HMCS boundaries	Do nothing
Minimum contract threshold	Introduce a minimum contract threshold of £50K as a pre-requisite for contract awards from October 2007	Introduce a variable minimum contract threshold up to £50K and below as a pre-requisite for contract awards from October 2007	Do nothing	

**7.2 Costs and Benefits**

7.2.1 It is difficult to determine with certainty the likelihood that the possible costs and benefits associated with each option will actually occur. This RIA sets out the possible costs and benefits and we would welcome views on these as part of the consultation process.

**7.3 Fixed Fees**

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

**Option 1**

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

Costs, disbenefits and risks:

7.3.3 There would be minimal transition costs for the LSC and providers. Risks to providers are driven by volume, case mix and efficiency. It is essential that providers have sufficient volume and case mix to ensure that they are exposed to limited risk through the swings and roundabouts principle

Benefits:

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

**Option 2**

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

Costs, disbenefits and risks:

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

Benefits

- 7.3.7 As above.

**Option 3:**

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

Costs, disbenefits and risks:

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

Benefits

- 7.3.10 As above.

**7.4 Boundaries**

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

**Option 1 – New Boundaries, London Boundaries Merging 3 Schemes**

- 7.4.2 The Carter report recommended that the Legal Services Commission should construct new General Criminal Contract boundary areas for all of England and Wales, for introduction in October 2007. This and the following option propose to merge schemes where appropriate outside of London, and group London

schemes by merging either 3 (Option 1) or 4 (option 2) existing schemes to create the new boundaries.

Costs, disbenefits and risks:

7.4.3 There would be minimal transition costs for the LSC.

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

Benefits:

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

**Option 2 – New Boundaries, London Boundaries Merging 4 Schemes**

Costs, disbenefits and risks:

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

Benefits

7.4.7 As above at option 1.

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

Costs, disbenefits and risks:

7.4.8 As option1, but with a greater risk to efficiency obtained from the travel element of the fixed fees in London as a result of the increased geographic area that the schemes would cover.

Benefits

7.4.9 As above at option 1.

## **Option 4 – Do nothing**

### Costs, disbenefits and risks

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

### Benefits

7.4.11 There are no benefits in not redrawing boundaries at this stage.

## **7.5 New Working Arrangements**

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

### **Option 1**

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

### Costs, disbenefits and risks:

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

### Benefits:

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

## **Option 2 – Do nothing**

### Costs, disbenefits and risks:

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

### Benefits

- 7.5.6 There are no benefits in not bringing in new working arrangements as planned.

## **7.6 Minimum Contract threshold**

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

### **Option 1**

- 7.6.2 The proposal is to introduce a minimum contract size of £50k (police station and Magistrates' Court work) per office in all areas from October 2007.

### Costs, disbenefits and risks:

- 7.6.3 This option would exclude all providers delivering less than the required threshold in the previous financial year from carrying out publicly funded criminal work from October 2007.
- 7.6.4 It is likely that this may, in some areas, disproportionately impact on BME majority owned firms, who are over represented in this group of providers – an assessment of this impact can be found in the tables 4 and 6 below. There is also a risk that, by introducing a threshold that is not sensitive to local factors, coverage may be affected in some areas, whilst in others, there could be an impact on the ability of the LSC to run an effective competition.

### Benefits

- 7.6.5 This option could enable those providers that have delivered the requisite volumes to secure greater market share in the area in which they have historically undertaken work, allowing them to benefit from any economies of scale that may be available. This increase in volume could also offset the proposed limitation on out of area own client work. This proposal would also allow the LSC to reduce some of its administrative costs through a reduction in contracting resource.

## Option 2

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

### Costs, disbenefits and risks:

7.6.7 This option would serve to exclude providers in larger areas that had delivered less than the required threshold in the previous financial year, from carrying out publicly funded criminal work from October 2007. As in para 7.6.4, this may disproportionately impact on BME majority owned firms in some areas.

7.6.8 The risk to client coverage in this proposal would be limited by varying the minimum contract threshold, allowing the LSC to ensure that adequate coverage is maintained within each area. This will also allow the LSC to manage the number of providers in each area in order to operate an effective competition process.

### Benefits

7.6.9 As in para 7.6.5, this option could enable those providers that have delivered the requisite volumes to secure greater market share in the area in which they have historically undertaken work, allowing them to benefit from any economies of scale that may be available. However, this would be limited in this instance to those areas where the LSC felt that a threshold would not affect either coverage or, ultimately, an effective competition. This increase in volume could also offset the proposed limitation on out of area own client work for these areas. This proposal would also allow the LSC to reduce some of its administrative costs, although by less than would be offered by implementing option 1.

## Option 3– Do nothing

### Costs, disbenefits and risks:

7.6.10 Lord Carter suggested that - in addition to volume released by firms leaving the market - an administrative minimum threshold should be introduced to help larger firms gain access to greater volumes of work and take advantage of any available economies of scale. Without the introduction of a minimum contract size, larger firms would be limited in their ability to access greater volumes.

7.6.11 It is unclear whether the very small firms that would be directly affected by the threshold could compete effectively once best value tendering is introduced. Failure to remove small firms from the market would mean that other firms would be limited in their ability to gain a greater understanding of the volume of work in some areas before the first stage of competition.

### Benefits:

7.6.12 If a minimum contract size is not introduced, there would be no risk in terms of a disproportionate impact of the proposals on BME providers in some areas. It would also ensure that all firms that currently provide defence services to clients in the police station would be offered the opportunity to restructure in advance of

competition, whilst retaining the maximum number of providers in the market for the LSC prior to tendering work, which may lower prices in some areas at this stage.

### Alternatives

7.6.13 In addition to the above options the Commission would welcome suggestions on alternative proposals that would meet the key objectives identified in section 3 of this assessment.

## **8 Equity and Fairness: Race Equality, Disability Equality, Gender Equality, Rural Impact**

### **8.1 Our Duties:**

#### Race Equality

8.1.1 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.

8.1.2 The DCA and LSC are 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

8.1.3 The Disability Equality Duty came into force on 4th December 2006. The LSC has already published its Disability Equality Scheme and this is available on the LSC website [www.legalservices.gov.uk](http://www.legalservices.gov.uk). This sets out the actions that we will be taking to promote disability equality for legal service providers and the clients they serve, and our staff.

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

- 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.

8.1.5 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

8.1.6 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.

8.1.7 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

8.1.8 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.

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

## **8.2 Current Position**

8.2.1 Black and minority ethnic (BME) groups, the disabled, people of different genders, and people living and/or working in rural communities have a direct interest in any changes to the legal aid scheme, as the owners and/or managers of solicitor firms 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.

- 8.2.2 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. However client information is limited in the context of crime and therefore we are not able to provide reliable statistics on the current position in relation to crime clients.
- 8.2.3 With specific regard to BME groups, in the context of publicly funded legal services and the opportunity for BME clients to receive representation from BME solicitors, we believe that the key focus is the number of BME practitioners in the market.
- 8.2.4 Whilst the impact of a minimum contract threshold of £50k on BME owned and controlled providers is shown in this RIA, these statistics create a very incomplete picture in terms of BME representation, as they do not give any indication as to the number of BME fee earners within the market and therefore cannot give an indication as access to representation by a BME fee earner, nor that particular group's opportunity to progress their career within the legal profession. Tables 1 and 2 show the impacts of a minimum contract threshold on fee earners by ethnicity.

## **9 Impact on Clients, Employees and Providers**

### **9.1 Impact on Clients**

- 9.1.1 The key impacts on clients within the consultation proposals are those around new working arrangements and the introduction of a minimum contract size. With regard to the former, the limitation on out of area own client work would reduce the choice available to clients when selecting their provider. However, by retaining a prerequisite number of providers in any given area, and by allowing providers to deliver a certain proportion of their work outside of the area in which they are contracted, there will still be sufficient choice and access for clients where they elect to have a specific firm represent them. It is not possible to provide statistical impacts for clients as a result of the shortage of client data for publicly funded criminal services.
- 9.1.2 In respect of the minimum contract size, the issues are very similar. If introduced the effect of the minimum contract size will be to reduce the overall number of providers eligible to deliver publicly funded criminal work. To that extent there will be a reduction in client choice; however the remaining number of providers, along with the considerations outlined above, means that there will be sufficient access and choice available to clients in selecting their representatives.
- 9.1.3 One specific consideration applies to BME clients. Anecdotal evidence, and evidence from civil legal aid, suggests that BME clients tend to prefer to be represented by BME lawyers. However, BME fee earners are sufficiently represented within the group of eligible providers that meet the minimum threshold to ensure this client need is met. For example (table 9) a £50,000 minimum contract threshold would only remove 6% of total crime lower fund expenditure that is currently paid to BME owned and controlled firms. The impact of a larger contract threshold would be more substantial. However, this analysis

does not take account of the possibility of BME lawyers being re-employed or of the impact of the Commission's policies on diversity, which should tend to increase capacity.

## 9.2 Impact on Employees

9.2.1 According to the LSRC 2006 survey, 16% of solicitor fee earners working within providers holding criminal legal aid contracts were BME (905 solicitors out of a total of 5,673 covered by the survey). As stated above, we believe that the number of BME fee earners is a far more accurate indicator of access opportunities for BME clients to BME fee earners than BME ownership and control of providers. The tables below show the impacts of the introduction of a minimum contract threshold on the number of BME fee earners in the market.

**Table 1: Ethnicity impact of £50k minimum contract threshold on fee earners (national)**

	No contract	Contract
White British solicitor fee earners	20%	80%
BME solicitor fee earners	17%	83%
White British non solicitor fee earners	19%	81%
BME non solicitor fee earners	22%	78%
White British fee earner	19%	81%
BME fee earner	19%	81%

**Table 2: Ethnicity impact of £50k minimum contract threshold on fee earners (London)**

	No contract	Contract
White British solicitor fee earners	32%	68%
BME solicitor fee earners	26%	74%
White British non solicitor fee earners	20%	80%
BME non solicitor fee earners	33%	67%
White British fee earner	28%	72%
BME fee earner	29%	71%

## 9.3 Impact on Providers

### Fixed Fees

9.3.1 The most notable impact here will be on provider income. The proposed levels of fees are designed to save £8m per annum. Where providers do not have a sufficient case mix they are at risk of carrying out a greater volume of less profitable cases, leading to a drop in overall income. Securing sufficient volumes for providers, allowing them to take advantage of the swings and roundabouts effect, can mitigate this risk.

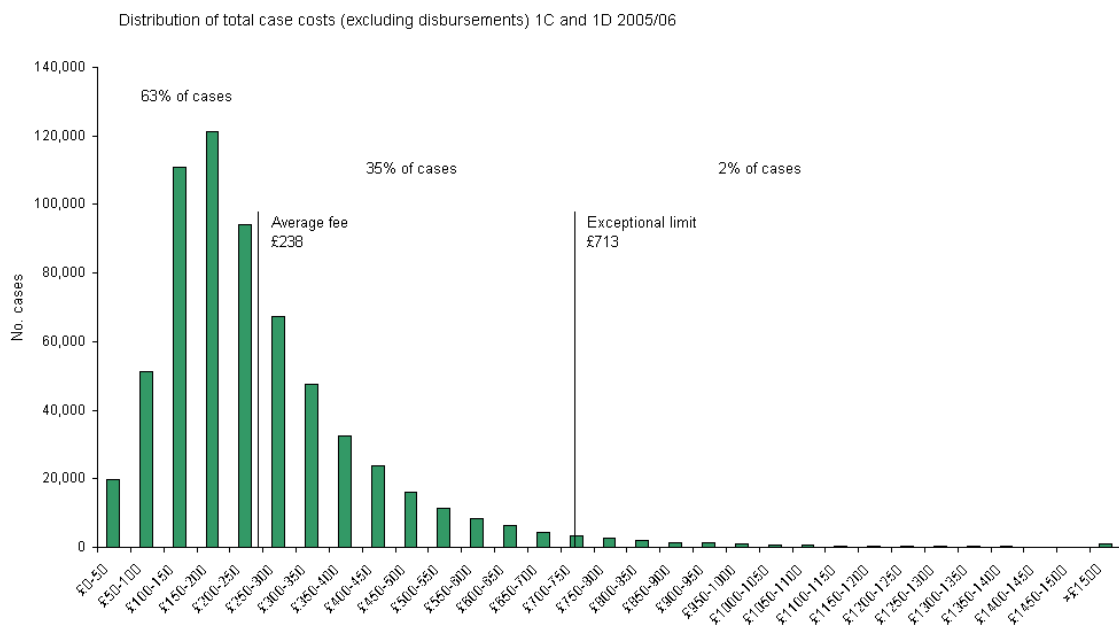
9.3.2 The following table shows national impacts of each of the four potential schemes based on applying the proposed fees to 2005/06 police station attendance claims. **These figures do not take into account any potential loss of income**

from the proposed discontinuance of standby payments and therefore providers should consider the potential impact of the withdrawal of standby when calculating their overall income. It is also important to recognise that although the fee levels have been set to deliver £8m savings per annum against 2005/06 expenditure in police stations, the actual fee levels published benefit from the redistribution of all standby claims, some £9m. In effect this means that the overall allocation for police station attendances increases by approximately £1m, but only as a result of not paying standby and using that money to bolster the fixed fees.

**Table 3: Impacts of proposed new fees**

Fee Scheme	Increase %	Reduction %	£ Increase	£ Decrease
Existing schemes, fixed fee + hourly rate escapes	54.6 % (1390 offices)	45.4% (1155 offices)	£8,138,930	£7,186,029
Existing schemes, paid as claimed escapes	55.5% (1412 offices)	45.5% (1133 offices)	£7,433,708	£5,859,610
New schemes, fixed fee + hourly rate escapes	53.4% (1360 offices)	46.6% (1185 offices)	£8,195,966	£7,786,659
New schemes, paid as claimed escapes	54.5% (1386 offices)	45.5% (1159 offices)	£7,533,919	£6,265,372

9.3.3 The graph below shows the distribution of claims for 2005/06 against a notional average fee and escape threshold. This demonstrates that providers, taken as a whole, are twice as likely to undertake a case below the fixed fee than they are to take a case above it. The notional average fee is the average of all the fees contained within the main body of the consultation paper, excluding the Carter CJS fees.



New Boundary Areas

9.3.4 The revised boundary areas of themselves do not impact on providers.

**New Working Arrangements**

9.3.5 The key impact on providers under the proposed new working arrangements will be the out of area own client allowance. Under current arrangements providers have no geographical limitation on where they deliver work. However under these proposals providers would no longer be able to exercise this freedom and instead would be required to deliver the majority of their work within the area in which they are based, with a fixed proportion deliverable outside of the area. Any reduction in volumes that this may cause should be offset by the increases in available volumes within the area in which the provider is based.

**Minimum Contract Threshold**

9.3.6 The introduction of a minimum contract size seems to have a disproportionate impact on BME and female owned firms. Both of these groups are overrepresented amongst those providers delivering smaller volumes of publicly funded work. But this view should be seen alongside the impacts on the proportion of BME fee earners (Tables 1-2) and payments to BME owned and controlled providers (Tables 8-9).

9.3.7 The effect of the imposition of a varying minimum contract size with regard to gender and BME is shown below. Due to response rates to the LSRC 2006 diversity survey it is only possible to show impacts on both national and London bases. Response rates at a local level elsewhere do not allow statistically valid conclusions to be drawn. Impacts shown are expressed as percentages of those providers for whom the requisite data was held. Overall the response rate to the survey was 44.77%, however not all respondents provided information in all categories. Despite this, the sample that provided information on ethnicity and gender control allows statistically valid conclusions to be drawn for the areas illustrated within the tables.

9.3.8 Currently 11.8% of providers with a general criminal contract have BME majority managerial control with a further 4.6% of providers with split managerial control between White British and BME. 83.6% of providers are white managerial majority controlled.

9.3.9 Of offices holding crime contracts that returned a survey, 72.8% had majority male, 12.7% majority female and 14.5% split managerial control. The following tables demonstrate the BME and gender impacts of introducing a minimum contract size of £50k in certain areas.

**Table 4: National BME impact of £50k minimum contract threshold**

Ethnicity of majority managerial control	No contract	Contract	Total
White British	20.3%	79.7%	100.0%
BME	22.4%	77.6%	100.0%
Split	4.9%	95.1%	100.0%

**Table 5: National Gender impact of £50k minimum contract threshold**

Gender of majority managerial control	No contract	Contract	Total
Male	18.8%	81.2%	100.0%
Female	26.3%	73.7%	100.0%
Split	19.8%	80.2%	100.0%

**Table 6: London BME impact of £50k minimum contract threshold**

Ethnicity of majority managerial control	No contract	Contract	Total
White British	18.9%	81.1%	100.0%
BME	37.5%	62.5%	100.0%
Split	0%	100%	100.0%

**Table 7: London Gender impact of £50k minimum contract threshold**

Gender of majority managerial control	No contract	Contract	Total
Male	20.2%	79.8%	100.0%
Female	32.1%	67.9%	100.0%
Split	28%	72%	100.0%

9.3.10 Another key consideration in viewing the ownership and control tables is the level of expenditure involved. The following tables demonstrate the percentages of fund spend by eligible and ineligible providers by ethnicity against the minimum contract thresholds, as well as breakdown of expenditure by ethnicity.

**Table 8: Expenditure by ethnicity ownership and control 2005/06**

	Crime Lower
	Sum
White British	£178,681,047
BME	£24,199,249
Split	£14,637,621

**Table 9: Expenditure by ethnicity based on a £50k minimum contract threshold (national)**

		Crime Lower
		Sum
White British	N	5%
	C	95%
BME	N	6%
	C	94%
Split	N	1%
	C	99%

### **Potential impact of minimum contract size on dual crime/civil contract holders**

9.3.11 Although difficult to ascertain with any real degree of certainty, there may be a potential impact on providers with contracts for both civil and criminal legal aid work if the introduction of a minimum contract threshold results in the crime element being withdrawn and providers then decide to withdraw from civil contracting as a result. Using 2005/06 financial data for those providers that hold both crime and civil contracts, taking into account crime lower and legal help work, we have analysed by CJS area the respective fund spend by civil category that could potentially be withdrawn by providers if the loss of a crime contract led to civil withdrawal. The analysis suggests that there would not be significant withdrawals on the part of providers, and where withdrawal might occur there would not be a significant threat to the level of supply in local geographies. It is important to note that the analysis concerned legal help work only and not certificated spend.

## **10 Rural**

10.1 Our assessment of the impact of the outline proposals is that access for clients in rural areas to legally aided services will be maintained under any of the minimum contract threshold options but option 2 may achieve that more fully than option 1.

10.2 In terms of provider impact, the key issue here is the inclusion of travel payments within the fixed fee. However, the calculation method for the fee, and the fact that it is focussed on a specific locality means that travel costs in rural areas have been taken account of fully in arriving at the fee.

## **11 Small Firms Impact Test**

11.1 Cabinet office guidelines for the SFIT suggest that any organisation with fewer than 250 full time employees is considered small. Therefore almost all providers that are affected by these proposals would fall within the definition. The Law Society, the Legal Aid Practitioners Group, and other representative bodies whom the LSC will consult in respect of these proposals will represent their interests. In addition, impacts on all providers are presented in the various sections within this RIA, particularly fee, gender and ethnicity impacts.

## **12 Competition assessment**

12.1 Total spending on criminal legal aid in 2005-2006 was in excess of £1.1 billion. Of this £800m was paid directly to solicitors. These proposals effect about £173m of that spend, or 16% of the total criminal legal aid expenditure. These proposals will remain in place for a minimum of 12 months depending on area, with best value tendering being phased in from October 2008. Best value tendering will be the subject of further consultation later this year.

12.2 We anticipate that there would be some impact on competition if these proposals were implemented.

- 12.3 The proposals that most affect competition are those for the introduction of a minimum contract size for contract eligibility and requiring providers to focus their delivery in the area in which they are based.
- 12.4 With regard to the introduction of a minimum contract size, the proposed introduction would serve to reduce the number of offices delivering advice within a given area. However, the actual level of the threshold will be varied to ensure that a sufficient number of providers remain in each area to ensure a competitive market.
- 12.5 In respect of the proposal requiring providers to deliver the majority of their work in a specific area, this is likely to promote competition. By ensuring that there are a sufficient number of providers delivering within the area, and being required to focus delivery within that area, there is less fragmentation of the market than is seen under current delivery arrangements.

### **13 Legal Aid Impact Test**

- 13.1 The proposals in the consultation paper will have a direct impact on the level of spending incurred by the Commission for duty solicitor work as they seek to realise £8m in savings. Fee impacts are shown at table 3 above. As outlined earlier in the paper the cost benefits will be realised by the providers themselves.

### **14 Enforcement, sanctions and monitoring**

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

### **15 Implementation and delivery plans**

- 15.1 This will be completed in the full regulatory impact assessment which will be published after the public consultation closes.

### **16 Post Implementation Review**

- 16.1 We 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.

### **17 Compensation Simplification Measures**

- 17.1 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.

- 17.3 These proposals do not provide firms with any additional or reduced regulatory burdens. However the proposals are an interim measure to enable the introduction of a wider programme for change in the police station that will lead to the introduction of Best Value Tendering in the police station that will be clearer, simpler and easier to administer.

## **18 Contact Point**

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