



Ministry
of Justice

Transforming Legal Aid: Next Steps

This consultation begins on 5 September 2013
This consultation ends on 1 November 2013



Ministry
of Justice

Transforming Legal Aid:

Next steps

**A consultation produced by the Ministry of Justice. It is also available
on the Ministry of Justice website at
<https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>**

About this consultation

- To:** This consultation is aimed at providers of publicly funded legal services and others with an interest in the justice system.
- Duration:** From 05 September 2013 to 1 November 2013 (extended from 18 October)
- Enquiries (including requests for the paper in an alternative format) to:** Annette Cowell
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 3555
Email: LegalAidReformMoJ@justice.gsi.gov.uk
- How to respond:** Please send your response by 1 November 2013 to:
Annette Cowell
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 3555
Email: LegalAidReformMoJ@justice.gsi.gov.uk
- Response paper:** A paper summarising the responses to this consultation will be published following their consideration. The response paper will be available on-line at:
<https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>

Contents

Ministerial Foreword	3
Chapter 1. Introduction & The Case for Reform	5
Part One: The Programme of Reform	11
Chapter 2. Response to consultation	12
Part Two: Further Consultation	23
Schedule of Consultation Questions	24
Chapter 3. Procurement of Criminal Legal Aid Services	25
Chapter 4. Reforming Criminal Advocacy Fees	47
Chapter 5. Impact Assessment	53
About you	54
Consultation Co-ordinator Contact Details	55
Annexes	57
Annex A: Glossary	58
Annex B: Response to consultation	64
Annex C: Alternative Proposals	147
Annex D: Outcome of the 2013 civil legal aid tender	157
Annex E: New Civil, Family and Expert Fees	158
Annex F: Equality Statement	165
Annex G: Data in support of the modified model of procurement of criminal legal aid services	228
Annex H: Revised Advocacy Scheme 1	277
Annex I: Revised Advocacy Scheme 2	279

Ministerial Foreword



Legal aid is a vital part of our justice system – it ensures that those who are accused of a crime are always entitled to a defence. This goes to the heart of a civilised society, and underpins access to justice. This Government’s commitment to legal aid means we must ensure that it commands public confidence, and is put on a sustainable footing, for those who need it, those who provide it, and those who ultimately pay for it – the taxpayer.

This Government has embarked upon a process of repairing the public finances after years of reckless borrowing and financial crisis under the previous administration. The Ministry of Justice will see its budget reduce by nearly a third between 2010 and 2016. No area of our spending has been immune from scrutiny in these circumstances. Our legal aid system is a major part of my

Department’s budget, and it is therefore appropriate that we look to make savings here too.

In April, my Department published a set of proposals to deliver these savings, to ensure a sustainable criminal legal aid market and a credible and efficient legal aid system. Since then we have been engaged in extensive consultation, which has helped us refine these proposals in line with our objectives. I would like to thank those who have engaged constructively in this process.

In particular, we have been involved in detailed negotiations with the Law Society. As a consequence of these discussions, I have agreed with them a sensible set of proposals for a sustainable legal aid market in criminal litigation. These proposals mean that all those accused of a crime would receive quality legal representation; that defendants are free to choose their lawyer, whether they want a big firm, their local high street solicitor or a particular specialist; that all those who currently provide criminal legal aid services can continue to do so, provided they meet minimum quality standards; and that access to justice is guaranteed nationwide through a new method of contracting duty providers from organisations with the capacity and capability to provide this service on an ongoing basis. These proposals also meet the financial constraints faced by my Department, and therefore represent a long term and sustainable way forward both for the Government and for the profession. We are today inviting views on these proposals.

In relation to advocacy fees, we are publishing two options for reform. One of these builds on the proposals we put forward in April, and the other is based on a scheme put forward by the Bar Council, drawing on that used by the Crown Prosecution Service. Both represent a sensible way to reduce fees, as well as speeding up and simplifying the administration of the legal aid system. We will be guided by the views of the profession and other stakeholders in reaching a final decision on which scheme to implement.

I think it is important to recognise that it is not simply fee arrangements which determine the success and viability of the legal profession, and I am taking a series of steps which demonstrate that this Government is serious about maintaining the legal profession in this country as a world leader. First, I understand the financial challenges that businesses around the UK are facing, and therefore we will introduce an enhanced system of interim payments for long running cases, to help with the cashflow of legal firms and self-employed advocates.

Second, I want to ensure that the criminal justice system is more efficient so that cases do not demand more resources than necessary, both in terms of public money and in terms of lawyers' time. We are therefore putting together a panel of criminal lawyers to look at the legal process, identifying scope for improvements and drawing up proposals for reform. Finally, it is clear to me that advocacy is facing many challenges, from the rise of different routes into the profession, increasing supply but decreasing demand, regulatory changes, as well as financial challenges. I have therefore, in conjunction with the Law Society and the Bar Council, asked Sir William Jeffrey to conduct an independent review of the future of independent criminal advocacy in England and Wales, to report in six months time. I believe these three actions will help to secure the long term sustainability of the professions in the more difficult financial environment that we face.

I have decided to proceed with most of the measures we proposed in April, to bear down on the cost of legal aid and ensure public confidence in the legal aid system. To qualify for civil legal aid, people must in future have a strong connection with the UK; no longer will civil legal aid be available for cases that only have a borderline chance of success – if a private individual would not likely fund the case, the taxpayer should not either; wealthiest Crown court defendants will no longer automatically receive criminal legal aid and neither will offenders have access to criminal legal aid simply to seek an easier life in another prison. We are also proceeding with the change in civil and experts fees with some minor modifications.

This is a comprehensive package of reform, based on extensive consultation. I believe it offers value for the taxpayer, stability for the professions, and access to justice for all.

A handwritten signature in black ink, appearing to read 'Chris Grayling', with a long horizontal stroke extending to the right.

Chris Grayling
Lord Chancellor and Secretary of State for Justice

Chapter 1. Introduction & The Case for Reform

- 1.1 The justice system in England and Wales has a world class reputation for impartiality and fairness and is a model for many other systems the world over. The provision of legal aid where necessary is an integral part of that system.
- 1.2 However, any legal aid scheme needs to be properly targeted at the cases and people most in need of assistance. And publicly funded legal services must be provided in as efficient a way as possible to ensure value for the taxpayer on the one hand and the availability of sustainable high quality services for clients on the other. These objectives go with the grain of the Government's wider approach to enable Britain to succeed in the 21st Century. Public services must be fair to the taxpayer and the recipient, standards must be high and we must reduce costs so the country can live within its means as we build a strong, sustainable economy.
- 1.3 In spite of various attempts by previous Governments to restrain the cost of legal aid spending, the fact remains that at an annual cost of around £2 billion, we still have one of the highest levels of legal aid spending in the world, with around £1 billion of this spent on criminal legal aid. It costs more per head than any other country, including those with similar legal and judicial traditions.
- 1.4 The Government is committed to reducing spending and the legal aid scheme cannot be immune. Overall, by 2015/16 the Ministry of Justice budget will have reduced by a third since 2010, and our reforms to the legal aid scheme, once implemented, would see that particular budget fall by a similar proportion.
- 1.5 If we are to maintain the credibility of legal aid as an integral part of our justice system we have to be able to demonstrate to the public and hard-working families on whose taxes this system depends that we have scrutinised every aspect of legal aid spending to ensure that it can be justified and that services are being delivered as efficiently as possible. Unless the legal aid scheme is targeted at the people and cases where funding is most needed, it will not command public confidence or be credible.
- 1.6 That is why when the Government took office in 2010 it confirmed that it would 'carry out a fundamental review of the legal aid scheme to make it work more efficiently.'¹ To that end,
- a. In November 2010 the Government published its *Proposals for Reform of Legal Aid in England and Wales*² which led to the legal aid measures contained in the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012³. Those measures focused on changing the scope of civil legal aid, and brought about wide-ranging reform when it came into force in April 2013, targeting legal aid at the most serious cases which have sufficient priority to justify the use of public

¹ The Coalition: our programme for government: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

² Proposals for the Reform of Legal Aid in England and Wales: <http://www.justice.gov.uk/consultations/633.htm>

³ LASPO: <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

funds and delivering substantial savings to the scheme and better value for the taxpayer.

- b. In April 2013 the Government embarked on the next step of reform, this time mainly focused on criminal legal aid, with the consultation *Transforming Legal Aid: delivering a more credible and efficient system*. This consultation focused both on the need to ensure that spending is credible in the light of the Government's wider approach to public spending and economic reform and on the need to ensure in particular that criminal defence services are provided in a cost effective way through more efficient business and fee structures.

- 1.7 This document sets out the detail of the responses we have received to that second consultation and describes how the Government intends to proceed.

The consultation process

- 1.8 We recognise that the decisions to be made are difficult. We have therefore canvassed and received a broad range of views. We published a consultation – with 36 detailed questions – because we genuinely wanted to hear from those interested in the proposals and those delivering current services. Ministry of Justice officials held fourteen stakeholder events around the country which were attended by an estimated 2,500 people. The ministerial team met many representatives from the professions. We responded to and learned from Parliamentary debates and select committee hearings, questions, and requests for information. Our consultation received nearly 16,000 responses. We had lengthy and detailed responses from the relevant professional bodies and groups; legal aid practitioners; members of the judiciary; charities; and individuals. We have considered them all with care.
- 1.9 It is inevitable that changes of this kind will generate enormous interest as was evident in the responses we received. The Government recognises the strength of feeling raised by our proposals and especially among those most directly affected, the providers of services and their representatives.

The outcome

- 1.10 The Government believes that our consultation and the responses it has generated have shown clearly that legally aided criminal defence services can be delivered more efficiently. It has confirmed our view that the market for criminal defence litigation services needs significant consolidation and re-structuring if it is to function effectively at a lower cost. And whilst we intend to make some modification to our original proposals in the light of responses received, it has confirmed our view that further changes are needed to ensure that legal aid spending is properly targeted at priority matters. The Government also believes that it is right to press ahead with the reductions in fees paid in some civil cases and those paid to experts.
- 1.11 Our overall conclusion is therefore that there is a compelling case for transforming legal aid with these aims in mind. In the light of the feedback we have received we have decided to press ahead with some of the reforms in a modified form while for some others we have developed our approaches and are now seeking further views. For some reforms we have decided to proceed with the full original proposal.

Further Consultation

- 1.12 In relation to the procurement of criminal defence services, the Government is clear that further significant efficiencies can be made. However, the responses suggest that changes are required to the proposed model of procurement to encourage consolidation and the development of new business models and approaches and to secure a consistent and quality service. We have therefore decided to consult further on **a modified model of procurement for criminal legal aid**. We have been greatly helped by the positive contribution of The Law Society and others in responding to the consultation and believe that our proposed modified model is better able to achieve our objectives as a result.
- 1.13 We have listened to the views of respondents, including the concern that the market is not well placed to take part in a competition where they are asked to bid based on price, and we are persuaded that we can achieve our objectives through a competitive tendering process where price is not used as an award criterion. We also recognise the importance of client choice in any future model of criminal legal aid services. Therefore, under the modified model, we propose to retain the same level of choice for clients seeking criminal legal aid as now and the proposed procurement process would not use price as an award criterion. Instead, providers will be expected to demonstrate that they have the right capacity to deliver services at the right quality.
- 1.14 We are committed to ensuring there is sufficient coverage of service supply across all police stations and magistrates' courts for those individuals who do not have their own provider. Therefore, we propose to maintain a duty provider scheme. However, in order for that scheme to be sustainable at the rates of pay on offer we propose to reduce the current number of contracts to deliver Duty Provider Work by running a competitive tendering process for the services to be provided in each geographical area (see Chapter 3). We believe this process will support the consolidation needed in the market.
- 1.15 However, we recognise that not every provider wishes to join with others or grow their businesses to the extent required to deliver the volume of work on offer under the duty provider scheme. Therefore, we propose that any provider meeting the Requirements of the Tender Process (including the required quality standards)⁴ would be eligible to be awarded a contract by the Legal Aid Agency to deliver criminal legal aid services to those clients who select their own provider at the point of request (Own Client Work) anywhere in England and Wales.
- 1.16 We believe this modified model would ensure any provider (small or large) which satisfies the Requirements of the Tender Process (including the required quality standards) can continue to deliver criminal legal aid services whilst giving those providers wishing to expand their businesses through access to Duty Provider Work the opportunity to compete to do so.
- 1.17 For Duty Provider Work, we propose to run a competition for a limited number of contracts in each procurement area where tenders are evaluated against the Requirements of the Tender Process (including the required quality standards).

⁴ The reference to 'Requirements of the Tender Process' throughout this document means the requirements of the tender process set out in the 'Pre-Qualification Questionnaire', the 'Information for Applicants' documentation (which will include the terms and conditions of tender) and the 'Invitation to Tender' – see Chapter 3 for further information.

- 1.18 Whilst for most of country, as previously proposed, Criminal Justice areas will be the most practical procurement area for competing Duty Provider Work, in some areas we will adapt this to take account of specific local geography.
- 1.19 We are proposing to give firms longer to prepare for this modified procurement process and our proposal is that all services – both Own Client and Duty Provider - under the new contracts will commence in spring 2015. Alongside this, we propose a phased approach to the overall reduction in remuneration. This would mean an interim fee cut of 8.75% in early 2014 followed by a further 8.75% reduction in fees in spring 2015. This second reduction would be set administratively (against the proposed new remuneration arrangements discussed below) and applied to both Duty Provider Work and Own Client Work under the new criminal legal aid contract (relative to current fee levels).
- 1.20 On **criminal advocacy fees**, we have listened to the feedback from respondents and reviewed a revised fee scheme put forward by the bar Council and are now consulting on two alternative graduated fees proposals: a revised harmonisation and taper model and a system based on the Bar Council's proposed variation of the Crown Prosecution Service model. The first proposal is a revised model in which version of the earlier consultation model which simplifies the scheme in order to support the aim of efficient justice and encourage the defence team to give early consideration of plea by harmonising the Basic Fees for guilty pleas and cracked trials at a level in between the current rates, and introducing a tapered reduction to trial daily attendance which would be subject to a price floor below which rates would not fall. The second proposal is based on the Bar Council's proposed variation of the Crown Prosecution Service model in which the structure of the fee scheme is simplified and Standard and Enhanced Fixed Fees replace the current Basic Fees and Pages of Prosecution Evidence (PPE) uplift. Cases would move from a Standard to an Enhanced Fee if they exceeded a PPE threshold. Daily attendance payments would be made for trials and not subject to tapering.

The way ahead

- 1.21 In most other areas, our analysis of responses to the consultation has convinced us that we should press ahead with our original proposals subject to no or only limited modification.
- 1.22 In relation to the package of measures on eligibility, scope and merits, the Government therefore intends to implement without modification, the reforms relating to imposing a **financial eligibility threshold** in the Crown Court and removing legal aid for **borderline cases** as part of the civil merits test.
- 1.23 We have made modifications to certain other proposals to ensure that their implementation is fully consistent with our wider objectives. So, on **prison law**, we have amended our proposals to ensure criminal legal aid remains available for all proceedings before the Parole Board in which it has the power to direct release, as opposed to all cases that engage Article 5.4 of the European Convention on Human Rights (ECHR). We also intend retaining sentence calculation cases where the date of release is disputed. We also agree with those respondents who have stressed the importance of ensuring that there is a robust prisoner complaints system in place, and in the detail that follows we describe the ways in which we are reinforcing compliance with current arrangements.

- 1.24 We have revised the proposed **residence test** so that children under 12 months of age will not need to meet the requirement for at least 12 months of previous lawful residence, and to include exceptions for certain types of cases, where we accept that there should be no requirement for an individual to demonstrate a strong connection to the UK.
- 1.25 For **payment for permission work in judicial review cases**, in the light of the responses to this proposal, we intend to consult further on an alternative option which will achieve our desired aim of preventing legal aid being used to fund weak cases which have little effect other than to cause delay and incur unnecessary cost. We intend to set out further details of this proposal shortly in a separate paper.
- 1.26 On our various other proposals for reforming fees in **criminal and civil legal aid**, we propose to proceed with reducing litigator and advocate fees in Very High Cost Cases (Crime) by 30%, reducing the use of multiple advocates, reducing the fixed representation fee paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme, harmonising fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings and removing the uplift in the rate paid for immigration and asylum Upper Tribunal cases.
- 1.27 On **expert fees** we have decided to proceed with our reform to fees, subject to retaining the rates payable to experts in those areas where recent increases have been made to address market supply issues. We have also decided to retain the current fees payable to interpreters in London and will limit the reduction in rates payable to interpreters outside London to ensure these do not fall below rates paid by CPS.

Future Work

- 1.28 As signalled in our consultation document, we will be bringing forward proposals for consultation in the autumn on how to adjust the eligibility criteria for legal aid in light of the roll-out of Universal Credit. This will replace the benefits which are currently used to “passport” recipients through all or part of the legal aid means test⁵. We will propose a new system which is fair to everyone, whether they are in work or not, and which does not cut across any incentives to be in work. We also intend, later in the autumn, to bring forward a proposal as to how to adapt the current family fees scheme to reflect the creation of the single family court in April 2014.
- 1.29 In June 2013 the Government published *Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System*. It sets out a comprehensive programme of work that will drive system-wide improvement in the delivery of criminal justice. We are continuing to work with representative bodies from the legal professions both to deliver the action plan commitments and explore broader ideas that were raised through this consultation on how to remove inefficient process and procedure. We are establishing a panel of experienced defence lawyers to advise on system reform to support better value for money for the taxpayer. Achieving improvement of this nature would support hard-working defence practitioners and bring benefits to all those working and participating in the criminal justice system.

⁵ From 2013, during the period of phased roll-out, Universal Credit is being treated in the same way as other ‘passporting’ benefits.

Overall Impact on Spending

- 1.30 Our first reform programme launched in 2010, which focussed primarily on civil legal aid, is estimated to save approximately £320 million in 2014/15 and, as these savings begin to take effect, we have witnessed a small reduction in the overall legal aid budget between 2011/12 and 2012/13. Our further reforms ensure that we can continue to bear down on the costs of legal aid spending. The chapters that follow outline how we intend to achieve additional savings. We estimate that these reforms would save a further £220 million per annum in 2018/19 over and above the savings that we expect to deliver as a result of our previous reforms and changes in underlying caseload and expenditure. Full details are set out in the Impact Assessment, published alongside this Government response.⁶
- 1.31 As we have made clear, we recognise the continued importance of providing access to justice, supported by public funding in those cases which we judge to be a priority. We note that, even after implementation of all of our proposals, England and Wales will still have one of the most generous legal aid schemes in the world, with a budget of around £1.5 billion per annum.

⁶ <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>

Part One: The Programme of Reform

Chapter 2. Response to consultation

- 2.1 This document sets out the Government's response to the consultation paper, *Transforming legal aid: delivering a more credible and efficient system*.
- 2.2 We estimate that the proposals set out in this consultation, once fully implemented, would deliver savings of £220m per year by 2018/19.
- 2.3 A detailed summary of the key issues raised in the consultation responses are our detailed response to those issues are set out in Annex B.

Eligibility Scope and Merits

- 2.4 Chapter 3 of the Legal Aid Transformation (LAT) consultation document sought views on a number of proposals that aimed at targeting limited resources at cases that really justify it, ensuring that the public can have confidence in the legal aid scheme. The detailed issues raised in consultation and the Government's considered response are set out at Annex B.

Restricting the scope of legal aid for prison law

- 2.5 The proposals on amending the scope of criminal legal aid for prison law are intended to focus public resources on cases that are of sufficient priority to justify the use of public money. Alternative means of redress such as the prisoner complaints system should be the first port of call for issues removed from the scope of legal aid. In line with these principles we intend to proceed with the original proposals, subject to a number of adjustments. We intend to retain funding for proceedings before the Parole Board where the Parole Board has the power to direct release, as opposed to all cases that engage Article 5.4 ECHR. We also intend retaining sentence calculation matters within scope where disputed, as both these matters have a direct and immediate impact on the date of release.
- 2.6 We consider that adequate provision is in place to enable prisoners with mental health issues and/or learning disabilities and young offenders to use complaints systems; advocacy services are available to support young offenders. Prisoners/young offenders in Young Offender Institutions and Secure Training Centres are able to refer complaints to the Prison and Probation Ombudsman (PPO) (or statutory Monitor or Local Authorities in the case of young offenders in Secure Training Centres and Secure Children's Homes respectively) if they are not satisfactorily resolved using complaints processes. Categorisation matters and licence condition cases should be resolved using the prisoner complaints system or representations by prisoners for Category A prisoners. Civil legal aid for judicial review may be available subject to means and merits. We are confident that the complaints system and the PPO are properly resourced to deal with these issues.
- 2.7 It is intended that these changes will be introduced by way of amendments to secondary legislation, subject to Parliamentary approval, and contract amendments later this year.

Imposing a financial eligibility threshold in the Crown Court

- 2.8 The proposal to introduce a financial eligibility threshold of disposable household income of £37,500 or more in the Crown Court is intended to ensure that the wealthiest Crown Court defendants, who are able to pay privately, are not automatically provided with legal aid at the taxpayer's expense. The Government intends to implement this proposal. We have conducted further analysis of private rates and consider that private defence costs should be affordable for the majority of defendants who would be subject to the threshold. Where a defendant can demonstrate on a hardship review that they cannot in fact afford to pay privately, they will remain eligible for legal aid, subject to a contribution under the existing Crown Court means testing scheme.
- 2.9 We consider that the Legal Aid Agency's (LAA) administrative processes are sufficient to mitigate the potential for additional delay, and that the hardship review will mean that defendants will not be forced to represent themselves, as some respondents claimed. Reimbursing acquitted defendants at legal aid rates rather than private rates is in accordance with the position in the magistrates' courts following changes to central funds, which were approved by Parliament and came into force in October 2012.
- 2.10 It is intended that this reform will be introduced, subject to parliamentary approval, by way of secondary legislation early next year.

Introducing a residence test

- 2.11 The purpose of this proposal is to ensure that only individuals with a strong connection to the UK can claim civil legal aid at UK taxpayers' expense. We proposed to do this by introducing a lawful residence test for applicants for civil legal aid. Following our analysis of consultation responses, we have identified the need for a number of modifications.
- 2.12 The Government continues to believe that individuals should, in principle, have a strong connection to the UK in order to benefit from the civil legal aid scheme. We believe that a requirement to be lawfully resident at the time of applying for civil legal aid and to have been lawfully resident for 12 months in the past is a fair and appropriate way to demonstrate such a strong connection. We will therefore proceed to introduce a residence test in civil legal aid so that only those who:
- are lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time the application for civil legal aid was made; and
 - have resided lawfully in the UK, Crown Dependencies or British Overseas Territories for a continuous period of at least 12 months at any point in the past
- would be eligible for civil legal aid, subject to the modifications and exceptions set out at paragraphs 2.13-2.16 below. It is intended that this reform will be introduced, subject to Parliamentary approval, via secondary legislation, to take effect in early 2014.
- 2.13 In addition to exceptions previously proposed for serving members of Her Majesty's Armed Forces and their immediate families and for asylum seekers, we will implement the proposals so that children under 12 months old will not be required to have at least 12 months of previous lawful residence.

- 2.14 We have also concluded that there are further limited circumstances where applicants for civil legal aid on certain matters of law would not be required to meet the residence test. The test will therefore not apply to categories of case which broadly relate to an individual's liberty, where the individual is particularly vulnerable or where the case relates to the protection of children.
- 2.15 We also agree that, in the case of successful asylum seekers, the continuous period of lawful residence required under the test will begin from the date they submit their asylum claim, rather than the date when that claim is accepted.
- 2.16 We consider it would be appropriate and proportionate to allow for short breaks in residence. We therefore intend that a break of up to 30 days in lawful residence (whether taken as a single break or several shorter breaks) would not breach the requirement for 12 months of previous residence to be continuous.
- 2.17 It is intended that these changes will be introduced by way of secondary legislation, subject to Parliamentary approval, in early 2014.

Paying for permission work in judicial review cases

- 2.18 The purpose of this proposal is to prevent legal aid being used to fund weak cases which have little effect other than to incur unnecessary costs for public authorities and the legal aid scheme. We proposed that providers should only be paid for work carried out on an issued application for permission for judicial review (including a request for reconsideration of the application at a hearing, the renewal hearing or an onward permission appeal to the Court of Appeal), if permission is granted by the court. Reasonable disbursements, such as expert fees and court fees (but not counsel's fees) which arise in preparing the permission application, would continue to be paid, even if permission was not granted by the court. Legal aid would continue to be paid for the pre-action stage of the case.
- 2.19 Respondents were concerned that the proposal would, as well as affecting weak cases, also affect a large number of meritorious cases which conclude prior to permission; that costs would not be recoverable in all such cases; that a merits test already exists to weed out weak cases; and that providers would no longer take on this work if made to act at risk in cases the outcome of which is difficult to predict.
- 2.20 The Government's aim remains to ensure that legal aid is focused on judicial review cases where it is really required. However, we have considered this proposal again in the light of the responses. We therefore intend to consult very shortly on a further proposal in which providers would not be paid unless granted permission, subject to discretionary payment in certain cases which conclude prior to a permission decision without a costs order or agreement. We intend to set out further details of this proposal shortly in a separate paper.

Civil merits test – removing legal aid for borderline cases

- 2.21 The purpose of this proposal is to direct the limited legal aid budget at the cases which really justify public funding by requiring a case to have at least 50% prospects of success in order to warrant public funding. We proposed to do this by no longer funding cases with 'borderline' prospects of success.
- 2.22 The merits test for civil legal aid broadly aims to replicate the decisions that somebody who pays privately would make when deciding whether to bring, defend or

continue to pursue proceedings. We do not think that a reasonable person of average means would choose to litigate in cases which only have a borderline prospect of success and we do not think it is fair to expect taxpayers to fund such cases either.

- 2.23 The Government has decided to proceed to remove legal aid for all cases assessed as having 'borderline' prospects of success. It is intended that this reform will be introduced, subject to Parliamentary approval, via secondary legislation in late 2013.

Introducing Competition in the Criminal Legal Aid Market

- 2.24 In Chapter 4 of the original consultation we sought views on a proposed model of competitive tendering for criminal legal aid contracts in England and Wales. That model was designed to achieve best value for money by offering providers increased opportunities to scale up to achieve economies of scale and provide a more efficient service, giving them the confidence to invest in the restructuring required in the knowledge they would be in receipt of larger and more certain returns.

- 2.25 Having carefully considered the responses, the Government is clear that further significant efficiencies can be made in a way which secures consistent service provision by applying a new model of procurement to encourage consolidation and the development of new business models and approaches. We have been greatly helped by the positive contribution of the Law Society and others in responding to the consultation and believe that our proposed modified model – which is described below – is better able to achieve our objectives as a result.

- 2.26 A summary of the key issues raised during consultation and the Government response on each question are set out in Annex B. The proposed modified model is discussed in the following chapter.

Client choice

- 2.27 The Government recognises that many respondents regard client choice as fundamental to the effective delivery of criminal legal aid. The modified model would in practice retain the same level of choice for clients seeking criminal legal aid as now.

Price as an award criterion

- 2.28 Having listened to the views of respondents, the Government is persuaded that a model of competition where price is set administratively would still enable us to achieve the overall policy objectives of a sustainable, more efficient service at a cost the taxpayer can afford. Therefore, we have designed a model that does not include the evaluation of tenders on price.

Number of contracts

- 2.29 The Government is convinced that steps are needed to support re-structuring and consolidation of the market. This is a view shared by a number of respondents including the Law Society. The Government continues to believe that without any Government intervention the market will not take any action to consolidate and that the best possible way to achieve such a sustainable market is through a procurement process that involves an element of competition.

- 2.30 Therefore, the modified model on which the Government is now consulting means that any organisation meeting the Requirements of the Tender Process (including the required quality standards), would be able to deliver Own Client Work⁷ anywhere in England and Wales. There would be no restriction on the number of contracts to deliver this work.
- 2.31 However, in order to ensure a sustainable duty provider service (the provision of criminal legal aid services at the police station and magistrates' court for those clients who do not have their own lawyer) at the rates of pay on offer, we intend to press ahead with plans to compete Duty Provider Work⁸. In determining the number of contracts we propose to have regard to the same four factors identified in the previous consultation paper in addition to one further factor. We aim to make, as far as possible, the contracts to deliver Duty Provider Work large enough in volume and value to be sustainable in their own right. In order to help inform our final decision on the number of contracts for Duty Provider Work, we intend to jointly commission with the Law Society a further piece of research exploring the size of contract necessary for it to be sustainable.

Geographical areas for the procurement and delivery of Duty Provider Work

- 2.32 The Government continues to believe that for most of the country the use of the Criminal Justice System (CJS) procurement areas for letting Duty Provider Work contracts is appropriate. However, in some areas, for specific local geographical reasons, we intend to base our procurement areas on combinations of existing police station duty scheme areas. Providers delivering Own Client Work would be able to deliver services anywhere in England and Wales.

Procurement process

- 2.33 Aside from the necessary changes to the procurement process to facilitate an approach whereby a provider could apply to deliver Own Client Work, and could apply to deliver Duty Provider Work, it is important to highlight that we have designed a modified model where price is set administratively. This would mean that the rates of pay for would be set administratively, both for the competed Duty Provider Work and for Own Client Work. Therefore, for Duty Provider Work, we propose to run a competition for a limited number of contracts in each procurement area where tenders are evaluated against the Requirements of the Tender Process (including the required quality standards). We are seeking views on this modified model.

Contract award / implementation

- 2.34 The Government agrees that it is important that the timetable for the implementation of any competitive tendering process gives providers sufficient time to secure all necessary resources to deliver services effectively at the point the service commences. Therefore, we are proposing a new implementation timetable. This would mean we would start the procurement process in early 2014, award contracts in late 2014/early 2015 and the service would commence in spring 2015.

⁷ Own Client Work is all criminal legal aid advice, litigation (except VHCCs) and magistrates' court advocacy services delivered to clients who choose their own provider at the first point of request.

⁸ Duty Provider Work is all criminal legal aid advice, litigation (except VHCCs) and magistrates' court advocacy services delivered to clients who choose the Duty Provider at the first point of request.

Scope of the contract

- 2.35 A number of respondents suggested that we consider letting providers who only wish to deliver prison law and/or appeals and reviews services to be able do so. We agree and the modified model we are consulting on would enable this.

Contract length

- 2.36 The Government recognises the need to strike a balance between providing as much certainty as possible for providers in order to give them the greatest opportunity to invest in their businesses; and not binding providers and the Government into a contract for too long a period. Therefore, in the modified model we propose to extend the contract term for both Own Client Work and Duty Provider Work to four years with the option for the Government of extending the contract term by up to one further year (subject to rights of early termination).

Remuneration

- 2.37 Our original model proposed a price cap 17.5% below the rates paid in 2012/13. Our modified model, on which we are seeking views, achieves the same overall reduction in fees but we propose a phased approach to the reduction, beginning with an 8.75% interim fee cut in early 2014 followed by a further 8.75% reduction (relative to current fee levels and against the proposed remuneration arrangements discussed below) upon commencement of the new contracts in spring 2015.
- 2.38 We maintain the view that the current remuneration mechanism is unnecessarily complex and that the introduction of fixed fees to simplify administrative processes would help cut costs for both providers and the Legal Aid Agency. Under the modified model, we propose to maintain the escape mechanism for non-standard cases in the magistrates' court; and introduce a series of fixed fees for Crown Court litigation (cases with less than 500 PPE) based on offence type and bands of PPE rather than one fixed fee for all types of Crown Court case with less than 500 PPE. Our modified approach will also provide for magistrates' court duty work to be remunerated by way of hourly rates and will keep the payment of travel and subsistence disbursements separate from the fixed fees.

Conclusion

- 2.39 Having considered, and given due weight to the responses to the consultation, the Government has decided to consult on a modified model of criminal legal aid which seeks to address many of the concerns expressed in response to the original proposal. The details of the new model are set out in the next chapter and we seek views on the proposal.

Interim Payments

- 2.40 The Government has decided to proceed with a suggestion put forward by respondents, including the Law Society and Bar Council, to improve cash-flow for litigators and advocates. The LAA will work with the profession's representative bodies to consider further how best to provide a facility or improve an existing mechanism by which cash-flow issues for litigators and advocates would be addressed.

Reforming Fees in Criminal Legal Aid

2.41 Chapter 5 of the consultation document looked at reforming fees in criminal legal aid in order to deliver further savings. Crown Court advocacy⁹ represents approximately £245m per annum of criminal legal aid but the current fee structure could be improved to better support efficient resolution of cases. Very High Cost Cases (Crime) (VHCCs) are long running cases which cost the scheme a disproportionately large amount. The reforms proposed complement work in the wider criminal justice system to embed the principle of “right first time”, ensuring that cases are resolved more quickly and cost effectively. The proposals include restructuring the Advocates’ Graduated Fee Scheme (AGFS), reducing litigator and advocate fees in VHCC (Crime) matters by 30% and reducing the use of multiple advocates.

Restructuring the Advocates’ Graduated Fee Scheme

2.42 The purpose of this proposal was to restructure the current AGFS to encourage earlier resolution of cases and more efficient working through a harmonisation of guilty plea, cracked trial and basic trial fee rates to the cracked trial rate, and a reduction in and tapering of daily trial attendance rates from day three onwards.

2.43 We have been persuaded by consultees that the gap between the preparation done and fees payable within the AGFS as a result of harmonising the Basic Fee for trials with those for guilty pleas and cracked trials might be too great to be managed by advocates given the current distribution of work.

2.44 However, the Government believes that further simplification of fee structures is needed which nonetheless takes account of the amount of preparation generally needed in different types of case. We therefore propose to consult on two different approaches to restructuring the AGFS as outlined in Chapter 4.

Reducing litigator and advocate fees in Very High Cost Cases (Crime)

2.45 Following careful consideration of responses to our proposal for VHCCs, our conclusion is that these cases do need a separate regime to manage their remuneration. LAA analysis of fraud VHCCs shows that the average value of a contract is £1m and contracts run for three to four years on average. VHCCs will remain high value, long duration cases that, because of the way these cases are managed by the LAA, with regular phased payments, bring certainty of income for providers for the extended period in which they are instructed in these matters. This is particularly important to self-employed advocates.

2.46 In relation to fees for VHCCs we do not accept that a distinction in legal aid and CPS rates for VHCCs undermines the principle of “equality of arms”. We are confident that defendants will continue to receive effective representation under the revised rates. Having considered, and given due regard to the responses to the consultation, the Government has decided to proceed with the proposed 30% reduction in fees payable to all new criminal VHCCs and to future work in existing cases, with the exception of pre-panel cases.

⁹ Excluding expenditure on Very High Cost Cases.

- 2.47 It is intended that these changes will be introduced by way of amendments to secondary legislation, subject to Parliamentary approval, and contract amendments later this year.

Reducing the use of multiple advocates

- 2.48 We proposed tightening the criteria governing the decision to appoint multiple counsel in a case, changing litigator contracts to require greater support to counsel from the litigation team, and introducing a more robust and consistent system of decision-making.
- 2.49 Following our analysis of consultation responses, we remain concerned that there are cases where multiple advocates are being appointed unnecessarily, particularly in cases with multiple defendants. .
- 2.50 We accept that Presiding Judges will not be as close to the detail of a case as an individual resident judge or the trial judge. However, Presiding Judges' oversight on a circuit-wide basis would allow them to ensure there was a consistency of approach between court centres. We intend to give Presiding Judges the power to delegate their function where they consider it appropriate to provide flexibility to ensure that bureaucracy and delay might be minimised.
- 2.51 Having considered, and given due regard to the responses to the consultation, the Government has decided to amend the criteria for the appointment of multiple advocates. We will also require decisions to allow Queen's Counsel (QC) or multiple advocates to be confirmed by a Presiding Judge (or nominee).
- 2.52 It is currently anticipated that the changes to the criteria together with the changes to the decision-making process will be implemented through changes to secondary legislation to be laid later this year.
- 2.53 On the question of greater litigation support for advocates, we consider it appropriate to defer taking a decision until deciding the terms of the new criminal litigation contracts generally.

Reforming Fees in Civil Legal Aid

- 2.54 Chapter 6 of the consultation paper sought views on a series of proposals designed to deliver further savings ahead of the introduction of competitive tendering for services in civil and family cases.

Reducing the fixed representation fees to solicitors in family cases covered by the Care Proceedings Graduated Fee scheme

- 2.55 The purpose of this proposal is to ensure that the representation fee in public law family cases more accurately reflects the work involved in such cases, in particular, the benefits arising out of the streamlining and speeding up of the family justice system as a result of the implementation of the Family Justice Review reforms. The current fixed fee regime is based on the codification of the average of the bills paid at hourly rates in care proceedings in 2007. As the family justice system reforms take effect, the Government remains of the view that these fees increasingly do not represent value for money. Having considered, and given due regard to the

responses to the consultation, the Government has therefore decided to proceed with the proposal as set out in the consultation paper, to reduce by 10%:

- the fixed representation fee; and
- the hourly rates that apply when a case reaches the escape threshold.

2.56 The revised hourly rates will be used for the purpose of calculating the escape threshold from the fixed fee scheme.

2.57 It is intended that the revised rates will be implemented, subject to Parliamentary approval, by way of secondary legislation in April 2014. The timing is intended to coincide with changes to the Family Advocacy Scheme required to facilitate the introduction of the new Single Family Court on which the Government will consult later this year.

Harmonising fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings

2.58 This proposal seeks to deliver value for money for the taxpayer by ensuring that self-employed barristers appearing in civil legal aid cases would be remunerated on the same basis as other advocates where they were undertaking similar work.

2.59 The Government continues to believe that it is an important principle that the same rates of pay should be used for the same basic work irrespective of the branch of the legal profession to which the practitioner belongs. Therefore, having considered and given due regard to the responses to the consultation, the Government has decided to proceed with the proposal as set out in the consultation paper to harmonise the fees payable to barristers in civil non-family proceedings with those of other advocates.

2.60 It is intended that the revised rates will be implemented, subject to Parliamentary approval, by way of secondary legislation, later this year.

Removing the uplift in the rate paid for immigration and asylum Upper Tribunal cases

2.61 The purpose of this proposal is to ensure that remuneration for Immigration and Asylum Upper Tribunal cases reflects wider scheme changes by removing the 35% uplift in the rate for Immigration and Asylum Upper Tribunal appeal cases.

2.62 Having considered and given due regard to the responses to the consultation, the Government's view remains that there is no justification for the continuing payment of the uplift. It is intended that this reform will be introduced, subject to Parliamentary approval, by way of secondary legislation, later this year.

Expert Fees in Civil, Family and Criminal Proceedings

2.63 Chapter 7 of the consultation paper sought views on a proposed 20% reduction in fees payable to experts in civil, family and criminal proceedings in order to ensure that the fees paid to experts under legal aid deliver value for money to the taxpayer and more accurately reflect the fees paid to experts elsewhere. The Government believes that the basic principle should be that it pays only those fees that are absolutely necessary to secure the level of services that are required. Therefore, having considered and given due regard to the responses to the consultation, the

Government has decided to proceed with the proposal to reduce the fees payable to most experts in civil, family and criminal proceedings by 20% as proposed in the consultation paper. However, in the light of recent changes to ensure market supply, we have decided to modify the proposal in respect of:

- Neurologists, Neuroradiologists and Neonatologists in clinical negligence (cerebral palsy) cases where the higher rates recently set out in guidance to the LAA will be codified;
- Surveyors in housing disrepair cases where the current rates codified in the Civil Legal Aid (Remuneration) Regulations 2013 will be retained; and
- Interpreters, where the:
 - current rates payable to interpreters inside London will be retained; and
 - rates payable to interpreters outside London will be reduced by 12.5%.

2.64 It is intended that the revised rates will be introduced, subject to Parliamentary approval, by way of secondary legislation later this year.

Part Two: Further Consultation

Nearly 16,000 responses were received following the *Transforming Legal Aid* consultation published in April. In addition to these, the Ministry of Justice held 14 stakeholder events throughout the consultation period. The responses are summarised at Annex B.

All views expressed have been carefully considered and it is on the basis of these that the proposals set out in Part 1 have been determined. In the case of two of the original *Transforming Legal Aid* proposals – those to introduce competitive tendering and our proposed reforms to criminal advocacy fees – it was decided to undertake a second phase of consultation on refined proposals. These are set out here, in Part 2 of the document.

Schedule of Consultation Questions

Chapter 3: Procurement of Criminal Legal Aid Services

- Q1. Do you agree with the modified model described in Chapter 3? Please give reasons.
- Q2. Do you agree with the proposed procurement areas under the modified model (described at paragraphs 3.20 to 3.24)? Please give reasons.
- Q3. Do you agree with the proposed methodology (including the factors outlined) for determining the number of contracts for Duty Provider Work (described at paragraphs 3.27 to 3.35)? Please give reasons.
- Q4. Do you agree with the proposed remuneration mechanisms under the modified model (as described at paragraphs 3.52 to 3.73)? Please give reasons.
- Q5. Do you agree with the proposed interim fee reduction (as described at paragraphs 3.52 to 3.55) for all classes of work in scope of the 2010 Standard Crime Contract (except Associated Civil Work)? Please give reasons.

Chapter 4: Advocacy fee reforms

- Q6. Do you prefer the approach in:
- Option 1 (revised harmonisation and tapering proposal); or,
 - Option 2 (the modified CPS advocacy fee scheme model)
- Please give reasons.

Chapter 5: Impact Assessments

- Q7. Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper?
Please give reasons
- Q8. Do you agree that we have correctly identified the extent of impacts under these proposals?
Please give reasons.
- Q9. Are there forms of mitigation in relation to impacts that we have not considered?

Chapter 3. Procurement of Criminal Legal Aid Services

Introduction

- 3.1 The Government's proposals for reform of the procurement of criminal legal aid services are intended to support the market to move towards more cost effective and modern business models, reducing back office costs in order to provide quality services for users at a lower cost to the taxpayer.
- 3.2 Our analysis of responses to the consultation (see Annex B) and the detailed discussions we have had with providers and their representative bodies convinces us both that criminal defence services can be delivered more efficiently and that significant consolidation of the market is required in order to enable firms to function effectively at those lower costs. We continue to believe that the way in which the Government organises the procurement of these services will be an important part of that consolidation process. However, as a result of responses to the consultation and the further helpful engagement that this has stimulated, we are making a number of changes to that proposed procurement method which we believe will provide a more secure means of achieving our objectives. We believe that this will be better for providers and their clients as well as for the taxpayer. We are therefore seeking further views in this document on a revised procurement model.
- 3.3 The modified model set out below would give providers the opportunity to apply for one of an unlimited number of contracts to deliver criminal legal aid services to their own clients anywhere in England and Wales. For those seeking to also provide services to clients that do not have their own lawyer, we propose to run a competitive tendering process for a limited number of contracts for access to this work. We believe this maintains an appropriate balance between providing opportunities for consolidation - thereby ensuring sustainable provision of the duty provider service which is fundamental to the effective of criminal legal aid - without restricting access to the market unnecessarily.

New proposals

Modified Model

- 3.4 The model for the procurement of criminal defence services which is described below has been designed to achieve the same policy objectives as the proposed model set out in the consultation paper, namely:
- Economies of scale – providers would have increased opportunities to scale up to achieve economies of scale and provide a more efficient service.
 - Economies of scope – providers would be obliged to deliver the full range of litigation services, as well as advocacy in the magistrates' court. This would enable providers to resource their contract in the most efficient way.
 - Simplification and greater flexibility – systems and processes for operating the scheme would be simplified to introduce fixed fees where possible; and providers

given greater flexibility in how they structure their businesses and enter into a contractual relationship.

- Savings objective – proposals would reduce criminal legal aid expenditure through a more efficient service and structure.
- 3.5 In response to feedback to the consultation, we have considered how to develop a model of competitive tendering which includes client choice. For example, we have re-examined how best to structure the proposed fixed fee scheme; the scope of the work competed; the appropriate size of procurement areas; and the number of contracts in order to accommodate client choice.
- 3.6 We have also listened to the views of respondents and discussed at length with the Law Society the concerns raised about a competitive tendering process which uses price as a key criterion. Having considered these views, we are persuaded that we can achieve our objectives through a competitive tendering process where price is not used as an award criterion.
- 3.7 The modified model therefore provides firms with an opportunity to apply to deliver just Own Client Work¹⁰ and for firms which fulfil the requirements to provide Own Client Work also to have the opportunity to apply to deliver Duty Provider Work¹¹. This would retain the same level of choice for clients seeking criminal legal aid as now.
- 3.8 There would be no restriction on the number of contracts for Own Client Work and any provider meeting the Requirements of the Tender Process¹² (including the required quality standards) would be able to deliver those services anywhere in England and Wales and individuals would be free to select any provider with an Own Client contract to represent them.
- 3.9 Under the modified model, we would let a limited number of contracts for Duty Provider Work. The successful providers would be given an equal share of the police duty slots within the relevant contractual area. Applicants for Duty Provider Work would need to demonstrate how they met the Requirements of the Tender Process (including the required quality standards) but would also have to demonstrate how they had capacity to deliver the type and volume of work on offer. Our assessment of the ability of firms to meet these requirements would form the basis of a process through which the limited number of contracts for this work would be let.
- 3.10 Whilst for most of the country the procurement area for these Duty Provider contracts will be existing CJS areas, we propose to modify this in a number of areas where geographical constraints make it impractical.

¹⁰ Own Client Work is all criminal legal aid advice, litigation (except VHCCs) and magistrates' court advocacy services delivered to clients who choose their own provider at the first point of request.

¹¹ Duty Provider Work is all criminal legal aid advice, litigation (except VHCCs) and magistrates' court advocacy services delivered to clients who choose the Duty Provider at the first point of request.

¹² The reference to 'Requirements of the Tender Process' throughout this document means the requirements of the tender process set out in the 'Pre-Qualification Questionnaire', the 'Information for Applicants' documentation (which will include the terms and conditions of tender) and the 'Invitation to Tender'.

Summary of proposed modified model

3.11 Looking at the same key elements as were discussed in the consultation paper, we set out in Table 1 below the key elements of the proposed modified model. Each element is discussed in detail in the paragraphs that follow.

Table 1: Key elements of proposed modified model

(i) Scope of the new contract(s)	<p>The structure of the new contract(s) would enable providers to:</p> <ol style="list-style-type: none"> 1. Apply to deliver the following services to only clients who choose their own provider (Own Client Work) at the first point of request: Investigations, Proceedings, Associated Civil Work, Crown Court (non VHCC) litigation and higher court representation¹³; <p>and</p> <ol style="list-style-type: none"> 2. Apply to take part in a competition to deliver those same services to clients who choose the Duty Provider at the first point of request (Duty Provider Work): <p>Providers wishing to apply to conduct prison law and/or appeals and reviews classes of criminal legal aid services would be able to do so, whether they deliver other criminal legal aid services or not.</p> <p>(A full breakdown of the types of classes of work delivered under each of these headings is included in Table G1 at Annex G)</p>	Para Refs. 3.12-3.17
(ii) Contract length	Four year contract term both for Own Client Work and for Duty Provider Work with the option for the Government of extending the contract term by up to one further year (subject to rights of early termination).	3.18-3.19
(iii) Geographical areas for the procurement and delivery of services	<p>For Own Client Work, the procurement area would be England and Wales.</p> <p>For Duty Provider Work, the proposed procurement areas are a mixture of Criminal Justice System (CJS) areas and combined police station duty scheme areas</p>	3.20-3.26

¹³ Representation before the Court of Appeal or Supreme Court.

<p>(iv) Number of contracts</p>	<p>For Own Client Work, there would be no restriction on the number of contracts across England and Wales.</p> <p>For Duty Provider Work, applicants would be able to compete to deliver services in more than one procurement area. The number of contracts would vary by procurement area and would be determined based on a number of factors.</p>	<p>3.27-3.36</p>
<p>(v) Types of provider</p>	<p>Providers could be individual organisations (such as a partnership or a Legal Disciplinary Practice), a joint venture or an Alternative Business Structure (ABS) but must be a single legal entity.</p>	<p>3.37-3.40</p>
<p>(vi) Contract value</p>	<p>There would be no limitation on the amount of Own Client Work a successful applicant could deliver.</p> <p>For Duty Provider Work, providers would be contracted to deliver an equal share of police station and magistrates' court duty slots in their procurement area, thereby granting them access to further work in either the station or the court.</p>	<p>3.41-3.45</p>
<p>(vii) Client Choice</p>	<p>Clients would be able to choose between a provider they know and/or already have a relationship with provided that provider holds a criminal legal aid contract for Own Client Work; or the provider on duty at the time they are seeking advice. This maintains the current level of choice for clients.</p>	<p>3.46-3.48</p>
<p>(viii) Case allocation</p>	<p>As now, there would be no system of case allocation for those clients seeking to instruct their own provider. Duty Provider Work would be allocated on a duty slot rota basis or, where applicable on a panel basis.</p>	<p>3.49-3.51</p>
<p>(ix) Remuneration</p>	<p>Fixed fee schemes for police station attendance, magistrates' court representation and Crown Court litigation (cases with less than 500 pages of prosecution evidence (PPE)).</p> <p>For Crown Court litigation, cases with more than 500 PPE would be remunerated under the Litigators Graduated Fee Scheme (reduced by 17.5%).</p> <p>All other remuneration mechanisms would remain unchanged, albeit rates of pay would be reduced.</p>	<p>3.52-3.73</p>

(x) Procurement process	<p>Applicants could:</p> <ul style="list-style-type: none"> • Apply for one of an unrestricted number of contracts to deliver Own Client Work anywhere in England and Wales; <p>and</p> <ul style="list-style-type: none"> • Apply to take part in a competition to be awarded one of a limited number of contracts to deliver Duty Provider Work in a procurement area(s). <p>Organisations that wish to undertake Prison Law would be able to apply under a separate process that would have specific criteria reflecting the quality requirements of the service.</p> <p>The application process for Own Client Work would be a single stage process to evaluate the Requirements of the Tender Process consisting of:</p> <ul style="list-style-type: none"> • Pre-Qualification Questionnaire (PQQ); <p>and</p> <ul style="list-style-type: none"> • An assessment that the applicant can meet certain core obligations under the contract. <p>The application process for Duty Provider Work would be a two stage process to evaluate the Requirements of the Tender Process:</p> <ul style="list-style-type: none"> • Stage 1 - PQQ; and • Stage 2 - Invitation to Tender consisting of the assessment of bidders' Delivery Plans. 	3.74-3.98
(xi) Contract Award / Implementation	<p>Tendering process to start in all procurement areas in early 2014 for both Own Client Work and Duty Provider Work.</p> <p>Our current intention is for the service to commence in spring 2015 for Own Client Work and Duty Provider Work.</p>	3.99

(i) Scope of the new contract¹⁴

3.12 The previous consultation model proposed that the scope of the new contract would include all services currently in scope of the 2010 Standard Crime Contract. Successful applicants would have been required to deliver all services within scope of the new contract, thereby preventing those organisations currently delivering just prison law and/or appeals and reviews matters from doing so in future. We have made a number of modifications to this approach.

3.13 As with the previous consultation model, under the modified model the new contracts would only apply to new cases starting on or after the service commencement date. Further to the reasoning set out at paragraphs 212 to 220 of Annex B, we propose that whatever the structure of the new contract(s), providers could:

- Apply to deliver Own Client Work only – all classes of criminal legal aid listed in Table G 1 of Annex G to those clients where they choose their own provider, including:
 - Investigations – includes all work undertaken for a client during the criminal investigation of a matter up to the point at which a client is charged, discharged or summonsed for the matter under investigation;
 - Proceedings – includes all work undertaken for a client during the magistrates’ court criminal proceedings in a matter or case from the date of charge or summons;
 - Associated Civil Work - legal advice and representation for matters concerning public law challenges arising from any criminal case; and
 - Crown Court (non-VHCC) litigation; and
 - Representation for appeals heard by the Court of Appeal or Supreme Court.

And

- Apply to deliver Duty Provider Work covering the same classes of criminal legal aid.

3.14 Providers who only wish to deliver prison law¹⁵ and/or appeals and reviews¹⁶ services should be able do so.

3.15 As explained in the previous consultation paper, at present, the Legal Aid Agency (LAA) operates a duty solicitor scheme in the magistrates’ court. The duty solicitor is able to offer free legal advice and representation to people on their first appearance at court (not at trial), regardless of their financial circumstances, where they are charged with an imprisonable offence only or where the client is in custody and, in both cases, where the client has not previously received advice from the duty solicitor on the same matter.

¹⁴ The new Crime Contract(s) would also be tailored to the services required under the final model and procurement process. They would also be updated to reflect changes to our business processes (e.g. electronic working) and impacts as a result of changes to legislation and/or the justice system.

¹⁵ Prison law (as revised – see Chapter 2).

¹⁶ Appeals and reviews – advice and assistance on appeals against conviction or sentence (where a newly instructed representative is not covered by an existing Representation Order) or applications to the Criminal Cases Review Commission (CCRC).

- 3.16 We propose to maintain such a service under the modified model, but only those awarded contracts to deliver Duty Provider Work would be eligible to provide court duty provider coverage in their procurement area (paragraph 3.64 sets out proposals on how this work would be remunerated having taken into consideration the responses to the consultation).
- 3.17 For the reasons outlined at paragraphs 212 to 220 of Annex B, we intend to proceed with our plans to exclude the following three areas of criminal legal aid from the scope of the new contract entirely:
- Crown Court Advocacy;
 - Very High Cost Cases (Crime);
 - Defence Solicitor Call Centre and Criminal Defence Direct services.

(ii) Contract length

- 3.18 Following feedback from consultees, we see the case for a slight adjustment to the proposed period for contract length. We propose that new contracts would be for a four year term, with the option for the Government of extending the contract term by up to one further year (and subject to rights of early termination).
- 3.19 We still propose that any new criminal legal aid contract for Duty Provider Work would include a modified no fault termination clause to include provision for compensation in certain circumstances for early termination of the contract by the Lord Chancellor.

(iii) Geographical areas for the procurement and delivery of criminal legal aid services

- 3.20 We believe that the case for using the existing 42 CJS areas as the basis for setting procurement areas stands. However, for the reasons set out at paragraphs 244 to 246 of Annex B, we propose to make a number of modifications.
- 3.21 Providers delivering Own Client Work would, of course, be able to deliver services anywhere in England and Wales.
- 3.22 In relation to Duty Provider Work, in a small number of areas, for reasons of specific local geography, we propose to create smaller procurement areas based on combinations of existing police station duty scheme areas. In taking this approach we have looked at two key factors:
- a. Travelling time between the most extreme two points of delivery in the procurement area – we have assessed the two points of delivery (e.g. police station, magistrates' court, Crown Court location) which are the most extreme geographically in each procurement area. No proposed procurement area would require a provider to travel more than 1.5 hours by car between two points of delivery.

- b. Input from the LAA on an appropriate geographic division of the area. We asked the LAA to use their local knowledge of the proposed geographic split and advise on appropriate amendments where necessary.

3.23 Our proposal for London is that it should be subdivided and procurement areas set by London Local Justice Areas. There are currently nine Local Justice Areas in London, whereby London Boroughs are grouped according to the relevant magistrates' courts.

3.24 Based on the analysis above, the proposed procurement areas under the modified model are as follows:

Table 2: Proposed procurement areas under the modified model

Procurement area	Police Station Duty Schemes
Avon and Somerset 1	Mendip, Weston Super Mare, Sedgemoor
Avon and Somerset 2	Avon North, Bath, Bristol
Bedfordshire	All police station duty schemes currently within CJS area
Cambridgeshire	All police station duty schemes currently within CJS area
Central London	All police station duty schemes currently within CJS area
Cheshire	All police station duty schemes currently within CJS area
Cleveland	All police station duty schemes currently within CJS area
Cumbria 1	Barrow in Furness, Whitehaven
Cumbria 2	Kendal, Penrith
Derbyshire	All police station duty schemes currently within CJS area
Devon and Cornwall 1	Barnstable, Exeter, Plymouth, Teignbridge
Devon and Cornwall 2	East Cornwall, Carrick
Dorset	All police station duty schemes currently within CJS area
Durham	All police station duty schemes currently within CJS area
Dyfed-Powys 1	Amman Valley, Llanelli, Pembrokeshire
Dyfed-Powys 2	Carmarthen, Brecon, Mid Wales, North Ceredigion
East London	All police station duty schemes currently within CJS area
Essex	All police station duty schemes currently within CJS area
Gloucestershire	All police station duty schemes currently within CJS area
Greater Manchester	All police station duty schemes currently within CJS area
Gwent	All police station duty schemes currently within CJS area
Hampshire 1	Aldershot, Andover, Portsmouth, Gosport, Southampton
Hampshire 2	Isle of Wight
Hertfordshire	All police station duty schemes currently within CJS area
Humberside	All police station duty schemes currently within CJS area
Kent	All police station duty schemes currently within CJS area
Lancashire	All police station duty schemes currently within CJS area
Leicestershire	All police station duty schemes currently within CJS area
Lincolnshire	All police station duty schemes currently within CJS area
Merseyside	All police station duty schemes currently within CJS area
Norfolk 1	Cromer, Great Yarmouth, Norwich, Thetford, Dereham
Norfolk 2	Kings Lynn

Procurement area	Police Station Duty Schemes
North East London	All police station duty schemes currently within CJS area
North London	All police station duty schemes currently within CJS area
North Wales 1	Colwyn Bay, Denbighshire, Mold, Wrexham
North Wales 2	Bangor, Dolgellau, North Anglesey, Pwllheli
North West London	All police station duty schemes currently within CJS area
North Yorkshire 1	Northallerton, Harrogate, Skipton
North Yorkshire 2	Scarborough, Malton, York
Northamptonshire	All police station duty schemes currently within CJS area
Northumbria 1	S. E. Northumbria, Newcastle Upon Tyne, Gateshead, N.Tyneside, S.Tyneside, Sunderland, Tyndale
Northumbria 2	Berwick and Alnwick
Nottinghamshire	All police station duty schemes currently within CJS area
South East London	All police station duty schemes currently within CJS area
South London	All police station duty schemes currently within CJS area
South Wales	All police station duty schemes currently within CJS area
South West London	All police station duty schemes currently within CJS area
South Yorkshire	All police station duty schemes currently within CJS area
Staffordshire	All police station duty schemes currently within CJS area
Suffolk 1	Felixstowe / Ipswich & District / Woodbridge, Lowestoft
Suffolk 2	Sudbury
Surrey	All police station duty schemes currently within CJS area
Sussex 1	Brighton, Hastings, Worthing, Eastbourne
Sussex 2	Chichester, Crawley
Thames Valley	All police station duty schemes currently within CJS area
Warwickshire	All police station duty schemes currently within CJS area
West London	All police station duty schemes currently within CJS area
West Mercia 1	Hereford, Kidderminster, Worcester
West Mercia 2	Shrewsbury, Telford
West Midlands	All police station duty schemes currently within CJS area
West Yorkshire	All police station duty schemes currently within CJS area
Wiltshire	All police station duty schemes currently within CJS area

Exclusivity

- 3.25 A contract to deliver Duty Provider Work in one procurement area would not permit that provider to deliver Duty Provider Work in another procurement area except where a case crossed procurement area boundaries. Where a case crossed the procurement area boundary (for example, where a case is transferred to a court in a different procurement area) the Duty Provider would be contractually obliged to follow that client to the other procurement area.
- 3.26 Applicants would be able to tender to deliver Duty Provider Work in more than one procurement area. However, applicants would not be able to tender for more than one share of Duty Provider Work in a single procurement area.

(iv) Number of contracts

- 3.27 Under the previous consultation model, we set out four factors which we proposed to use to determine the optimum number of contracts in each procurement area, and asked for feedback on these factors and whether there were any others we should consider. We explained that based on our assessment of these factors, the LAA claim data for the period October 2010 to September 2011 would suggest approximately 400 contracts with providers across England and Wales. These contracts would have covered both Own Client and Duty Provider Work and therefore were, in general, for much larger volumes of work than most providers currently undertake.
- 3.28 Under the modified model which includes client choice, we are proposing only to compete Duty Provider Work, which accounts for around 40% (based on a national average) of cases receiving criminal legal aid. We believe it is necessary to limit the number of contracts to deliver Duty Provider Work – relative to the number of duty providers today – in order to ensure the duty provider service, which is fundamental to the effective delivery of criminal legal aid, is sustainable at the rates of pay on offer.
- 3.29 However, we have heard from respondents that for some providers, the level of growth necessary to obtain one of the new duty contracts may not be desirable or achievable. Therefore, under the modified model, providers would be able to deliver services to their own clients and ensure their business remains sustainable within the reduced fees by growing the amount of Own Client Work they deliver and where necessary explore opportunities for consolidation during the contract term. We believe that the proposed modified model would support those providers to make those changes by offering greater flexibility in terms of business structures; giving them the opportunity to grow their business and innovate; and adopting a staged reduction in fees.
- 3.30 Under the modified model, the number of contracts for Own Client Work would be unlimited. Any provider that was capable of meeting the requirements of the tender process (including the required quality standards) would be awarded a contract to provide criminal legal aid services to a client who chooses them from anywhere in England and Wales at the first point of request.
- 3.31 For the purposes of determining the number of contracts for Duty Provider Work, we maintain our view that the same four key factors as set out in the previous consultation paper should still be taken into account. These are:
- **Sufficient supply to deal with potential conflicts of interest** – Having expanded our data set to include LAA claim data from 2009 to 2013, the data confirms that the vast majority of cases have four defendants or less. The data therefore indicates that there should be a minimum of four contracts in each procurement area.
 - **Sufficient case volume to allow fixed fee schemes to work** – To manage the level of risk of financial loss faced by providers with a fixed fee scheme, we would need to offer sufficient volume of work in order for them to cope with variations in case mix. We intend to assess this using a similar approach to that set out in the previous consultation - adjusted for the latest data and to reflect Duty Provider Work only - and changes to the fixed fee scheme and procurement areas.

Our view remains it would be reasonable to expect providers to absorb up to a 3% change in revenue, in any one year, relative to what they would have received on the same mix of cases. For example, taking an area with a current average claim value of £400, we would aim to be statistically confident that under the proposed fixed fee schemes, the average claim value a provider will receive is no less than £388 (-3%) and no more than £412 (+3%).

- **Market agility** – The same considerations apply with this model compared with the previous consultation model, in terms of the extent to which existing providers in each procurement area would need to expand their businesses to take on increased volumes of Duty Provider Work. However, we would also take into consideration the views presented in response to consultation by those firms who may, on their assessment, have had to scale their businesses down. In determining the number of Duty Provider Work contracts, we would therefore need to consider the extent to which this could be mitigated by enabling those providers to maintain access to Own Client Work.
- **Sustainable procurement** – We also maintain the view that we need to ensure the market is competitive in future tendering rounds. As set out in the previous consultation paper, we expect that a number of successful applicants would be joint ventures or a legal entity using agents. In addition, providers of Own Client Work would have the opportunity to grow their businesses should they wish through obtaining more work as a result of competition through natural market forces. This in turn might enable those providers to build enough scale in order to compete in a future round of procurement.

- 3.32 In addition to these factors, our intention is to ensure that the contracts to deliver Duty Provider Work are large enough in volume and value to be sustainable in their own right after the cumulative reduction in fees by 17.5%, so far as is possible. We clearly must ensure that a minimum number of providers continue to operate in each area and that a service is provided to all who need it. We think the best way to do that would be to ensure that Duty Provider Work is sustainable on its own.
- 3.33 In order to help inform our analysis of sustainability and the final decision on the number of contracts for Duty Provider Work, we intend to jointly commission with the Law Society a further piece of research to get more detailed information for this purpose. It would also be necessary for such work to take into account the proposed size of procurement area.
- 3.34 Therefore, we propose to determine the appropriate number of contracts for Duty Provider work on the basis of the four factors set out above and the outcomes of the further research. We would welcome consultees' views on these factors and whether there are any others that we should consider.
- 3.35 We note that an indicative analysis set out in a report by Otterburn and Ling, supplied by the Law Society in response to previous consultation¹⁷, suggested that three hypothetical organisations operating across the proposed CJS procurement areas would have a better chance of sustaining their business after a 17.5% reduction in fees, if they have an annual turnover in excess of around £1m (including VAT).

¹⁷ <http://www.lawsociety.org.uk/representation/policy-discussion/transforming-legal-aid-consultation-law-society-response/>

Taking the estimated spend on criminal legal aid services in scope of the proposed new contract after the proposed 17.5% reduction in fees (which would equate to around £570 million in steady state), this would suggest that we should offer, no more than, 570 contracts for Duty Provider Work. Whilst this is a useful starting point, this number does not take account of the other factors set out above, and also presupposes that the providers with a Duty Provider Work contract would need to absorb all Own Client Work available in the market during the contract term in order for the contracts to be sustainable. As indicated above, our aim is that Duty Provider Work contracts should be large enough to be sustainable in their own right after the cumulative reduction in fees by 17.5%. We would have regard to all the factors set out above, including the further research described at paragraph 3.33 above, in determining the final contract numbers for this work.

Public Defender Service (PDS)

- 3.36 We continue to believe that it is important to maintain a role for the PDS because of the part that the service plays in benchmarking; in the development of quality standards in criminal defence work; and as a safeguard against market failure. Our current intention is that following an assessment of the capacity of the PDS, it would be assigned an equal share of duty slots in the areas in which it is already established. The PDS would also be eligible to conduct Own Client Work anywhere in England and Wales.

(v) Types of provider

- 3.37 As with the previous consultation model, we do not propose to limit the types of organisation that may bid for a contract provided that they meet the applicable Requirements of the Tender Process (including the required quality standards) in this regard. Our current thinking is that any applicant applying for a contract and not already regulated, must ensure that it has applied for appropriate regulation in order to be regulated by the contract start date. Subject to the outcome of this consultation this may be a condition of submitting a tender (i.e. applicants would need to be a legal entity and have applied for appropriate regulation by the close of the Invitation to Tender for Duty Provider Work). Applicants would need to check with their regulatory body with regard to what is required in order to apply for regulation and how long this process would take (which may be a number of months).
- 3.38 Consistent with the previous consultation model, under the modified model applicants could be individual organisations (such as a partnership or a Legal Disciplinary Practice), a joint venture or an ABS but will need to form a single legal entity. Applicants could choose to deliver the service themselves and/or through the use of agents. The model would not preclude any new entrant to the market, provided they were appropriately regulated.
- 3.39 Under the model, providers would be permitted to use agents, but they might need to provide, as part of their tender, details of the agents with whom they had a relationship or intended to have a relationship by the start date of the contract. Providers would need to take responsibility for the quality of the work carried out by their agents in accordance with the terms of the contract.

- 3.40 Applicants that were awarded contracts for Duty Provider Work would be expected to have the capacity and capability to undertake all of the categories of work within the scope of the Duty Provider Work contract or use appropriately qualified agents.

(vi) Contract value

- 3.41 It follows from the modifications we have outlined that contract value in relation to Own Client Work would depend on the volume of business generated by individual firms and the proposed changes to the fees available.
- 3.42 We also propose that providers undertaking just Own Client Work would have access to the subsequent criminal proceedings in the magistrates' court, and where applicable, the Crown Court and higher courts.
- 3.43 In relation to Duty Provider Work, the overall value of the contract to successful firms would depend on the number of contracts in each area. We intend that providers would be given an equal share of police station and magistrates' court Duty Provider slots in the given procurement area over the life of the contract. Providers would have access to the subsequent criminal proceedings in the magistrates' court, and where applicable, the Crown Court and higher courts.
- 3.44 A provider wishing to conduct prison law¹⁸ and/or appeals and reviews¹⁹ classes of work would be able to do so whether they wish to conduct only those services or in addition to other criminal legal aid services.
- 3.45 For clarity, as with the previous consultation model, we could not guarantee a specific number of cases for each provider awarded Own Client Work or Duty Provider Work; simply that depending on type of contract(s) awarded, providers would have access to such work available that flowed through their procurement area either by the client choosing the provider or by means of an allocation of an equal share of Duty Provider slots.

(vii) Client choice

- 3.46 In line with the modifications we have outlined, our proposal is that clients would retain the opportunity to choose between:
- a. a provider they know and/or with whom they have a pre-existing relationship, so long as that provider holds a contract with the Lord Chancellor to conduct criminal legal aid services; or
 - b. a provider who is on duty at the time that client needs such advice.

This maintains the same level of choice as is available under the current scheme.

- 3.47 Once a provider has been chosen (Own Client Work) or allocated (Duty Provider Work), we propose that the provider would, in general, be obliged to deliver the full

¹⁸ Prison law (as revised – see Chapter 2).

¹⁹ Appeals and reviews – advice and assistance on appeals against conviction or sentence (where a newly instructed representative is not covered by an existing Representation Order) or applications to the Criminal Cases Review Commission (CCRC).

range of advice, litigation and magistrates' court representation services. We still however propose that a client wishing to change their legal representative would be able to do so. As is currently the case, any change in provider after the grant of a representation order would be determined by a court, subject to the same criteria set out currently in regulations²⁰.

- 3.48 We also propose that where a provider considers it appropriate, in line with their professional Code of Conduct, to withdraw their services, they should be able to do so. We propose therefore that the same criteria as apply now for withdrawals/transfers following the grant of a representation order should continue to apply under the modified model²¹. We would expect that any withdrawals or transfers prior to the grant of a representation order would only take place having considered the same criteria. The LAA would explore whether to include any obligations in the new criminal legal aid contract against which providers would be monitored.

(viii) Case allocation

- 3.49 Under the modified model, it follows that only cases where the client chooses the Duty Provider, would be allocated to whichever provider is on duty at the relevant time. This maintains the current case allocation method including the current rules on managing conflicts of interest.
- 3.50 As now, clients choosing their own solicitor would be directed by the Defence Solicitor Call Centre to the provider they choose provided that the provider holds a criminal legal aid contract. In the event the client chooses a provider that does not hold a criminal legal aid contract, the provider can of course deliver the service on a privately funded basis. In any event, the client should be advised that they can seek free legal advice and assistance from a contracted provider should they so wish, pursuant to their professional obligations.

Case allocation outside police station attendance

- 3.51 Under the modified model, clients seeking advice from a provider for matters outside the police station would seek such advice from any provider holding a criminal legal aid contract. As now, there would be no allocation process for this work, the client would simply contact a provider directly.

(ix) Remuneration

Phased fee reduction

- 3.52 The modified model proposes a total reduction in fees of 17.5% by spring 2015, the proposed Service Commencement date of the new criminal legal aid contract. It therefore delivers the same level of savings as the previous proposal.

²⁰ See Regulation 14 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013.

²¹ As above, see Regulation 14 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013.

- 3.53 Rather than making a one step reduction of 17.5% in spring 2015, we propose to make two successive reductions: a 8.75% fee reduction in early 2014 across all criminal litigation services²² (with the exception of VHCCs which are discussed in Chapter 2) and magistrates' court advocacy fees followed by a second reduction of 8.75% across the same range of fees in spring 2015 to be applied to both Duty Provider Work and Own Client Work under the new criminal legal aid contracts (relative to current fee levels and against the proposed remuneration arrangements discussed below).
- 3.54 Such an approach would enable us to begin realising necessary savings and help providers to adapt through a more gradual reduction in fees over the course of the extended period preceding the start date of the new contracts. It would have the added benefit of encouraging providers to explore the opportunities for the level of market consolidation necessary to ensure sustainable services in the longer term. We think a more phased implementation of the proposed price cap and/or ultimate fee reduction, beginning with an 8.75% interim cut, strikes the appropriate balance of delivering initial savings and mitigating the risk of a single, substantial drop in prices while incentivising change.
- 3.55 The current and proposed reduced rates for the litigation services affected by the proposed interim fee cut are set out in Table G2 of Annex G.

Fixed fees

- 3.56 As set out in the previous consultation document, the Government believes that the current remuneration mechanism for criminal legal aid services is overly complex and administratively burdensome. Therefore, in looking at alternative models we propose to introduce fixed fees as far as is reasonably practicable.
- 3.57 We also believe that no matter whether the client chooses their own provider or the Duty Provider, the payment mechanism (i.e. a fixed fee scheme) would be the same.
- 3.58 Therefore, in adapting the original proposed fixed fee scheme as set out in the previous consultation paper, we now propose the following for each stage in the CJS process.
- a) Police station attendance fixed fee**
- 3.59 We propose to introduce a fixed fee approach to remuneration for police station attendance.
- 3.60 For both Own Client Work and Duty Provider Work, no matter where services are delivered, the same national fixed fee for police station attendance would apply. In order to determine the national police station attendance fixed fee, we would apply the following process:
- a. From 2012/13 claim volume and value data, calculate the average police station attendance claim nationally by taking the total expenditure on police station attendance nationally and dividing that total by the volume of claims nationally;

²² References to 'litigation services' throughout this chapter means all services currently in scope of the 2010 Standard Crime Contract.

- b. Reduce the average police station attendance claim value by 17.5% (subject to the proposed phased fee reduction approach discussed in paragraphs 3.52 to 3.55 above) below current rates²³.
- 3.61 Applying a 17.5% reduction to the 2012/13 Police Station billing data gives a proposed national fixed fee of £200.64 (inclusive of VAT and the average claim cost for travel and subsistence disbursements). The proposed fixed fee (exclusive of travel and subsistence disbursements) would be £192.54 (inclusive of VAT).

b) Representation in the magistrates' court fixed fee

- 3.62 As with the proposal set out in the original consultation, we propose replacing the Standard Fee scheme in the magistrates' court with a fixed fee. This would remove the distinction between a Lower Standard Fee and a Higher Standard Fee and instead every claim for magistrates' court representation would be based on one fixed fee. However, having listened to the views submitted in response to consultation, we propose to maintain a mechanism, similar to the current non-standard fee mechanism for magistrates' court representation work, whereby providers would be able to claim a higher fee. The current non-standard fee mechanism enables providers to claim a higher fee provided they can demonstrate that their hours worked exceed a specified threshold. For the purposes of this chapter we will continue to refer to this as a Non-Standard Fee. The hourly rates for such work would be reduced by 17.5% below current rates²⁴.
- 3.63 For both Own Client Work and Duty Provider Work, no matter where services are delivered, the same national fixed fee for magistrates' court representation would apply for cases which do not exceed the Non-Standard Fee threshold. In order to determine the national magistrates' court representation fixed fee we would apply the same calculation as described at 3.60 above but based on magistrates' court representation data (for Lower and Higher Standards Fees only). For both Own Client Work and Duty Provider Work, providers that can demonstrate they have worked in excess of the Non-Standard Fee threshold would be able to claim on an hourly rate basis. The current hourly rates²⁵ applicable for the magistrates' court representation Non-Standard Fee would apply subject to a proposed reduction of 17.5%.
- 3.64 As described at paragraph 3.16 we propose to maintain the magistrates' court duty provider scheme under this model. Currently, magistrates' court duty work is remunerated by way of hourly rates and providers are paid based on the number of hours in attendance at the magistrates' court. Our proposal is to maintain the separate remuneration for this work and retain the hourly rate mechanism. However,

²³ By current rates we mean those rates of pay for litigation (except VHCCs) and magistrates' court advocacy services as apply at the time of publication. 17.5% would be the total reduction in fees which would include the proposed 8.75% reduction across the same rates in early 2014 (see paragraphs 3.52 to 3.55 on a proposed interim fee reduction).

²⁴ *ibid.*

²⁵ By current hourly rates we mean those rates of pay for Non Standard Fees for magistrates' court representation as apply at the time of publication. 17.5% would be the total reduction in fees which would include the proposed 8.75% reduction across the same rates in early 2014 (see paragraphs 3.52 to 3.55 on a proposed interim fee reduction)

those providers awarded Duty Provider Work would be remunerated for this work at the current rates²⁶ reduced by 17.5%.

- 3.65 A 17.5% reduction to all magistrates' court bills (except for claims made for Non-Standard Fees) in 2012/13 would give a proposed national fixed fee of £321.05 (inclusive of VAT and the average claim cost for travel and subsistence disbursements). The proposed fixed fee (exclusive of travel and subsistence disbursements) would be £310.45 (inclusive of VAT). Table G4 in Annex G sets out the proposed thresholds for Non-Standard Fees.
- c) Crown Court litigation fixed fee (cases with less than 500 pages of prosecution evidence)**
- 3.66 We maintain the view that any future criminal legal aid scheme must look to simplify the current Litigators Graduated Fee Scheme (LGFS). Whereas the previous consultation model proposed replacing such a scheme with a single fixed fee scheme, having considered the responses to the consultation with regard to the financial uncertainty of such a model, we have explored a number of modifications to the proposed fixed fee scheme. For both Own Client Work and Duty Provider Work we therefore propose a fixed fee scheme based on two variables (offence type and pages of prosecution evidence (PPE)) to mitigate the financial risk for providers. Rather than the one fixed fee proposed in the previous consultation model, we are proposing five fixed fees for each of the eleven offence types. This we believe would help to reduce the risk of a provider substantially gaining or losing financially from any one case.
- 3.67 As under the original proposal, we propose to maintain one exception to this fixed fee scheme, namely the alignment of the fees in the magistrates' court and Crown Court schemes in cases which magistrates had determined were suitable for summary trial but where the defendant had elected trial by jury and subsequently pleaded guilty. In such a scenario, the fee paid would be equivalent to that received if the case had remained in the magistrates' court.
- 3.68 We maintain the view that some cases are of such length and complexity that their inclusion in a fixed fee scheme would be hard to accommodate without requiring providers to bear an unreasonable level of risk, and therefore we maintain our original proposal that those cases with over 500 PPE should be remunerated by the graduated fee scheme.
- 3.69 For both Own Client Work and Duty Provider Work, no matter where services are delivered, the same national fixed fee scheme for Crown Court litigation would apply for cases with 500 PPE or less. In order to determine the fixed fees, we would apply the same calculation as described at 3.60 above but based on Crown Court litigation claim data (for cases with 500 PPE or less).
- 3.70 The new indicative proposed fixed fee scheme for Crown Court cases with less than 500 PPE is set out in Table G3 of Annex G.

²⁶ By current hourly rates we mean those rates of pay for magistrates' court duty solicitor hourly rates as apply at the time of publication. 17.5% would be the total reduction in fees which would include the proposed 8.75% reduction across the same rates in early 2014 (see paragraphs 3.52 to 3.55 on a proposed interim fee reduction).

d) Crown Court litigation graduated fee (cases with 500 PPE or greater)

3.71 As outlined above, we propose to maintain the current LGFS for cases where the PPE is 500 or greater. For both Own Client Work and Duty Provider Work, the rates underpinning the LGFS would be set administratively at 17.5% below current rates²⁷.

Rates of pay for other classes of criminal legal aid

3.72 The rates of pay for all other classes of work would be set administratively and reduced by 17.5% below current rates²⁸. The current rates of pay for each of the classes of work with administratively set rates are set out in regulations.²⁹

Disbursements

3.73 We recognise the importance of separate disbursement payments and therefore we propose that the cost of any travel and subsistence disbursements under each category above would be remunerated separately. Disbursement costs for experts, would continue to be paid separately.

(x) Procurement Process

3.74 Subject to the outcome of this consultation, the purpose of this section is to explain how we currently intend to run the procurement process to procure new crime contracts under the modified model.

3.75 However, the model will need to be reviewed subsequent to the further work we intend to jointly commission with the Law Society to help inform contract sizes for Duty Provider Work. We make no express commitment in this section with regard to the final version of the procurement process (including the terms and conditions that would govern the process, the final criteria, any method for evaluating tenders and/or any scoring mechanism applied).

3.76 The procurement process would allow applicants to:

- Apply for a contract to deliver Own Client Work anywhere in England and Wales; and
- Apply to take part in a competition to be awarded a contract to deliver Duty Provider Work in the proposed procurement area.

3.77 Organisations that wish to undertake Prison Law and/or Appeals and Reviews work would be able to apply under a separate process that would have specific criteria reflecting the quality requirements of the service. These criteria would include the requirement to employ a Prison Law Supervisor. There would be a revised Prison Law Supervisor standard taking into account the revised scope of the work and removing exceptional circumstances as a route for qualifying for the standard. This would be made available in advance of the tender process opening.

²⁷ By current rates we mean those rates of pay for litigation (except VHCCs) and magistrates' court advocacy services as apply at the time of publication. 17.5% would be the total reduction in fees which would include the proposed 8.75% reduction across the same rates in early 2014 (see paragraphs 3.52 to 3.55 on a proposed interim fee reduction).

²⁸ Ibid.

²⁹ Criminal Legal Aid (Remuneration) Regulations 2013.

Contract for Own Client Work

- 3.78 This application process would be a single stage process consisting of:
- Pre-Qualification Questionnaire (PQQ); and
 - An assessment that the applicant can meet the conditions of tender and core obligations under the contract.
- 3.79 Applicants would have to meet the Requirements of the Tender Process (including the required quality standards) in order to be awarded a contract to undertake Own Client Work.

Pre-Qualification Questionnaire (PQQ) for Own Client Work

- 3.80 The PQQ for Own Client Work would consist of mandatory and discretionary criteria.

Mandatory and Discretionary Criteria

- 3.81 The mandatory and discretionary criteria would test an applicant's suitability to contract with a public body.
- 3.82 As outlined in the original consultation model, we propose that the PQQ would, as far as possible, follow Cabinet Office guidance. The PQQ would include the standard PQQ core questions covering grounds for mandatory rejection (for example, convictions for bribery) and grounds for discretionary rejection (for example, fulfilment of tax obligations). Discretionary criteria would also include LAA specific considerations (for example, whether the applicant has had previous contract termination).
- 3.83 Responses to grounds for mandatory rejection would be absolute and where an applicant indicated that it was unable to meet the requirement, it would fail the PQQ.
- 3.84 Under the PQQ questions relating to discretionary grounds for rejection, applicants would have the opportunity to present information that should be taken into account in evaluating why requirements were not met outright. This information would be assessed by the LAA as part of its evaluation of PQQ responses.

Core obligations under the Contract for Own Client Work

- 3.85 As part of the tender process, applicants would have to meet certain core obligations. The Law Society has made a number of valuable suggestions about the minimum service requirements applicants should meet, and we have reflected these as far as possible in the core obligations outlined below. Their suggestions around ensuring quality were particularly helpful and as a result we plan to require that all organisations employ at least one qualified full time equivalent members of staff and to introduce a supervisor to caseworker ratio of 1 to 4.
- 3.86 Core obligations that we are currently considering include (but are not limited to):
- Applicants must hold (or commit to acquire within a specified time period) a relevant quality standard (either the LAA's Specialist Quality Mark or the Law Society's Lexcel standard or an equivalent quality standard agreed by the LAA)
 - Applicants must be subject to regulation by one of the legal sector regulators

- Applicants must receive a Peer Review Rating of 3 or above during any audit under the contract;
- Applicants must have or commit to have and use a CJS Secure Email Account to accept service of electronic evidence from prosecution agencies.
- Applicants must employ at least one full-time equivalent Supervisor and commit to maintain a Supervisor to caseworker/advisor ratio of 1:4 throughout the contract term;
- Applicants must employ at least one full-time equivalent CLAS accredited staff member; and
- Applicants must have an office in England and Wales that meets the presence requirements set out in the contract.

Contract to deliver Duty Provider Work

3.87 For Duty Provider Work, we propose to run a competition for a limited number of contracts in each procurement area where tenders are evaluated against the Requirements of the Tender Process (including the required quality standards). To tender to deliver Duty Provider Work, there would be a two stage process consisting of:

- PQQ (including testing an applicant's experience and capability); and
- an Invitation to Tender consisting of a Delivery Plan.

PQQ Experience and Capability Criteria for Duty Provider Work

3.88 In addition to the Mandatory and Discretionary Criteria described above, we propose to use additional PQQ criteria to shortlist applicants bidding to deliver Duty Provider Work. As suggested by the Law Society it would also be a requirement that applicants have an office meeting the presence requirements in the specific procurement area in which they are tendering.

3.89 We were interested in the Law Society's suggestion that we should be testing the experience of applicants, and as a result these PQQ criteria would evaluate an applicant's experience as well as their capability of delivering services of similar type or volume. Applicants would be scored against a number of criteria. Those we are currently considering include:

- Experience of staff;
- Experience of the management team in managing a comparable service;
- Experience of having delivered comparable volumes of work; and
- Financial assessment (including scale of any expansion required to deliver the contract).

3.90 The number of shortlisted applicants at the PQQ stage would be determined relative to the number of Duty Provider Work contracts required in each procurement area.

Invitation to Tender (ITT) for Duty Provider Work

3.91 The ITT would involve the assessment of the applicant's Delivery Plan against the published criteria and applicants would then be scored and ranked in order of highest score.

- 3.92 We would aim to award a specified number of equal sized contracts in each procurement area to the highest scoring applicants.

Delivery Plan

- 3.93 In providing a Delivery Plan, we propose that applicants would be required to set out how they intended to deliver the service against defined areas such as staffing and recruitment, premises and other aspects of mobilisation.
- 3.94 The LAA would evaluate Delivery Plans to ensure applicants had capacity to deliver the service. This might include, where applicants were tendering to deliver services in more than one procurement area, the LAA's confidence in the applicant's ability to deliver services simultaneously in all procurement areas.

Allocation of duty slots

- 3.95 Depending on the number of contracts required in each procurement area, the highest scoring applicants would then be allocated equal numbers of police station and magistrates' court duty slots.
- 3.96 For example, if ten contracts were to be awarded in a Procurement Area, to the ten highest scoring bids then each of these providers would be awarded equal sized allocations of duty slots (i.e. each provider would get 10% of the available duty slots).

Contract mobilisation

- 3.97 In order to have assurance that successful applicants were making satisfactory progress towards being in a position to deliver the services, the LAA would aim to sign contracts with successful applicants in advance of the service commencement date. Where a successful applicant was not considered to be making satisfactory progress, the LAA might have to take the decision to terminate the contract.

TUPE

- 3.98 It would be each applicant's responsibility to form their own view (taking legal advice as necessary) as to whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applied.

(xi) Implementation

- 3.99 Having considered responses to the previous consultation and as a consequence of this further consultation period, subject to its outcome, we now propose to commence the procurement process for criminal legal aid services in early 2014 with a view to contracts being awarded in late 2014 or early 2015. This would extend the time applicants have to explore opportunities for possible mergers, joint ventures and/or agency arrangements and to prepare for service commencement. We propose the service commences in spring 2015.

Consultation Questions

Q1. Do you agree with the modified model described in Chapter 3? Please give reasons.

Q2. Do you agree with the proposed procurement areas under the modified model (described at paragraphs 3.20 to 3.24)? Please give reasons.

Q3. Do you agree with the proposed methodology (including the factors outlined) for determining the number of contracts for Duty Provider Work (described at paragraphs 3.27 to 3.35)? Please give reasons.

Q4. Do you agree with the proposed remuneration mechanisms under the modified model (as described at paragraphs 3.52 to 3.73)? Please give reasons.

Q5. Do you agree with the proposed interim fee reduction (as described at paragraphs 3.52 to 3.55) for all classes of work in scope of the 2010 Standard Crime Contract (except Associated Civil Work)? Please give reasons.

Chapter 4. Reforming Criminal Advocacy Fees

Introduction

- 4.1 This chapter sets out our revised proposals for restructuring the Advocates' Graduated Fee Scheme (AGFS) for criminal advocacy carried out in the Crown Court.
- 4.2 Following consultation, we have developed two alternative models and are seeking views on which would be the preferred option for reforming the AGFS. The two proposed options meet our objective of bearing down on costs in order to achieve best value for the taxpayer and both simplify the fee scheme while taking account of the amount of preparation generally required in different types of case.
- 4.3 We have been conscious throughout of the impact that the options would have on those with lower fee income and the accompanying Impact Assessment provides a detailed analysis of the impacts of the two options whilst also recognising that fee income is determined not only by the values of the fees paid but also the number of advocates and volume of cases in the criminal market, as well as the specific case mix undertaken by each advocate. Option one is based on our original proposal for advocacy fees but with some adjustments to structure, rates and the operation of the taper. Option two is adapted from the fee structure operated by the Crown Prosecution Service (CPS) as suggested by the Bar Council but with a reduction in the rates that they proposed. Both proposals represent a sensible and rational way forward for reforming fees and reducing expenditure.

Advocacy Option 1 - Harmonisation and tapering

- 4.4 As set out in the previous consultation document we believe there is a case for harmonising Basic Fees and for reducing and tapering trial daily attendance fees (DAFs). Option 1 supports the aim of efficient justice, promoting early consideration of the question of plea and the earliest possible resolution of contested matters. Decisions on the question of plea are ultimately for the defendant; we do not believe that changes in the fee structure will lead to lawyers abandoning their professional obligations to clients. However, we continue to consider that the current system of fees could better support the aim of speedy and efficient justice.
- 4.5 We are pursuing a number of initiatives to support the efficient resolution of trials and minimise the likelihood of delay (as explained in paragraph 1.29 above). This revised proposal continues to support that aim. However, we have adjusted our original proposal in this option to address respondents' concerns that the scale of work for trials should be properly reflected in the fees paid and that longer cases should not be disproportionately affected.
- 4.6 In light of consultation responses, we recognise that harmonising trial fees at the same rate as those for guilty pleas and cracked trials may create too large a discrepancy gap between the amount of preparation done and the fees payable in some cases. Thus, under this option we propose to harmonise Basic Fees for

cracked trials and guilty pleas and to leave the Basic Fees for trials unchanged from current levels. The Basic Fee for cracked trials and guilty pleas would be a harmonised fee set at a level that would be lower than the current fee for cracked trials, but higher than the current fee for guilty pleas, supporting the objective of encouraging early consideration of the question of plea. This proposal would therefore result in a redistribution of remuneration across cracked trials and guilty pleas on a cost neutral basis. As now, the fees would vary by type of advocate and offence group.

- 4.7 Under this option there would still be a reduction in the DAFs and a taper in DAF rates from day three of the trial so that the fee payable for each additional day of trial would gradually decrease. Compared to the consultation paper, this revised option would reduce DAFs overall by less than was originally proposed (20% instead of 35%), through a combination of a higher starting DAF and a less steep taper being applied. The revised option also includes a floor (i.e. a level at which DAFs stop tapering) which rates would not fall below.
- 4.8 We propose to set the floor at the same rate as is currently paid for the 41st day of the trial, which is the same rate as the current lowest DAF (ie QC £387, Leading Jr £331, Led Jr £221, Lone Jr £225). This is the point where, in the current fee scheme, DAFs are reduced from the level paid for 3 to 40 day trials. If, as a result of the taper, that point floor is reached before the 41st day of trial then DAFs from that point forward will not be tapered further and will be paid at the same rate for the remainder of the trial. This is illustrated in Chart 1 below where applying the taper results in the floor being reached after Day 18. In all other cases (typically more complex offence groups) the current DAF rate is applied from day 41 onwards as illustrated in Chart 2.
- 4.9 This means that in cases where the trial is exceptionally long, the advocate would not see DAFs fall to an extremely low level. This should address the concern raised by respondents to consultation that a large initial reduction in DAFs and steeper taper might lead to senior advocates switching to shorter, more profitable cases thereby disproportionately impacting on junior advocates.
- 4.10 Under the current scheme, there is a small increase in the rate payable for DAFs for day 50 of the trial onwards. We propose to eliminate this so that once the DAF reaches our proposed floor it does not increase, as there is no justification for retaining an increase.

4.11 Below we set out some examples of Option 1 and compare these with the current and previously proposed rates:

Chart 1: The impact of Option 1 compared to the current scheme and the original consultation proposal on the Daily Attendance Fees for a Junior alone for Offence Group F: Dishonesty under £30,000

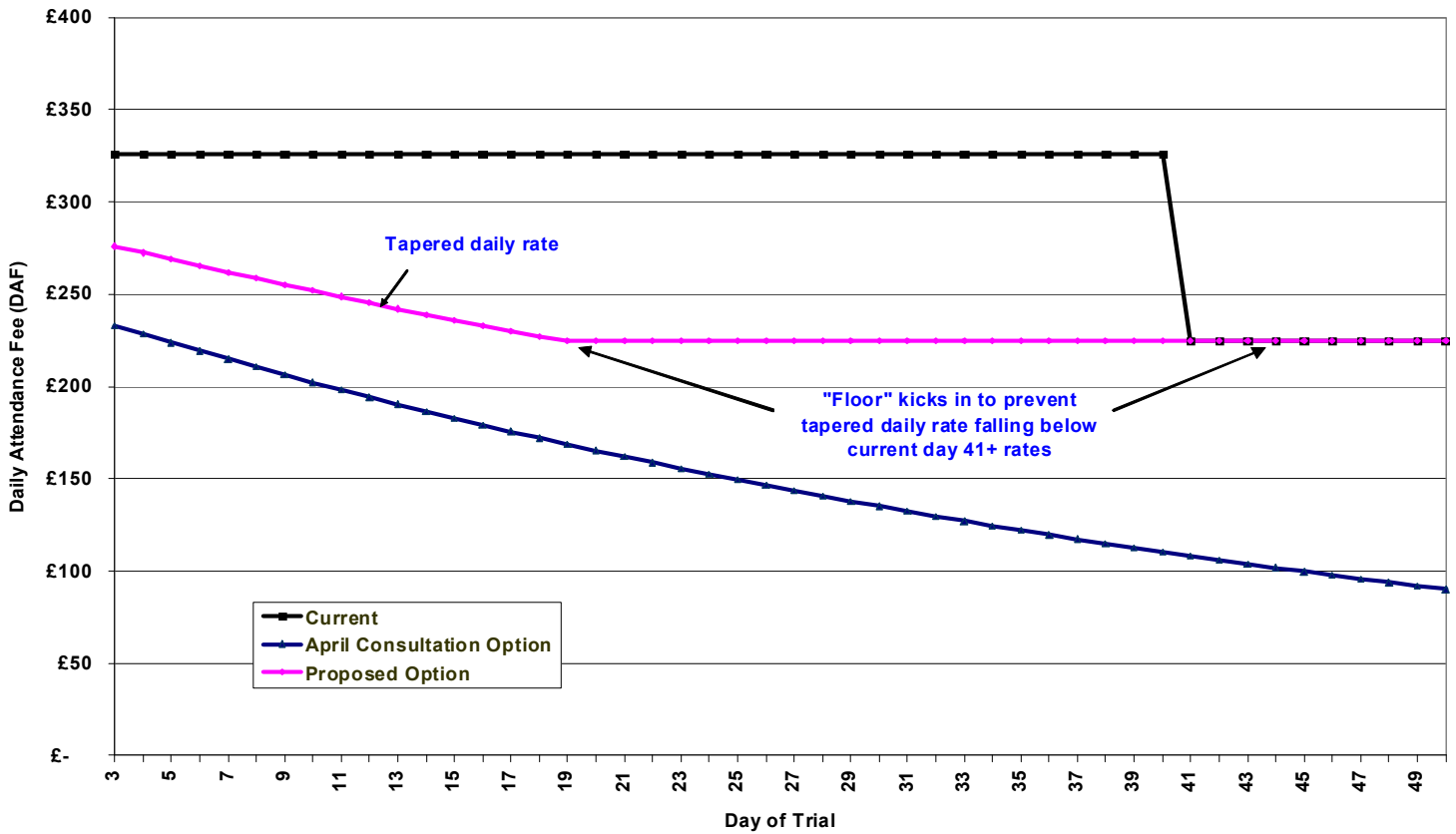
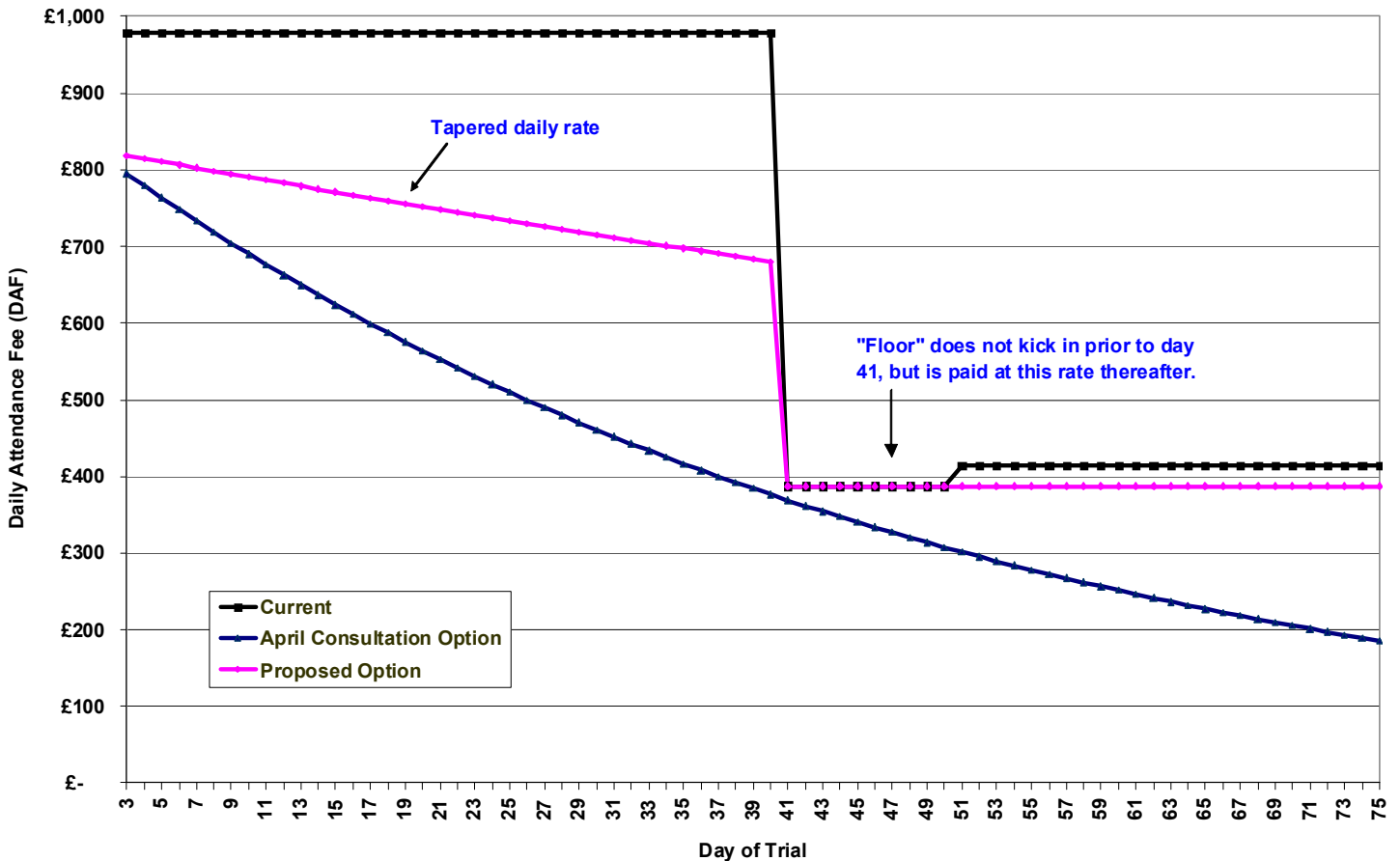


Chart 2 The impact of Option 1, compared to the current scheme and the original consultation proposal on the Daily Attendance Fees for QCs for Offence Group K: Dishonesty cases over £100,000



4.12 The proposed new rates payable under this option are set out in Annex H.

Advocacy Option 2 – Modified CPS Advocacy fee Scheme Model

4.13 Having considered the concerns raised by respondents and the alternatives put forward, we are also seeking views on an alternative model that would simplify the AGFS fee structure. Option 2 is based on the Bar Council’s proposed alternative reflecting the fee scheme currently used by the Crown Prosecution Service (CPS). Last year the CPS changed the calculation of fees for Crown Court advocacy to a simplified model put forward then by the Bar Council. The mechanism whereby the evidence uplift was calculated by a precise page count was removed. Basic Fees (known as core fees in the CPS scheme) covering preparation and the Pages of Prosecution Evidence (PPE) uplift are now calculated according to a page threshold as either a standard or enhanced fee. There is a page cut-off point which determines the applicable fee for each offence category and different types of advocate instructed.

- 4.14 The approach in Option 2 takes account of some key differences between prosecution and defence schemes and introduces a number of simplifications. As proposed by the Bar Council, the standard and enhanced fixed fees are calculated on the same basis for trials, guilty pleas and cracked trials with the amount payable for guilty pleas being 45% of the trial rate and for cracked trials 80% of the trial rate. However, the Bar Council proposition was based on 2009/10 AGFS rates and would not deliver savings on the order of our original proposal. We therefore propose a reduction in rates. The rates we propose under this option would achieve the same level of savings as the original proposal and Option 1.
- 4.15 Under the scheme introduced by CPS there are two bands of Basic Fee for each offence group, a 'standard fee' and an 'enhanced fee'. For each offence type, the level of fees is varied by the type of advocate instructed. The standard fee is payable for all cases where the page count falls below a particular threshold, and is the same regardless of the precise page count. The thresholds used vary with the offence type. The standard fee is designed to capture 95% of the cases in any particular offence type.
- 4.16 The enhanced fee is payable for all 'evidence heavy' cases where the page count falls above the threshold, and again will be the same for all such cases regardless of the precise page count. The enhanced fee is designed to capture the top 5% of cases in any particular offence type in terms of PPE. The page count is therefore only used to determine whether the threshold between the standard and enhanced fee has been exceeded. In most cases whether a case will receive a standard or an enhanced fee will be a clear cut matter, making the scheme simpler to administer for both the Legal Aid Agency (LAA) and advocates. This would address concerns raised by advocates about the time spent establishing precise page counts which is viewed as inefficient.
- 4.17 In the small minority of cases close to the boundary there may be an incentive to claim the enhanced rate, but we do not consider this to be a significant risk. The LAA would continue to require advocates to submit objective evidence of the volume of evidence served where it has an impact on the fee payable.
- 4.18 The CPS pay separately for all additional hearings and conferences (as these might be carried out by in-house lawyers rather than the independent Bar). Option 2 however retains the structure of the existing scheme for defence advocates in which the Plea and Case Management Hearing and first four standard appearances (as well as the first three conferences and views) are included within the Basic Fee, in order to promote the efficient resolution of proceedings. In addition, this option retains the Bar Council's proposed simplification of rates in cases where a QC or multiple counsel are instructed. In these cases, the respective rates paid for QCs, leading juniors and led juniors are harmonised across all offence groups, which would further simplify payment in these complex cases. Harmonisation across all offence groups is consistent with recent amendments to the fee scheme which resulted in Basic Fees for Offence Group A (Murder and Manslaughter) being harmonised with those for Offence Groups J (serious sexual offences) and K (high value dishonesty offences).
- 4.19 An outline of the proposed payment rates is at Annex I. DAFs and other fixed fees would remain unchanged.
- 4.20 Our initial conclusions as to the impacts of these proposals are addressed in Annex F and the accompanying Impact Assessments. The impact on advocates' earnings is

estimated based on historic work undertaken and we have assumed the behaviour of advocates in taking decisions remains the same in future. It is important to note that the impact on an individual advocate will depend on their individual workload. Different advocates have different workloads and mixes of case. Fee income is affected not only by the value of fees paid but also the number of advocates in the criminal market, the volume of cases and the specific case mix undertaken by each advocate. However, the average impact on fee income for each option is set out in the table below for trials, cracked trials and guilty pleas.

Table 3: Reduction in fees under each option, split by case type, based on 2012/13 LAA billing data³⁰

	Guilty	Crack	Trial
Option 1	+23%	-18%	-11%
Option 2	-11%	-2%	-8%

Consultation Question

Q6. Which approach do you favour in terms of reforming the Advocates’ Graduated Fee Scheme:

- Option 1 (revised harmonisation and tapering proposal); or
- Option 2 (the modified CPS advocacy fee scheme model);

Please give reasons.

³⁰ This has been derived taking all AGFS bills in 2012/13 and creating a baseline expenditure after applying the 2013/14 rates. The baseline expenditure was split into guilty / cracked / trials. We have then applied the rates from options 1 and 2 onto each of the bills to generate expenditure figures for each option, split into guilty / cracked / trials. We compared the aggregate expenditure of each option against the baseline, split by guilty / cracked / trials. This table summarises the percentage differences in aggregate expenditure.

Chapter 5. Impact Assessment

- 5.1 The Government is mindful of the importance of considering the impact of the legal aid proposals on different groups, with particular reference to users and providers of legally aided services.
- 5.2 In accordance with our duties under the Equality Act 2010 we have considered the impact of the proposals on individuals sharing protected characteristics in order to give due regard to the need to eliminate unlawful conduct, advance equality of opportunity and foster good relations.
- 5.3 Our assessments of the potential impact of these proposals can be found in Annex F, which should be read in conjunction with the proposals. We welcome any relevant information to further inform our analysis and better understand the potential impacts of the proposals. We will be updating our assessments once we have considered all relevant responses.

Consultation Questions

- Q7. Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.
- Q8. Do you agree that we have correctly identified the extent of impacts under these proposals? Please give reasons.
- Q9. Are there forms of mitigation in relation to impacts that we have not considered?

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Consultation Co-ordinator Contact Details

Please send your response by 1 November 2013 to:

Annette Cowell
Ministry of Justice
Legal Aid and Legal Services Policy
4.41
102 Petty France
London SW1H 9AJ
Tel: 020 3334 3555
Email: LegalAidReformMoJ@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>

Alternative format versions of this publication can be requested using the contact details above.

Publication of response

A paper summarising the responses to this consultation will be published following their consideration. The response paper will be available on-line at:
<https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Annexes

Annex A: Glossary

Advocates' Graduated Fee Scheme	The fee scheme which governs fees paid to advocates (barristers or solicitor advocates) who represent clients in criminal proceedings in the Crown Court, other than in cases which have been classified as Very High Cost (Criminal) Cases. Payment is determined by proxy measures, namely, the seniority of the advocate, the type of offence, the number of pages of prosecution evidence, the number of prosecution witnesses (excluding the first 10) and the number of days that the advocate spends at court at trial.
Alternative Business Structures	A new type of law firm structure which are partly or wholly owned or controlled by non-lawyers to provide legal services (or a mixture of legal and non-legal services).
Category/area of law	The Legal Aid Agency defines areas of law (education, housing etc) thematically and contracts for the provision of advice and representation based on the categories.
Civil	The area of law that concerns the rights and relations of private citizens – for example, disputes relating to unpaid debts or the enforcement/breach of contracts. Covers civil and family law but excludes criminal matters.
Civil Legal Aid	Civil legal aid provided in accordance with Part 1, Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This includes civil legal services to be funded under civil or family legal aid but excludes services required to be funded by criminal legal aid.
Cracked Trial	A case in which proceedings are stopped due to the defendant(s) pleading guilty or the prosecution offering no evidence after the accused is indicted but before the trial begins.
Criminal	The area of law that defines conduct which is prohibited by the Government because it is held to threaten, harm or otherwise endanger the safety and welfare of the public, and that sets out the punishment to be imposed on those who breach these laws.
Criminal legal aid	Criminal legal aid means advice and assistance (including advocacy assistance) and representation for the purposes of criminal proceedings (as defined in section 14 of LASPO and the Criminal Legal Aid (General) Regulations 2013).
Crime Higher	Legal representation in the Crown Court and higher courts.
Crime Lower	Work carried out by legal aid providers at police stations and in magistrates' courts in relation to people accused of or charged with criminal offences. Prison law is also included within this category.
Crown Court Means Testing (CCMT) scheme	Financial eligibility assessment scheme in the Crown Court
Defence Costs Order (DCO)	An order of the court whereby an acquitted defendant may be reimbursed some or all of their defence costs.

Duty Provider Work	Duty Provider Work is all criminal legal aid advice, litigation (except VHCCs) and magistrates' court advocacy services delivered to clients who choose the Duty Provider at the first point of request.
Either way offence	An offence which can be tried either before the magistrates' court, or before a jury at the Crown Court. The appropriate venue is determined at a Mode of Trial hearing at the magistrates' court. If the magistrates determine that the matter is too serious or complex for summary trial, they can commit it to the Crown Court. If the magistrates determine that the case is suitable for summary trial, the defendant can elect for trial by jury.
European Convention on Human Rights	A binding international agreement. The Convention enshrines and protects fundamental civil and political rights (e.g. right to life, right to fair trial, right to respect for private and family life). The Convention was drafted in 1950 and entered into force in 1953. It is a treaty of the Council of Europe and established the European Court of Human Rights.
Her Majesty's Courts and Tribunals Service (HMCTS)	The agency is responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.
Her Majesty's Inspectorate of Prisons (HMIP)	An independent inspectorate which reports on conditions for and treatment of those in prison, young offenders institutions and immigration detention centres.
Independent Monitoring Boards (IMBs)	Monitor day-to-day life in local prisons or removal centres and ensure that proper standards of care and decency are maintained.
Indictable offence	A criminal offence that can only be tried in the Crown Court. Indictable offences are classified as 1, 2, 3 or 4. Murder is a class 1 offence.
Interests of justice test	The test is applied to criminal cases as part of the process to determine whether a client receives criminal legal aid. In the context of representation for the purposes of criminal proceedings, in deciding whether the test is satisfied, the following factors must be taken into account: <ul style="list-style-type: none"> • whether the individual would be likely to lose his or her liberty or livelihood or suffer serious damage to his or her reputation; • whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law; • whether the individual may be unable to understand the proceedings or to state his or her own case; • whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual; and • whether it is in the interests of another person that the individual be represented.

Judicial Review	A procedure in English administrative law by which the courts supervise the exercise of public power on the application of an individual. A person who feels that an exercise of such power by a government authority, such as a minister, the local council or a statutory tribunal, is unlawful, perhaps because it has violated his or her rights, may apply to the Administrative Court (a division of the High Court) for judicial review of the decision and have it set aside (quashed) and possibly obtain damages. A Court may also make mandatory orders or injunctions to compel the authority to do its duty or to stop it from acting illegally.
Junior counsel	Any practising barrister not appointed as Queen's Counsel
Legal Aid Agency	An executive agency of the Ministry of Justice, established on 1 April 2013, replacing the Legal Services Commission. The body responsible for commissioning and administering civil, family and criminal legal aid services in England and Wales.
Legal Disciplinary Partnership	A form of recognised organisation providing legal services where the owners and managers are not exclusively solicitors of England and Wales or registered lawyers from outside of England and Wales
Legal Help	A form of civil legal services which includes advice and assistance about a legal problem, but does not include representation or advocacy in proceedings.
Legal Services Commission	The body responsible, before 1 April 2013, for commissioning civil, family and criminal legal aid services from solicitors, barristers, advice agencies, and family mediators across England and Wales. It also commissioned services to be provided over the telephone and the internet as well as in person.
Litigators' Graduated Fee Scheme	The fee scheme which governs fees paid to solicitors who represent clients in criminal proceedings in the Crown Court, other than in cases which have been classified as Very High Cost (Criminal) Cases where the trial is estimated to last beyond 60 days. Payment is determined by proxy measures, namely, the type of offence, the number of pages of prosecution evidence, and the number of days of trial.
Means test	The process by which an assessment of clients' financial eligibility for public funding is made.
Merits test	One of the aims of the merits test is to ensure that only cases with reasonable prospects of success receive legal aid. The test does this by seeking to replicate the decision-making process that somebody who pays privately would make when deciding whether to bring, defend or continue to pursue proceedings. The full merits test also takes accounts of factors other than the prospects of success (including for example whether it is reasonable to provide legal aid in all the circumstances of the case). The merits test is set out in the Civil Legal Aid (Merits Criteria) Regulations 2013.
National Offender Management Service (NOMS)	NOMS delivers administration of correctional services in England and Wales through Her Majesty's Prison Service and the Probation Service
Own Client Work	Own Client Work is all criminal legal aid advice, litigation (except VHCCs) and magistrates' court advocacy services delivered to clients who choose their own provider at the first point of request.

Passporting benefits	<p>The following benefits passport a client through the income side of the means test for civil legal aid (but not in respect of capital) and the whole means test for criminal legal aid:</p> <ul style="list-style-type: none"> • Income Support; • Income-Based Job Seekers Allowance; • Income-related Employment and Support Allowance; • Guarantee Credit (under section 1(3) (a) of the State Pension Credit Act); and • Universal Credit.
Prisons and Probation Ombudsman (PPO)	The Ombudsman investigates complaints from prisoners, those on probation and those held in immigration removal centres.
Prison Service Instructions (PSIs)	Rules, regulations and guidelines by which prisons are run.
Prospects of success test	The prospects of success test set out in the Civil Legal Aid (Merits Criteria) Regulations 2013 assesses the likelihood of the client obtaining a successful outcome at trial or other final hearing. In civil cases this is used as part of the merits test to determine whether the client receives funding.
Secure Children's Homes (SCHs)	Secure establishments operated by Local Authorities providing placements for 10-17 year olds.
Secure Training Centres (STCs)	Secure establishments operated by private contractors for 12-17 years olds.
Universal Credit	Universal Credit is the new welfare benefit for people who are looking for work or on a low income; it simplifies the benefits system by bringing together a range of working-age benefits into a single streamlined payment.
Very High Cost Case (Crime)	<p>A criminal case in which a representation order has been granted and which the Director of Legal Aid Casework classifies as a Very High Cost (Criminal) Case on the grounds that in relation to organisations:</p> <p>(a) if the case were to proceed to trial, the trial would in the opinion of the LAA be likely to last for more than 40 days, and the LAA considers that there are no exceptional circumstances which make it unsuitable to be dealt with under its contractual arrangements for VHCCs; or</p> <p>(b) if the case were to proceed to trial, the trial would in the opinion of the LAA be likely to last no fewer than 25 and no more than 40 days inclusive, and the LAA considers that there are circumstances which make it suitable to be dealt with under its contractual arrangements for VHCCs and:</p> <p>(i) the case is prosecuted by the Serious Fraud Office; or</p> <p>(ii) the case is a Terrorism Case.</p> <p>The LAA reserves the right to classify a case as a VHCC where it considers that exceptional circumstances apply and it is necessary to discharge its functions under the Act.</p> <p>In relation to Advocates:</p> <p>If the case were to proceed to trial, the trial would in the opinion of the LAA be likely to last for more than 60 days, and the LAA considers that there are no exceptional circumstances which make it unsuitable to be dealt with under a individual case contract.</p>

Very High Cost Case (Civil)	A civil or family case where the costs are likely to exceed £25,000. The Legal Aid Agency manages these under individual case contracts.
Young Offenders Institutions (YOIs)	Prisons for 15-21 year olds

Competition model terms:

Agent	This refers to the persons or organisations who deliver the service on behalf of the provider.
Applicant	This refers to those organisations who participate in the tender process.
Delivery Plan	Part of the Invitation to Tender stage of the proposed Procurement Process
Joint venture	This refers to groups or individuals forming new legal entities to achieve their optimum size to enable them to tender.
Peer Review	The independent audit of the standard of work delivered under a Legal Aid Agency contract
Provider	This refers to the legal entity to whom the contract has been awarded.
Specialist Quality Mark (SQM)	A quality assurance standard for legal services providers. The SQM Delivery Partnership is responsible for the SQM audit process, and will undertake any audits required to obtain or retain a future contract with the LAA
Lexcel	The Law Society's international practice management standard

Acronyms:

AGFS	Advocates' Graduated Fees Scheme
AIT	Asylum and Immigration Tribunal
ABS	Alternative Business Structures
BAME	Black, Asian Minority Ethnic
CBA	Criminal Bar Association
CCRC	Criminal Cases Review Commission
CDS	Criminal Defence Service
CFA	Conditional Fee Agreement/Conditional Fee Arrangement
CJS	Criminal Justice System
CLA	Community Legal Advice
CLAF	Contingent Legal Aid Fund
CLSA	Criminal Law Solicitors' Association
CPS	Crown Prosecution Service
DAF	Daily Attendance Fee
DSCC	Defence Solicitor Call Centre
ECHR	European Convention on Human Rights
EWCA	England and Wales Court of Appeal
FAS	Family Advocacy Scheme
FJR	Family Justice Review
HCA	Higher Courts Advocates
HMCTS	Her Majesty's Courts and Tribunals Service
ITT	Invitation to Tender

JEB	Judicial Executive Board
JR	Judicial Review
LAA	Legal Aid Agency
LAR	Legal Aid Reforms
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LGFS	Litigators' Graduated Fees Scheme
LSC	Legal Services Commission
LSF	Lower Standard Fee
LSRC	Legal Services Research Centre
MoJ	Ministry of Justice
NHS	National Health Service
NSF	Non Standard Fee
PCMH	Plea and Case Management Hearing
PDS	Public Defender Service
PLO	Public Law Outline
POCA	Proceeds of Crime Act 2002
PPE	Pages of Prosecution Evidence
PQQ	Pre Qualification Questionnaire
QC	Queen's Counsel
SME	Small or Medium Sized Enterprise
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
UC	Universal Credit
VAT	Value Added Tax
VHCC	Very High Cost Cases (could be criminal, civil or family cases)

Annex B: Response to consultation

Introduction

1. This Annex sets out the Government's response to the consultation paper, *Transforming legal aid: delivering a more credible and efficient system*.
2. We estimate that the proposals set out in this consultation, once fully implemented, will deliver savings of £220m per year by 2018/19.

Restricting the scope of legal aid for prison law

3. The consultation paper proposed amending the scope of advice and assistance, including advocacy assistance, in criminal legal aid for prison law to cases that:
 - involve the determination of a criminal charge for the purposes of Article 6.1 ECHR (right to a fair trial);
 - engage Article 5.4 ECHR (right to have lawfulness of ongoing detention reviewed); and
 - require legal representation as a result of successful application of the "Tarrant" criteria³¹.

4. The consultation asked:

Question 1: Do you agree with the proposal that criminal legal aid for prison law matters should be restricted to the proposed criteria? Please give reasons.

Key issues raised

5. The majority of respondents were opposed to the proposal and raised the concerns set out below, although not all respondents were unsupportive. A number of respondents raised concerns about the impact the proposals would have on under 18s in custody, particularly around resettlement (for example ensuring that local authorities are fulfilling their statutory duties in terms of provision of suitable accommodation on release). It was said that young people in custody may find it more difficult to engage with the complaints system and it was also suggested that they would have a greater need of

³¹ When a prisoner attends a disciplinary hearing before a governor the prisoner is asked whether they want to obtain legal advice or representation. If the prisoner does not want any legal assistance the hearing proceeds. However, if the prisoner requests legal advice, the adjudicating governor will consider each of the following criteria (resulting from the case of *R v Home Secretary ex parte Tarrant*) and record their reasons for either refusing or allowing representation or a friend:

- the seriousness of the charge/potential penalty;
- a substantive point of law being in question;
- the prisoner being unable to present their own case;
- potential procedural difficulties;
- urgency being required; or
- reasons of fairness to prisoners and staff.

If the adjudicating governor allows the request they will adjourn the hearing for a reasonable time to allow the prisoner to telephone or write to a solicitor.

legal advice and assistance than adult prisoners. It was also questioned whether restricting criminal legal aid for under 18s may be in breach of the UK's obligations under the UN Convention on the Rights of the Child.

6. Respondents suggested that the removal of categorisation and licence conditions matters from the scope of criminal legal aid for prison law would not be in line with the policy intention of providing legal aid where an individual's liberty is at stake, and that in relation to licence conditions prisoners' rehabilitation may be affected. A number specifically argued that re-categorisation from Category A is essential if prisoners on Indeterminate sentences for Public Protection (IPPs) are to be released. In addition, the possibility of prisoners being housed in more secure conditions than necessary as a result of not being re-categorised, and the resulting cost implications, was also raised. Specifically, respondents suggested that the difference in cost of holding a prisoner in Category A as opposed to Category B, C or D conditions is significant and removing prisoners' access to criminal legal aid for categorisation cases may result in more prisoners being held in more secure, and therefore more expensive, conditions for longer than necessary.
7. Particular concerns were raised in relation to the ability of prisoners with mental health issues and/or learning disabilities to participate in and make use of the complaints and discipline systems effectively without the benefit of legal advice and assistance. Respondents argued that these prisoners are less confident in the complaints process than other prisoners and that screening was incomplete and as a result, reasonable adjustments were not generally made for all prisoners who may require them.
8. A number of respondents stated that an effective means of redress for prisoners' complaints was a key element in maintaining order in prisons. Some raised concerns about the robustness of the complaints system, particularly that it was not suitable to resolve serious issues. A number of respondents argued that it lacked transparency, accountability or independence and suggested that adherence to the relevant Prison Service Instruction (PSI 02/2012) varied across establishments. Concerns were also raised about the timeliness with which complaints were dealt with and survey data was provided that suggested that prisoners held the complaints system in poor regard.
9. Some respondents were also concerned that the Prisons and Probation Ombudsman (PPO) would be unable to handle an increase in the number of complaints referred for investigation in light of a decreased budget in recent years. Concerns were also raised over the timeliness with which the PPO concludes investigations, and the potential cost implications of more cases being resolved via the PPO than by way of a prison law practitioner. Respondents also noted that the PPO's decisions are not binding.
10. Various respondents raised concerns regarding potential indirect cost implications of the proposals. Particular points of concern for respondents were that it was said that a PPO investigation costs around £1,000 (figure for 2012/13 supplied by PPO is around £830), whereas the standard fixed fee for criminal legal aid advice and assistance is £220. The contention was that an expected increase in referrals to the PPO would mean cases were more expensive to resolve than if they were addressed through legally aided prison law advice and assistance. The cost of judicial review proceedings was also set against the cost of a PPO investigation and the standard fixed fee.

Government response

11. As set out in the consultation document, the proposals on amending the scope of criminal legal aid for prison law are intended to focus public resources on cases that are of sufficient priority to justify the use of public money. Alternative means of redress such as the prisoner complaints system should be the first port of call for issues removed from scope. The proposals aim to target limited public resources at the cases that really justify it, in order to ensure that the public can have confidence in the scheme.

Young people

12. The Government has considered what respondents to the consultation said about the particular vulnerability of young people and their particular need for legal advice to ensure statutory agencies support and rehabilitate young people appropriately. Improving outcomes for young people leaving custody and tackling reoffending is a key priority for this Government, as set out in the *Transforming Youth Custody: Putting education at the heart of detention* consultation³². However, for the reasons set out below, the Government does not intend to make an exception for those under the age of 18.
13. Under-18s are detained in three different types of establishment - Secure Children's Homes (SCHs), Secure Training Centres (STCs; these are contracted-out services) and Young Offender Institutions (YOIs). Each sector is subject to independent inspection according to individual frameworks that take account of the particular requirements of young people in custody. SCHs and STCs are subject to inspection led by Ofsted³³. YOIs are inspected by Her Majesty's Inspectorate of Prisons (HMIP)³⁴ (in partnership with Ofsted). Detailed requirements for each sector can be found within the standards, rules and Prison Service Instructions indicated below.
 - SCHs – The Children's Homes Regulations 2001³⁵ and National Minimum Standards³⁶;
 - STCs – The Secure Training Centre Rules 1998³⁷; and
 - YOIs – The Young Offender Institution Rules 2000³⁸ and Prison Service Instruction (PSI) 08/2012 (Care and Management of young people)³⁹.
14. All youth secure establishments (SCHs, STCs, YOIs) are required to have comprehensive internal complaints systems that enable young people to address issues relating to their detention, including issues that would currently be resolved with criminal legal aid advice and assistance. Moreover, civil legal aid for judicial review remains available, subject to means and merits.

³² <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody>

³³ <http://www.ofsted.gov.uk/inspection-reports/how-ofsted-inspects>

³⁴ <http://www.justice.gov.uk/about/hmi-prisons/inspections-guidance>

³⁵ <http://www.legislation.gov.uk/ukxi/2001/3967/contents/made>

³⁶ www.minimumstandards.org/nms_childrens_home.pdf

³⁷ <http://www.legislation.gov.uk/ukxi/1998/472/contents/made>

³⁸ <http://www.legislation.gov.uk/ukxi/2000/3371/contents/made>

³⁹ <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-08-2012-care-management-young-people.doc>

15. SCHs have individualised complaints processes. Appeals resulting from these will utilise their Local Authority's complaints process and as such will be monitored by them (see individual Local Authority websites for more information). The requirements for complaints systems within STCs are outlined in the contract with each provider and include specific requirements and timescales for dealing with complaints. The general requirements of the grievance procedures in STCs are set out in the Secure Training Centre Rules 1998 (regulation 8 – see paragraph 9.2.10 of Annex F). In addition the statutory Monitor, appointed under section 8 of the Criminal Justice and Public Order Act 1994, has a role in relation to complaints from under-18s in STCs. The majority of under-18s in custody are detained in YOIs run by the Prison Service. The YOI Rules set out the requirements for a complaints process. Governors in these establishments have additional duties when addressing complaints from young people. These are outlined in PSI 08/2012 (Care and Management of Young People) and include verbal explanations of the result of a complaint, forms specifically designed to be used by young people and quality assurance processes by the safeguarding children manager.
16. We recognise that young people may find it more challenging to navigate the complaints process, grievance or disciplinary procedures (depending on the type of establishment), which is why young people are supported by advocacy services within the secure estate. Advocates will help to ensure that appropriate support is provided by statutory agencies such as Local Authorities, and as such will help to resolve issues that might currently be dealt with by way of criminal legal aid legal advice and assistance. All advocacy providers must adhere to the National Standards for the Provision of Children's Advocacy Services in England and Wales. Personal officers or caseworkers are also available to assist. This will ensure that matters removed from the scope of criminal legal aid for prison law can be resolved satisfactorily without the need for legal advice and assistance.
17. A new contract for advocacy services provided by Barnardos commenced on 1 July 2013 across all STCs and YOIs in the youth secure estate. This service is designed for use by young people. Under the contract independent advocacy support is provided to young people in order to assist them with any issues that they may experience whilst in custody, either within or outside the youth secure estate. The role of the advocate is to provide a broad range of non-legal support services to young people to resolve issues at the right level (see section 9.2 of Annex F). The advocacy service provider will accompany a young person to meetings on request either to support the individual or represent their wishes, such as meetings with external agencies (see section 9.2 of Annex F). Advocacy services are provided under different arrangements in SCHs and these must be in accordance with the relevant National Standards.
18. There are various external bodies to which a young person can appeal if they are not satisfied with the outcome of their complaint or grievance. Young people in STCs can appeal to the Monitor – a statutory appointee not employed by the organisation running the STC - to investigate their case further. In addition, we have agreed that young people in STCs will be able to take their complaint to the PPO by the end of September. Young people in SCHs can refer a complaint to their Local Authority, while those in YOIs can refer their complaint to both the PPO and the Independent Monitoring Board (IMB). Access to these organisations must be made readily available and promoted within the relevant establishments. The Monitor, PPO and IMB can all make recommendations on behalf of the young person and will work with the establishment to put these measures in place.

19. In these circumstances we consider that adequate support is available to ensure that under 18s in custody are supported and provided for and that criminal legal aid for prison law is not required apart from in the circumstances set out in the scope criteria. In addition, civil legal aid may be available, subject to means and merits. We consider that this is not in breach of the UK's obligations under the UN Convention on the Rights of the Child.

Categorisation and licence conditions

20. In relation to retaining categorisation and licence conditions matters within the revised scope of criminal legal aid advice and assistance due to their impact on liberty, we have decided that these matters should not be retained within the revised scope.
21. Categorisation matters should be resolved where possible using the prisoner complaints system or representations by prisoners for those in Category A. As noted above, civil legal aid for judicial review may also be available, subject to means and merits. Any disagreement with the licence conditions set should be discussed between the offender and their offender manager, with the relevant probation complaints system being used if no resolution can be reached. We consider these processes are sufficient to ensure that offenders' grievances will be properly considered and their rehabilitation will not be compromised.
22. Criminal legal aid advice and assistance will continue to be available for Parole Board proceedings where the Parole Board has power to direct release (but not for proceedings where the Parole Board has no power to direct release, for example cases which are referred to the Parole Board solely for the purpose of making a recommendation to the Secretary of State on categorisation).
23. Three groups of prisoners are to be considered in terms of release:
- First, determinate sentence prisoners have an automatic release date built into their sentence and as such will definitely be released at a set date. For determinate sentence prisoners who are not eligible for consideration by the Parole Board for release prior to their automatic release date, provision of legally aided advice and assistance in relation to categorisation will therefore not affect the date on which the prisoner will be released.
 - Secondly, there are determinate sentence prisoners who are eligible for consideration by the Parole Board for release prior to their automatic release date.
 - Thirdly, there are indeterminate sentence prisoners (for example those sentenced to life imprisonment or serving IPP sentences). They do not have a set release date. Their release is considered on the basis of a comprehensive risk assessment by the Parole Board based on reports of the prisoner's general risk factors, reduction in risk and performance and behaviour in prison, including suitability for release on licence and compliance with any sentence plan.
24. It is recognised that categorisation may be an important element of that risk assessment for all prisoners but we do not consider it is necessarily or directly determinative of release in the second and third categories. It is therefore a relevant factor in Parole Board decisions about release of prisoners in the second and third categories, but not the sole consideration. It should be noted that a small number of Category A prisoners have been released by the Parole Board without being re-

categorised to Category B or below. The categorisation process for prisoners is set out in PSI 39/2011⁴⁰ (Women Prisoners), PSI 08/2013⁴¹ (Review of security category: Category A/restricted status prisoners), PSI 40/2011⁴² (Adult Male Prisoners), and PSI 41/2011⁴³ (Young Adult Male Prisoners). However, as noted above, the complaints systems are available to those in these categories other than to Category A prisoners, and, in relation to Category A, representations by prisoners may be submitted. Civil legal aid for judicial review may be available, subject to merits and means.

25. In any event, criminal legal aid advice and assistance for proceedings before the Parole Board where the Parole Board has power to direct release will continue to be funded under the proposed new scope criteria.
26. Similar points apply in relation to licence conditions and suitability for release on licence.
 - They are discussed at Parole Board hearings for those determinate sentence prisoners whose release (or early release) is at the discretion of the Parole Board (the second category) and for indeterminate prisoners (the third category). As noted above, the proposal is that criminal legal aid advice and assistance will remain available for proceedings before the Parole Board where the Parole Board has power to direct release.
 - All other prisoners serving determinate sentences have an automatic release date and so do not have a Parole Board hearing at which licence conditions are discussed prior to release – licence conditions in those cases do not affect the date of release.
 - Offenders who have been released on licence but recalled due to breach of their conditions have any future release considered by the Parole Board, including individuals on determinate sentences. These proceedings will continue to be funded.
27. As noted above, respondents to the consultation argued that the proposed scope changes would lead to prisoners being housed in more secure conditions than necessary so increasing costs. We do not consider that the changes would lead to this result. Of the areas removed from the scope of criminal legal aid for prison law there are around 6,000 legally-aided categorisation cases per year based on 2012/13 Legal Aid Agency (LAA) data. If prisoners were to be held in a higher security category than necessary as a result of this change there would be an additional cost burden. However, we consider that the alternative means of redress such as the prisoner complaints system are sufficient to deal with these matters satisfactorily.

The complaints system

28. The Government has considered the points raised by respondents in relation to the complaints system, such as those related to prisoners' confidence in the system and its general effectiveness. We consider the complaints system to be sufficiently robust to enable the issues removed from the scope of criminal legal aid for prison law to be resolved satisfactorily including for prisoners with mental health issues and/or learning

⁴⁰ <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-39-2011-womens-cat-recat.doc>

⁴¹ <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2013/psi-08-2013-review-security-cat-a.doc>

⁴² <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-40-2011-categorisation-adult-males.doc>

⁴³ <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-41-2011-categorisation-young-adult-males>

disabilities, for the reasons set out below. Category A prisoners may also make representations to the prison in relation to categorisation matters. Civil legal aid for judicial review may also be available, subject to means and merits.

29. PSI 02/2012 sets out a robust set of procedures to ensure that prisoner complaints are dealt with effectively, including those made by prisoners with mental health issues and/or learning disabilities (or other protected characteristics).
30. There are two stages to the internal prisoner complaints process: (i) the initial complaint stage; and (ii) the appeal stage. The response timings for initial complaints reflect the urgency of the complaint, prioritising the most critical, but subject to an overarching maximum time period of 5 days. If a prisoner is dissatisfied with the response to their complaint they may submit an appeal which should normally be made within 7 calendar days of having received the initial response, unless there are exceptional reasons why this would have been difficult or impossible. Appeals are answered by someone at a higher level in the management structure than the person who provided the response to the original complaint. Under the complaints procedure, a prisoner who has a complaint about a particularly serious or sensitive matter, for example where it would be reasonable for the prisoner to feel reticent about discussing it with wing staff, such as a victimisation case, has the right to make a complaint under confidential access (in a sealed envelope) to the governing governor, the Deputy Director of Custody or the local Independent Monitoring Board (IMB). At any point during the complaint process a prisoner can make an application to speak to a member of the local IMB. Prisoners are provided with a written response to their complaint.
31. Prisons are required to make sure that information is available in formats that all prisoners can understand. This in particular means that prisoners who cannot read English either because of a learning disability, have difficulty reading or writing for any reason or because their first language is not English, will have information given to them in another format. In many prisons this will mean that induction information (for example) is provided on a video as well as in writing. We therefore consider that reasonable adjustments are made in accordance with relevant PSIs for prisoners with mental health issues and/or learning disabilities (see paragraphs 40-43 and section 9.2 of Annex F).
32. The complaints system was recently audited by the National Offender Management Service (NOMS) with the aim of assessing the adequacy, effectiveness and reliability of controls operating over prisoner complaints, although not whether the system catered adequately for different prisoners. The report was finalised after the publication of the consultation paper in May. The audit found that the system is generally operating as set out in PSI 02/2012 (Prisoner complaints). A number of recommendations were made, including around provision of information in other languages and that appeals should be heard by an individual independent of the original respondent, which were accepted in full by NOMS. The report found that prisoner induction was the primary method for informing prisoners about the complaints process, and that where induction was not used, alternative processes were in place to ensure prisoners were properly informed. We are therefore confident that the complaints system is being followed in establishments.
33. NOMS data on the types of matter dealt with through the prisoner complaints system also show that the system is not used solely for what might be considered lower level issues, such as visits or food, but also for more serious matters such as transfers and home detention curfew refusal appeals.

34. NOMS will develop a communications strategy to reinforce compliance with relevant PSIs in all establishments, and highlight changes to the criminal legal aid scheme, to ensure that staff and prisoners are fully aware of the changes being made and proposed alternative means of redress. This will include a letter from the Chief Executive of NOMS to all Governors. In addition, the Youth Justice Board will write to all STCs to reinforce the same message, and Ministry of Justice officials will liaise with the Department for Education to ensure SCHs receive the same message. The messages will also reinforce the need to make reasonable adjustments for prisoners with protected characteristics including those with mental health issues and/or learning disabilities. NOMS will also ensure that changes to criminal legal aid for prison law are communicated to the prison population and that the requirements outlined in PSIs in relation to the complaints system are highlighted in detail.
35. NOMS will formally approach HMIP to include a 'complaints' thematic inspection towards the end of 2014/15 or early in their 2015/16 programme of work to allow time for the changes to criminal legal aid for prison law and any impact on the complaints system to take effect. This will test the complaints system after the changes to criminal legal aid have taken effect and give an independent view on their impact. NOMS will continue to monitor the number of complaints submitted centrally to assess the impact on services. The effectiveness of the complaints process will continue to be assessed on an ongoing basis in the future.
36. Prisoners also have the opportunity to refer a complaint to the PPO if they are not content with the outcome of the complaints process. We consider that the complaints system, as well as the prison discipline procedures and probation complaints systems, are sufficient to ensure that prisoners' grievances are properly considered. In addition, civil legal aid for judicial review may be available, subject to merits and means.
37. We recognise concerns raised by respondents in relation to a potential increase in caseload for the PPO and possible increased costs as a consequence. However:
 - We consider the actions that will be taken by NOMS to reinforce compliance with PSI 02/2012 (Prisoner complaints) in all establishments should minimise the risk of a significant increase in caseload.
 - The PPO also continues to work with NOMS to reduce its complaints workload, for example by providing information to reduce the number of ineligible complaints (see the PPO's latest annual report⁴⁴). We consider that these actions and ongoing work will contribute to improved timeliness of PPO investigations. It should be noted that the majority of recommendations made by the PPO are implemented by establishments, despite these recommendations not being binding.
38. We consider the actions to be taken by NOMS in reinforcing compliance with relevant PSIs, including in relation to the complaints process and those regarding prisoners with protected characteristics (see paragraph 34), will reduce the likelihood of complaints not being satisfactorily resolved within establishments and so necessitate referral to the PPO. NOMS have also committed to approaching HMIP in relation to a 'complaints' thematic inspection that would highlight any unforeseen impacts.

⁴⁴ <http://www.ppo.gov.uk/annual-reports.html>

39. In relation to possible cost implications, informal feedback from NOMS suggests that it costs significantly less than the standard fixed fee for prison law legal aid advice and assistance to resolve a complaint using the prison complaints system.

Prisoners with mental health issues and/or learning disabilities

40. The Government considers that current processes are sufficient to allow those with mental health issues and/or learning disabilities to use the prisoner complaints mechanism, the disciplinary process or the probation complaints process or, if necessary, the PPO. PSIs 02/2012 (Prisoner complaints), PSI 75/2011 (Residential services), PSI 32/2011 (Ensuring equality) and 08/2012 (Care and management of young people) provide more information on the processes for ensuring these prisoners are able to participate effectively in terms of the complaints system and discipline procedures. Probation complaints systems vary between probation trusts (see individual trusts' websites for more information). Those prisoners with literacy difficulties should ask a friend (or prison 'listener') or relative to help when making a complaint to the PPO⁴⁵.
41. If an individual is identified (whether by a member of staff or by self-identification) as having mental health issues or learning disabilities, NOMS will apply those policies outlined in relevant PSIs and consider whether there are any other reasonable adjustments that should be made.
42. HMIP's annual report contains a comparison of survey scores of prisoners who consider themselves to have a disability and those who do not; these data include prisoners with a physical disability as well as those with mental health issues and/or learning disabilities. HMIP's 2011-12 Annual Report (latest available) indicates the following:
- Q. Is it easy to get a complaints form?**
- Disabled – 82% Yes
Non-disabled – 83% Yes
- Q. Have you made a complaint?**
- Disabled – 55% Yes
Non-disabled – 46% Yes
- Q. Is there a member of staff in this prison that you can turn to for help if you have a problem?**
- Disabled – 76% Yes
Non-disabled – 75% Yes
43. We acknowledge that HMIP's response to the consultation contained data indicating that prisoners with mental health issues and/or learning disabilities (as well as prisoners generally) did not have confidence in the complaints system and that outcomes were poor. However, the information from the 2011-12 Annual Report referred to above suggests a different picture in terms of accessibility, willingness to use the system and the potential for reasonable adjustments to be made when comparing disabled and non-disabled prisoners. Although respondents had concerns

⁴⁵ <http://www.ppo.gov.uk/complaints-faqs.html#4>

around potential impacts on these prisoners we consider the processes set out in PSI 02/2012 (Prisoner complaints), PSI 32/2011 (Ensuring equality) and 75/2011 (Residential services) are sufficient to ensure they are able to make effective use of the complaints system and access the other alternative means of redress (see section 9.2 of Annex F).

Article 5.4 ECHR

44. Some Parole Board hearings do not engage Article 5.4 of the ECHR, in particular those for certain determinate sentence prisoners. However, the Government considers that criminal legal aid should remain available for advice and assistance in relation to all proceedings before the Parole Board where the Parole Board has the power to direct release (see also paragraphs 24 and 25).
45. There are hearings before the Parole Board where the Parole Board has the power to direct release and, if it decides not to direct release, it may make a recommendation to the Secretary of State regarding categorisation. As the Parole Board does have the power to direct release at these hearings we will continue to fund these cases. However, hearings before the Parole Board that consider solely categorisation or licence conditions would not be funded as there is no consideration of whether to direct release.

Sentence calculation

46. The Government has also considered again the issue of sentence calculation matters – that is, how prison staff apply the relevant release provisions in the legislation to a prisoner’s sentence or sentences in order to calculate their correct release date. The amendment to the scope criteria outlined above would have the effect of removing both sentence planning and sentence calculation from scope as they are not matters for the Parole Board. The consultation paper stated that sentence planning matters would continue to be funded but the modified scope criteria will mean they are not in future.
47. However, the Government accepts that sentence calculation, where it is disputed, has a direct and immediate impact on the date of release from prison and should for that reason remain in scope. Legal aid should only be available, though, once alternative means of redress (such as the prisoner complaints system and the sentence calculation helpline) have been exhausted. As a result, criminal legal aid will remain available for advice and assistance in relation to sentence calculation in these circumstances.

Conclusion

48. Having considered and given due weight to the responses to the consultation the Government has decided to proceed with the proposal to limit the scope of criminal legal aid for prison law cases as proposed in the consultation document with the exception that criminal legal aid will remain available for:
 - all proceedings before the Parole Board, where the Parole Board is considering whether to direct release (as opposed to all cases that engage Article 5.4 ECHR); and,
 - advice and assistance in relation to sentence calculation where the date of release is disputed.

49. It is intended that these changes will be introduced by way of amendments to secondary legislation and contract amendments in late 2013.

Imposing a financial eligibility threshold in the Crown Court

50. The consultation paper proposed the introduction of a financial eligibility threshold, whereby any defendant with a disposable household income of £37,500 or more would be ineligible for legal aid in the Crown Court. This would be subject to review on hardship grounds for those who exceed that threshold but demonstrate that they cannot in fact afford to pay for their own defence. The consultation document asked:

Question 2: Do you agree with the proposal to introduce a financial eligibility threshold on applications for legal aid to the Crown Court? Please give reasons.

Question 3: Do you agree that the proposed threshold is set at an appropriate level? Please give reasons

Key issues raised

51. There was some support for this proposal in principle (for example the Law Society stated that it agreed with the principle that the taxpayer should not ultimately pay for wealthy defendants), although a number of concerns were also raised. It was suggested by respondents that the proposed threshold is at too low a level to enable private defence costs to be affordable in the majority of Crown Court cases, and so should be set at a higher level. It was also argued that the proposal to use annual disposable household (i.e. defendant's plus partner's) income would deny criminal legal aid to households of relatively modest means, as well as unfairly penalise partners, and therefore again that the threshold should be set at a higher level. Respondents also commented that the proposed level of household expenditure to be used in the calculation of disposable income was too low.
52. Some respondents argued that the introduction of the threshold would increase the number of defendants representing themselves including vulnerable defendants, whether through necessity or choice, with the consequent delays and inefficiency this would cause in the criminal justice system. It was argued that defendants would be denied representation and, if they could not afford to pay privately and therefore could not access representation, this would breach their right to a fair trial under Article 6 of the ECHR.
53. The issue of defendants being able to cross-examine vulnerable witnesses in person was raised by a number of respondents. It was also argued that defendants in person would 'play' the system leading to more collapsed trials. The issue of vulnerable defendants having to act in person was also raised. The comments of Ward LJ in *Wright v. Wright* ([2013] EWCA Civ 234) regarding litigants in person in civil cases were referred to by a number of respondents.
54. Concerns were raised by a number of respondents about the timeliness with which the LAA makes decisions on financial eligibility. It was argued by many that this proposal would build delay and inefficiency into the criminal justice system. Concern was raised in particular about the need for sufficient time to be available following that decision for providers to be instructed and begin work on the case before proceedings commence. It was also suggested that if delays do occur this would have significant knock-on effects for the trial process (and so transfer costs to Her Majesty's Courts and Tribunals

Service (HMCTS)) and that as a result the defendant's Article 6 ECHR rights may be breached.

55. Many respondents questioned whether private rates are the same as, or similar to, legal aid rates. It was suggested that the proposal to reimburse privately paying defendants at legal aid rates following acquittal represents an unfair financial penalty considering, in respondents' view, the practical impossibility of securing private representation at legal aid rates. The primary objection was that it is unfair to exclude a person from legal aid, and then for them to incur significant private costs which they cannot recoup in full (or at least up to a reasonable amount) in the event that either they are acquitted or the Crown Prosecution Service (CPS) discontinues a case. It was suggested that reimbursement should be at reasonable, if not full, private rates.
56. Amendments to the Crown Court Means Testing (CCMT) scheme were implemented on 1 April and on 30 July (see paragraph 86) and respondents argued that it was not appropriate for further changes to be made to financial eligibility arrangements in the Crown Court without a better understanding of how these changes have bedded in.
57. The Government has also committed to undertaking a consultation in the autumn on additional changes to legal aid eligibility criteria in the light of the wider roll-out of Universal Credit. Respondents were concerned that the proposed changes on Crown Court eligibility would be implemented shortly before any decisions in relation to the proposals in that consultation. The Government response to the Universal Credit consultation, which will consider financial eligibility arrangements and the basis on which financial eligibility is calculated, is expected to be published in early 2014.
58. It was suggested that assets restrained under the Proceeds of Crime Act 2002 should be released to pay for wealthy defendants' reasonable private defence costs.

Government response

59. The proposal to introduce a financial eligibility threshold of £37,500 disposable household income in the Crown Court is intended to ensure that the wealthiest Crown Court defendants, who are able to pay privately, are not automatically provided with legal aid at the taxpayer's expense.
60. As noted above, a key concern expressed by respondents was that the threshold is set at too low a level and that private costs would not be affordable for defendants ineligible as a result of the threshold, with a consequent significant impact on middle income earners. We have undertaken analysis of all Defence Costs Orders (DCOs) processed in Manchester (one of the 2 processing centres in England and Wales) over a 6 month period up to 23 March 2013. These are the most recent available data, as from October 2012 legal costs in the Crown Court could no longer be recovered under a DCO from Central Funds (although costs could still be recovered under DCOs granted prior to the changes which were still being processed after October 2012). The analysis provides further information on likely costs that defendants affected by this proposal may incur: DCOs were reimbursed from central funds at reasonable private rates – this is therefore the best available information we have as to private rates

recently available to defendants. The data below give average DCO values for each offence group A-K⁴⁶ (see Table B1 for definitions).

Table B1: average DCO values and number of DCOs in the sample for each offence group A to K.

Offence group	Average DCO £ value (rounded to nearest £000)	Number of DCOs in sample
A – Homicide and related grave offences	176	3
B – Offences involving serious violence or damage, or serious drug offences	13	26
C – Lesser offences involving violence or damage and less serious drugs offences	9	44
D – Sexual offences and offences against children	10	19
E – Burglary	12	3
F – Dishonesty under £30k	16	23
G – Dishonesty £30-100k	0	0
H – Miscellaneous other offences ⁴⁷	15	38
I – Offences against public justice and similar offences	14	7
J – Serious sexual offences	27	11
K – Dishonesty above £100k (including 2 Very High Cost Cases)	603	6

61. The data show that in the majority of cases, across the majority of offence categories, average private defence costs should be affordable to a defendant excluded from legal aid by the proposed threshold. The average value of a DCO in relation to offence categories B – I (160 cases out of a total sample of 178), which includes some of the most common offences in the Crown Court (such as those relating to drugs, violence and less serious dishonesty) is between £9,000 and £16,000. The average value of a DCO in the 11 cases in category J (serious sexual offences) is higher (£27,000), but is still below the disposable income threshold we proposed and therefore affordable. There were no cases in offence group G in the sample so we are not able to draw any conclusions in relation to that category. A hardship review, with the potential for legal aid to be granted, would remain available for any cases that are not in fact affordable.
62. The data show that offences in offence groups A (homicide and related grave offences) and K (dishonesty above £100,000) are, on average, considerably more expensive. This is not unexpected and this kind of variance of cost in complex cases was expressly acknowledged in the consultation paper. However, also as expected, there were fewer cases in these categories (9 out of a total sample of 180) and these are precisely the kinds of cases in which it is envisaged that a defendant with a disposable

⁴⁶ Please note that average private costs derived from DCOs are based on small numbers with a high degree of variation and as such must be treated with caution.

⁴⁷ A comprehensive list can be found in Schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013. Please see: <http://www.legislation.gov.uk/uksi/2013/435/contents/made>

- income above the threshold could make an application for a hardship review on the basis that the estimated defence costs in their case are beyond their means.
63. The data have indicated that there is a difference between legal aid rates and private rates in all offence groups and that the rates reimbursed under a DCO were higher than legal aid rates. However, we consider the data also demonstrate that private costs will be affordable for the majority of offence groups and where private costs are unaffordable the hardship review will ensure representation is provided.
 64. In arguing that the threshold would mean that private representation is unaffordable, a number of respondents did not address the inter-relationship between the proposed threshold and the hardship review. Any defendant (in whatever category their offence falls) would be able to make such an application and, if successful, would be granted legal aid. The potential grant of legal aid following a hardship review also secures the compatibility of the proposal with Article 6 ECHR.
 65. Paragraph 3.34 of the previous consultation set out how the hardship review would work. The defendant would be required to supply detailed financial information which showed that they could not afford to pay the estimated full costs of their defence privately. This review would have two stages. At the first, the estimated costs of the defendant's particular case and any additional allowable expenditure (for example secured or unsecured loans, medical costs, rent arrears, student loans, certain pension payments and credit card payments) would be subtracted from the defendant's disposable household income. If the defendant's remaining disposable household income is then below £37,500 they would be eligible for legal aid, but subject to a contribution in accordance with the CCMT scheme. At the second stage, the estimated private costs would be disregarded (as they are no longer relevant) and the defendant's liability to a contribution is based, in accordance with the CCMT Scheme, on an assessment of their disposable household income and any additional allowable expenditure.
 66. Eligibility would be calculated on the basis of disposable income from which some living costs and specified allowable outgoings (tax and National Insurance, council tax, housing and childcare costs, and any maintenance costs) have already been deducted – it would not be based on *gross* household income as some respondents seemed to suggest. This is in line with current financial eligibility rules elsewhere in the legal aid scheme. It should also be noted that the living allowance is weighted according to family circumstances⁴⁸.
 67. Some respondents argued that it was inappropriate to aggregate the income of a defendant and their partner in assessing eligibility as was proposed and is currently the case. Aggregating the means of the applicant and their partner is the norm, both in the legal aid context and in relation to means-tested benefits in England and Wales. Aggregation is a way of ensuring that all of the resources available to a person are assessed; household expenses and bank accounts are often shared and it is reasonable to operate on the basis that a defendant will have access to the *household* income to pay for their defence. We must also guard against a situation arising whereby a defendant with a partner with considerable means is provided with criminal legal aid.

⁴⁸ For more information see the Criminal Legal Aid Manual pp.92-97: <http://www.justice.gov.uk/downloads/legal-aid/eligibility/criminal-legal-aid-manual.pdf>

68. The Government has considered respondents' concerns regarding the potential delay that may be caused by the introduction of the threshold, in terms of LAA administration and changes in defendants' circumstances or actual private costs. However, we consider that current processes are sufficient to ensure that delay does not occur.
69. Current administrative processes are adequate to ensure that sufficient time is available following a decision regarding eligibility for private representation to be sourced before proceedings commence, although this is dependent on applicants submitting applications in a timely way in accordance with the relevant regulations and LAA rules.
70. Current performance data (2012/13) indicate that 93% of first time applications in magistrates' courts and Crown Court cases (both interests of justice and means tests) are dealt with by HMCTS within 2 days of receipt of a fully completed application, and 99% within 6 days of receipt. 100% of fully completed and evidenced complex and hardship applications are dealt with by the LAA National Courts Team within 2 days of receipt (both magistrates' court and Crown Court). We believe this demonstrates the efficiency and adequacy of current administrative processes. These turnaround times are dependent on fully completed forms; delays often occur because forms are not completed properly rather than as a result of LAA administrative processes.
71. Although neither the administrative process in the current magistrates court means testing or CCMT schemes are exactly analogous to those that will be required for the Crown Court eligibility threshold, we consider that current performance in these areas is indicative of the processes that we will put in place and their likely efficiency.
72. There may be situations where an individual has applied for legal aid, that application (including any hardship review applied for) has been refused because it is deemed that the individual can afford the costs of their own defence, and then during the course of the proceedings the individual's circumstances change. If, for example, the individual's financial circumstances change or the proceedings run longer than anticipated, resulting in private costs being unaffordable, mechanisms will be in place to enable the individual to obtain legal aid. Similarly where the circumstances of an individual who did not initially apply for legal aid subsequently change such that they can no longer afford to fund their own defence, they will be able to make a legal aid application in the light of the change.
73. Should the application be successful any private provider acting for the individual who also holds a legal aid contract would be able to continue acting for the individual, albeit at legal aid rates, thus providing continuity for the client and minimising disruption for the court. If the provider does not hold a contract there is an individual case contracting mechanism currently in place for exceptional circumstances where a defendant is represented by a provider who does not hold a Crime Contract, but it is in the interests of justice and public funds to enable the provider to obtain legal aid to represent that defendant. This would cater for these situations where a defendant funds him or herself privately at the start of proceedings, but cannot afford to do so throughout the case (i.e. is initially ineligible then becomes eligible). The risks of lack of continuity for the defendant and delays in court are therefore minimised.
74. The Government has also considered respondents' concerns in relation to a possible increase in the number of defendants representing themselves and the potential for delay and inefficiency this may introduce. However, we do not consider it likely that the

introduction of the threshold will result in an increase in defendants acting in person for the reasons set out below.

75. There are two potential drivers for an increase in defendants acting in person – lack of affordability (necessity) and a perception by defendants that representing themselves would benefit their case (choice). As set out above, average private defence costs should be affordable for those whose disposable income is above the proposed threshold in most cases. Where this is not the case, there will exist a hardship review to ensure that representation is available. We therefore consider that affordability should not be a driver of an increase in defendants representing themselves. Any increase in defendants representing themselves as a result of a perception by defendants that doing so would benefit their case would be driven by behavioural response as is currently the case, but we are not able to quantify this risk. We do not consider the introduction of the threshold would necessarily result in an increase in defendants acting in person. These two points regarding necessity and choice would apply equally to vulnerable defendants.
76. For these reasons, we do not consider that this proposal will lead to an increase in defendants cross-examining vulnerable witnesses in person. In any event, special measures are available to support witnesses to give evidence in court, which may include the use of screens around the witness box or giving evidence via livelink. The Ministry of Justice is currently reviewing how to reduce distress to victims during cross-examination and will report on this by the end of the year. In addition, the court is able to appoint an advocate to cross-examine vulnerable witnesses in certain cases where the defendant is representing themselves. These measures would continue to apply.
77. We will consider any impacts the introduction of a financial eligibility threshold may have in terms of delay in court, including via any informal feedback supplied by the judiciary. Should any impacts be identified we would examine ways in which the issues raised could be mitigated. This consideration of impacts will ensure that any delays resulting from an increase in defendants acting in person can be assessed.
78. The Government has already acted in response to concerns raised about those with substantial restrained assets receiving free legal aid. The Government brought forward proposals which were enacted by Parliament in the Crime and Courts Act 2013. That Act contains powers to amend the Proceeds of Crime Act 2002 to recoup legal aid contributions from restrained assets in certain circumstances. The detail of how this will be implemented remains under consideration.
79. A number of respondents were concerned that the proposal to reimburse acquitted defendants at legal aid rates rather than full or reasonable private rates would represent an unfair financial penalty. However, for the reasons set out below we consider it is right to reimburse acquitted defendants at legal aid rates.
80. Since 1 October 2012, defendants in the Crown Court have not been able to claim their private legal costs from Central Funds on acquittal. The reason for this is that at present, every defendant has access to legal aid and so the state will not reimburse a choice to pay privately. In the magistrates' courts, those who are not entitled to legal aid because their income is too high are entitled to reimbursement on acquittal at legal aid rather than private rates. There were a number of reasons for changing the rate of reimbursement from private rates to legal aid rates, including that:

- it is not considered right for the taxpayer to bear significantly greater costs for a privately-paying defendant or appellant than for one who is legally aided;
 - if an individual chooses a very expensive private lawyer, we do not believe that the taxpayer should indemnify them simply because the individual was willing to pay more;
 - money spent compensating successful defendants at private rates is money that would not be available to provide publicly funded legal services to those most in need of them; and
 - capping recoverable legal costs from Central Funds at legal aid rates helps to ensure greater parity between legal aid payments and payments to acquitted defendants from Central Funds. We think that this is fair to the individual and fair to the taxpayer.
81. Our proposal in the consultation was to reintroduce reimbursement (at legal aid rates) to acquitted defendants who apply for, but are no longer entitled, to legal aid in the Crown Court as a result of the threshold. We consider that even though this will cost the public purse it is a fair change to make, given that defendants excluded from legal aid by the threshold will need to pay privately. Ineligible Crown Court defendants will therefore be treated on the same basis as those in the magistrates' courts.
82. However, we do not consider that it is right or necessary to go further and reimburse at full or reasonable private rates for the reasons set out above. The changes to Central Funds have been approved by Parliament in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
83. Given the continuing challenging fiscal environment, a key objective of the Transforming Legal Aid programme is to deliver savings and we must also be mindful of the risk of reducing the savings expected from the reforms to Central Funds implemented in October 2012.
84. The CCMT scheme was further improved in 2013 by strengthening possible sanctions, re-assessment and the collection regime (see below). The introduction of a financial eligibility threshold in the Crown Court would not affect the current contributions regime, which would remain in place for those defendants eligible for legal aid but subject to a contribution. In light of this, we do not consider it necessary to wait for an assessment of how the CCMT changes are operating before implementing the £37,500 threshold.
85. The Government has considered alternative proposals submitted by respondents, in particular the Bar Council and the Criminal Bar Association. However, for the reasons set out below we do not consider these to be satisfactory alternatives.
86. The Bar Council suggested that another way of making savings would be to subject the CCMT scheme to more rigorous monitoring and enforcement with a possible sanction of revocation of legal aid mid-proceedings. However, enforcement is already rigorous and revocation of legal aid mid-proceedings could result in inefficiencies through changes in representation. In addition, changes to the CCMT scheme were implemented in April 2013, and the scheme has since been further strengthened by the implementation of the Motor Vehicle Order provisions on 30 July. This package of changes covers:

- The provision of evidence and sanctions for the defendant's failure to comply with requests for evidence;
 - Once a liability to an Income Contribution Order is established, considering the range of triggers which may lead to a re-assessment of that liability; and
 - Provisions concerning the collection and enforcement of payments under a contribution order, including implementation of Motor Vehicle Order regulations.
87. The Criminal Bar Association (CBA) made two suggestions. Firstly that there would be a presumption that legal aid would be provided if private costs are likely to be more than £5,000, subject to a means assessment and potential contribution. Secondly it was suggested that legal aid should be provided up to the Plea and Case Management Hearing.
88. The first proposal from the CBA would not have significant administrative costs but would have a limited impact in terms of reducing the number of wealthy defendants, who are in a position to pay privately for their defence, who would receive legal aid in the Crown Court. The policy objective of restricting the provision of legal aid to such individuals would therefore not be fully achieved. The second would introduce potential delay as ineligible defendants would have a limited amount of time to instruct privately, and there would be a shortened period in which applicants could provide supporting evidence (if required) for applications resulting in potential delay in processing. Both of these proposals would also incur extra cost to the legal aid fund at a time when the Government is aiming to reduce its spend on legal aid.

Conclusion

89. Having considered and given due weight to the responses to the consultation, the Government has decided to proceed with the proposal as set out in the consultation document and introduce a financial eligibility threshold whereby any defendant with a disposable household income of £37,500 or more would be ineligible for legal aid in the Crown Court, subject to review on hardship grounds for those who exceed that threshold but demonstrate that they cannot in fact afford to pay for their own defence.
90. It is intended that this will be implemented through amendments to secondary legislation in early 2014.

Introducing a residence test

91. The consultation paper proposed requiring applicants for civil legal aid to satisfy a residence test for civil legal aid to be available under the England and Wales scheme. The test as proposed would comprise two limbs:
- The individual would need to be lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time the application for civil legal aid was made; and
 - The individual would need to have resided lawfully in the UK, Crown dependencies or British Overseas territories for a continuous period of at least 12 months at any point in the past.

92. We proposed that the residence test would not apply to two types of individual: serving members of Her Majesty's armed forces and their immediate families; and asylum seekers. The consultation paper asked:

Question 4: Do you agree with the proposed approach for limiting legal aid to those with a strong connection with the UK? Please give reasons.

Key issues raised during consultation

93. The majority of those who commented (and in particular, the majority of civil legal aid practitioners) opposed the Government's proposal. Respondents were particularly concerned that the proposal would unfairly impinge upon access to courts and would have a significant impact on vulnerable groups. However, a number of respondents welcomed the proposal and agreed that it was reasonable to require an individual to have a strong connection to the UK in order to receive taxpayer-funded legal aid. Some responses suggested that a longer period of lawful residence should be considered.
94. Respondents who opposed the test argued that the scope of the civil legal aid scheme was only recently significantly restricted through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and that the residence test would effectively remove certain categories of law from the scope of that civil legal aid scheme. Particular concerns were raised about the impact on vulnerable groups of people and certain types of case, including (but not limited to) victims of trafficking, victims of domestic violence, victims of forced marriage, protection of children cases, children leaving care, homeless people, those with mental health and mental capacity issues, and cases which do not currently attract a means or merits test under the civil legal aid scheme. Many responses argued that further exceptions to the test should be made for these groups and cases. Some respondents queried the compatibility between this proposal and broader Government policies and strategies to support these groups. Some responses queried the compatibility of the test with Government policy to promote the UK as a centre of expertise for litigation.
95. A particular concern was raised by respondents regarding children under 12 months old who would be unable to meet the second limb of the proposed test. Other responses argued that the test would prevent individuals who are not lawfully resident from challenging and seeking redress for suffering caused through actions of the British state. Some responses argued that the proposed test would conflict with proposed tighter time limits for bringing judicial review cases. Some responses argued that the test would prevent people who reside overseas from accessing legal advice and representation at inquests into the death of relatives in the UK.
96. A number of responses queried the statement at paragraph 3.54 of the consultation paper that the existing power in section 10 of LASPO for funding to be provided in exceptional circumstances, where a case is excluded from the scope of the civil legal aid scheme, would enable funding to be provided to persons excluded by the test. Respondents also noted the differing application process and requirements for exceptional funding and therefore argued that the scheme would not be adequate in urgent cases.
97. Many respondents welcomed the proposed exception for asylum seekers. However, some responses raised concerns over the position of failed asylum seekers, whereby under the proposal, these individuals would not benefit from the proposed exception unless they made a fresh claim for asylum. Respondents argued that the proposed residence test would result in some people being unable to obtain legal aid to assist

with preparing a fresh claim, and unable to access legal aid to judicially review the decision of the Home Office to reject their further submissions as amounting to a fresh claim. Respondents also raised concerns about the proposal that successful asylum seekers would have to wait a further 12 months from the date their claim was successful before they could satisfy the second limb of the proposed residence test, arguing that this requirement was unfair.

98. Many responses welcomed the proposed exception for serving members of Her Majesty's armed forces and their immediate families. Some responses suggested that further exceptions should be made for military veterans and other persons who are normally lawfully resident but are working abroad.
99. Respondents queried the evidence for the Government's view that the proposal would result in an increase in public confidence in the legal aid scheme, arguing that without evidence to support this statement, the disadvantages that would arise as a result of the test could not be justified as a proportionate means of addressing a problem. Respondents have argued that the inability to estimate the volume of cases which would be affected by the proposed test (due to the fact that the LAA does not currently record the residency status of a client) does not allow for a sufficiently robust analysis of the impact of the proposal.
100. Respondents queried whether the test would result in savings to the legal aid scheme. They suggested that other costs would result if the test were implemented as proposed through increased numbers of litigants in person (many of whom may not speak English). They suggested that the LAA would face increased administration costs in establishing that the test is met and dealing with increased numbers of exceptional funding applications (and potential litigation of exceptional funding refusals). They also suggested that the state would face increased costs as a result of immigrants remaining in detention for longer than they would otherwise do if they were able to access civil legal aid to challenge their detention.
101. As part of the concerns about the potential increase in the numbers of litigants in person, some respondents raised concerns regarding the position of individuals who would not meet the test and who lack capacity (under the rules of court) to represent themselves. Some responses suggested that a separate fund should be set up to support litigants in person.
102. Many respondents argued that the Government had not properly considered the impact on vulnerable groups of people, in particular women, children and Black, Asian and Minority Ethnic (BAME) groups. They argued that insufficient consideration had been given to the nature and severity of the impacts for those with protected characteristics of gender, ethnicity and age. They also argued that no consideration was given to the Government's positive duties to promote equality of opportunity in respect of this proposal.
103. Many respondents queried the compatibility of the proposal with the Government's domestic, EU and international legal obligations. In particular, respondents argued that the proposal would amount to unlawful discrimination on the basis of nationality and would be contrary to EU law, ECHR law and common law. Respondents also argued that the Government's intention to implement the test through secondary legislation would be unlawful, as LASPO would not provide the powers to implement the test in that way.

104. Many responses queried paragraph 3.53 of the consultation paper which stated that the Government would continue to provide legal aid where necessary to comply with obligations under EU and international law. Respondents argued that insufficient detail was provided on how this would be achieved and raised particular concerns about vulnerable cases (such as persons seeking to recover abducted children through the Hague Convention 1980) and the extra delay that would be created if such cases were required to apply for exceptional funding.
105. Other responses queried the lawfulness of the proposals with respect to specific international obligations, such as the United Nations Convention on the Rights of the Child (UNCRC), the EU Directive on combating human trafficking (2011/36/EU) and the Council of Europe Convention on Action against Trafficking in Human Beings and the Refugee Convention.
106. Respondents argued that the proposal would be incompatible with the Equality Act 2010 as it would indirectly discriminate on the grounds of ethnicity/nationality and gender.
107. Finally, a large number of responses raised concerns around the practical issues which might arise in applying the test.
108. A key practical concern raised by many respondents was the lack of a clear definition of 'lawful residence' and the lack of detail provided in the consultation paper on the forms of evidence that claimants would need to provide to satisfy the test. Responses argued that lawful residence is not a simple matter and that many providers would lack the expertise in immigration matters to carry out the proposed test. Some argued that, in order to mitigate impacts and/or create a simpler test, the requirement for previous residence should be shortened to six or three months, that the test should be based on lawful presence, not lawful residence, or that possession of a national insurance number should be sufficient to meet the test.
109. Some responses queried the requirement for 12 months of previous residence to be continuous and the effect that short absences would have on eligibility for civil legal aid under the test.
110. Responses also raised concerns about the proposal that providers should carry out the test and the financial burden that this would place on them. Some argued that responsibility for carrying out the test should sit with the LAA, not providers, or that a residence test should apply only where the case suggests it is appropriate.
111. A number of responses argued that the test would have the effect of excluding those who are genuinely lawfully resident but are unable to provide the necessary evidence. Particular concerns were raised regarding the difficulty that certain vulnerable groups might face in providing evidence, such as homeless people, victims of domestic violence and those with mental health problems. Some argued that signed declarations certifying that an individual was nevertheless lawfully resident should be permitted in circumstances where evidence was not available.
112. Respondents queried the extra delay and complexity that might arise from carrying out the test and the difficulties this could raise for providers dealing with urgent cases. Some respondents queried what would happen in the event that they carried out the test but subsequently the claimant was shown to be not lawfully resident.

Government response

113. The Government has carefully considered the responses to the consultation. We continue to believe that individuals should in principle have a strong connection to the UK in order to benefit from the civil legal aid scheme. As with any other public service, legal aid must be fair to the people who use it but also fair for the taxpayer who pays for it. The Government believes that those who do not have a strong connection should not be prioritised for public funding in the same way as those who do have a strong connection. We must ensure that limited resource is targeted appropriately. This is always an important responsibility of Government but even more so at a time of financial constraint.
114. We also believe that the requirement to be lawfully resident at the time of applying for civil legal aid and to have been lawfully resident for 12 months in the past is a fair and appropriate way to demonstrate such a strong connection. We do not consider that any of the alternative suggestions put forward in responses (such as a requirement for a shorter period of lawful residence or a test based on lawful presence) would demonstrate a sufficiently strong connection to the UK. A period of 12 months of previous lawful residence demonstrates a meaningful connection with the UK. A test such as this inevitably involves making a choice on how a strong connection is best demonstrated. We consider that the test proposed strikes the correct, justified and proportionate balance by focusing on past and current connection to the UK.
115. It is important to note that the residence test would be introduced through an amendment to the scope of the civil legal aid scheme as set out in Schedule 1 to LASPO. Therefore, anybody excluded from civil legal aid as a result of the residence test would be entitled to apply for exceptional funding under the power set out in section 10 of LASPO (including applications for services described in Part 1 of Schedule 1 to LASPO from which the individual would be excluded as a result of the residence test). This will ensure that civil legal aid will continue to be provided (subject to merits and means testing) where failure to do so would breach the applicant's rights to legal aid under the ECHR or EU law (or, in the light of the risk of such a breach, it is appropriate to provide legal aid).
116. We do not accept arguments that the proposal would amount to unlawful discrimination. We believe that the policy decision to apply the residence test is justified and proportionate. In addition, anyone excluded by the residence test would be entitled to apply for exceptional funding. Neither do we accept arguments that the test would result in the Government failing to meet its legal obligations; as set out in the consultation paper, we would ensure that legal aid would continue to be available where necessary to comply with our obligations under EU or international law set out in Schedule 1 to LASPO and the secondary legislation that will implement the residence test will ensure that this is the case. We therefore do not consider that the proposal would breach ECHR, EU or any international law obligation on the UK.
117. The Government does not accept arguments that the test could not be implemented through secondary legislation. We consider that the necessary powers are contained within LASPO.
118. We recognised in the consultation paper that in certain circumstances it would be appropriate to provide for specific exceptions to the residence test. For example, we proposed an exception for asylum seekers, because of the particular vulnerability of this group. As set out in the consultation paper, by asylum seeker we mean any person

claiming rights described in paragraph 30(1) of Part 1 of Schedule 1 to LASPO. Such a person would continue to be able to get legal aid to help with making their claim for asylum, including preparing and submitting a fresh claim. Where the Home Office decides that their further submissions do not amount to a fresh claim, legal aid would continue to be available in respect of a judicial review of that decision (subject to means and merits).

119. We have considered concerns raised by respondents about requiring an individual who is successful in their asylum claim to have to wait a further 12 months to comply with the residence test for any new application for civil legal aid. In the light of these concerns, we therefore intend that the continuous 12 month period of lawful residence required under the second limb of the test should, in the case of an asylum seeker who is successful in their asylum claim, begin from the date they submitted their asylum claim, rather than the date when that claim for asylum is accepted. However, as previously proposed, where an asylum seeker has been unsuccessful in their asylum claim and their appeal rights had been rejected, they would no longer benefit from the asylum seeker exception to the residence test.
120. We also proposed an exception for armed forces personnel because these individuals are acting in accordance with their duties and in defence of the UK and therefore clearly maintain a strong connection to the UK, even when they are not resident in the UK.
121. We do not agree that the proposed exception for serving members of Her Majesty's armed forces should be extended to military veterans or anybody else who is working and living outside the UK. We recognise that military veterans may have a strong connection with the country, but they are no longer acting in accordance with their duties and will therefore have a choice over where they reside. Similarly, those working and living outside the UK have a choice over where they reside and therefore we do not think an exception for either group is justified. However, we note in respect of both groups that, as above, if they were excluded from civil legal aid as a result of the residence test, they would be entitled to apply for exceptional funding under section 10 of LASPO.
122. We do not agree that the proposal would prevent people (whether they reside overseas or in the UK) from receiving legal aid for representation at inquests into the death of relatives. Funding for representation at inquests, where required, is provided through the exceptional funding scheme under section 10 of LASPO and would therefore not be subject to the residence test. Initial legal help for an individual in relation to an inquest is provided under the general civil legal aid scheme and therefore would be subject to the residence test. However, as set out at paragraph 115 above, anybody excluded from legal advice in relation to an inquest as a result of the residence test would be entitled to apply for exceptional funding under section 10 of LASPO.
123. Some respondents had concerns that the residence test would lead to an increase in the numbers of litigants in person, and that this would create costs in other parts of the justice system. However, we do not accept that there is likely to be a significant increase in the number of litigants in person. In the event of any increase, we do not accept that it would lead to such additional costs in other parts of the system as to outweigh the justification for introducing the residence test. We have been monitoring the impact of litigants in person following the reforms introduced by LASPO and will continue to do so. We have established a Litigants in Person Programme Board which has this responsibility. The Board includes members from HMCTS and the Judicial

Office. We have also improved signposting to alternative sources of advice for those excluded from receiving civil legal aid. As above, any individual excluded from civil legal aid as a result of the residence test (including those who lack capacity under the rules of court to represent themselves) would be entitled to apply for exceptional funding under section 10 of LASPO.

124. We therefore consider that the proposed residence test is lawful, justified and appropriate and in general should apply to the matters set out in Part 1 of Schedule 1 to LASPO. However, in the light of the responses we have decided that it would be appropriate to modify our approach in some areas.
125. Having carefully considered consultation responses, we have concluded that there are further limited circumstances where applicants for civil legal aid on certain matters of law (as set out in Schedule 1 to LASPO) would not be required to meet the residence test. The test will not apply to the following categories of case (which broadly relate to an individual's liberty, or where the individual is particularly vulnerable or where the case relates to the protection of children):
- Detention cases (paragraphs 5, 20, 25, 26 and 27 (and challenges to the lawfulness of detention by way of judicial review under paragraph 19) of Part 1 of Schedule 1 to LASPO)
 - Victims of trafficking (paragraph 32 of Part 1 of Schedule 1 to LASPO), victims of domestic violence and forced marriage (paragraphs 11, 12, 13, 16, 28 and 29 of Part 1 of Schedule 1 to LASPO);
 - Protection of children cases (paragraphs 1, 3⁴⁹, 9⁵⁰, 10, 15 and 23 of Part 1 of Schedule 1 to LASPO); and
 - Special Immigration Appeals Commission (paragraph 24 of Part 1 of Schedule 1 to LASPO).
126. We will also make limited exceptions for certain judicial review cases for individuals to continue to access legal aid to judicially review certifications by the Home Office under sections 94 and 96 of the Nationality, Immigration and Asylum Act 2002.
127. We also recognise concerns raised regarding the effect of the test on children under the age of 12 months. Our intention is that they would not need to have resided lawfully in the UK, Crown Dependencies or British Overseas Territories for a continuous period of at least 12 months at any point in the past. However, they would still need to meet the first limb of the proposed test; that is they would need to be lawfully resident at the time of application for civil legal aid.
128. In applying the residence test, our intention is that "lawfully resident" should bear its natural meaning. That is that the individual has a right to reside lawfully in the UK and is exercising that right, whether that be for work, study, settlement or any other reason. Further details on how this will be demonstrated for the purposes of the test will be described in secondary legislation and guidance as appropriate so that the requirements are clear and providers will be clear on what is required of them. We

⁴⁹ Exceptions to the residence test for cases under paragraph 3 of Part 1 of Schedule 1 to LASPO would only apply for cases where the abuse took place at a time when the individual was a child.

⁵⁰ Exceptions to the residence test for cases under paragraph 9 of Part 1 of Schedule 1 to LASPO would only apply to cases under the inherent jurisdiction of the High Court in relation to children.

continue to believe it is reasonable to expect providers to carry out the test. It is our intention that the test will be objective and not overly onerous to administer. Where it is established that an individual who has passed the test was not, in fact, lawfully resident at the time of making their application for civil legal aid, then legal aid funding would cease. Providers would not face a further penalty or loss of funding in these situations, presuming they acted in accordance with their legal and contractual obligations. Providers would of course be required to adhere to their existing contractual, legal and professional duties when applying the test.

129. In applying the test, we also intend that “continuous” should bear its natural meaning, so that significant breaks in residence would not satisfy the “continuous” requirement. However, we consider it would be appropriate and proportionate to allow for short breaks in residence. We therefore intend that a break of up to 30 days in lawful residence (whether taken as a single break or several shorter breaks) would not breach the requirement for 12 months of previous residence to be continuous.
130. We have considered whether, in exceptional circumstances, signed statements should be accepted where evidence cannot be provided, potentially due to the particular circumstances of the claimant. We acknowledge that many respondents have raised concerns about difficulties that certain groups might face in providing evidence. However, we are concerned that allowing for signed statements to be made would dilute the effectiveness of the test as a genuine means of preventing non-residents from obtaining civil legal aid. A system of signed statements (even in only exceptional circumstances) would result in increased administrative costs to the LAA. On balance, we therefore consider that signed statements should not be allowed. As set out above, the legislation and guidance which introduces the test will provide further details on the forms of acceptable evidence.
131. We have published a revised impact assessment and equalities analysis which further considers the arguments raised regarding the impact of this proposal. We consider that the further modifications to the residence test outlined above substantially mitigate concerns raised about the impact of the residence test on groups with protected characteristics.

Conclusion

132. Having considered and given due weight to the responses to the consultation, the Government has decided to proceed with the introduction of a residence test in civil legal aid so that only those who are:
- lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time the application for civil legal aid was made; and
 - have resided lawfully in the UK, Crown Dependencies or British Overseas territories for a continuous period of at least 12 months at any point in the past
- would be eligible for civil legal aid. Asylum seekers and serving Members of Her Majesty’s Armed Forces and their immediate families would not be required to satisfy the test.
133. The following modifications will apply:
- children under 12 months will not be required to satisfy the requirement to have a continuous period of at least 12 months previous lawful residence;

- applicants for civil legal aid on certain matters of law (as set out at paragraph 125 and 126 above) will not be required to satisfy the test;
 - in the case of successful asylum seekers, the continuous 12 month period of lawful residence required under the second limb of the test will begin from the date they submit their asylum claim, rather than the date when that claim is accepted; and
 - a break of up to 30 days in lawful residence (whether taken as a single break or several shorter breaks) would not breach the requirement for 12 months of previous residence to be continuous.
134. It is intended that this reform will be introduced, subject to Parliamentary approval, via secondary legislation, to take effect in early 2014.

Paying for permission work in judicial review cases

135. The consultation paper proposed that providers should only be paid for work carried out on an application for permission for judicial review (including a request for reconsideration of the application at a hearing, the renewal hearing or an onward permission appeal to the Court of Appeal), if permission is granted by the court.
136. We proposed that reasonable disbursements, such as expert fees and court fees, which arise in preparing the permission application, would continue to be paid, even if permission was not granted by the court. The consultation paper asked:

Question 5: Do you agree with the proposal that providers should only be paid for work carried out on an application for judicial review, including a request for reconsideration of the application at a hearing, the renewal hearing, or an onward permission appeal to the Court of Appeal, if permission is granted by the Court (but that reasonable disbursements should be payable in any event)? Please give reasons.

Key issues raised

137. The majority of those who commented (in particular civil legal aid practitioners) opposed the Government's proposal. Respondents were particularly concerned that the proposal would reduce access to judicial review as an effective mechanism for challenging decisions by public bodies. However, a number of respondents welcomed the proposal and agreed that it was reasonable to expect providers to more carefully consider the merits of a judicial review case before issuing proceedings, and to withhold payment from cases which were not considered by the courts to be arguable.
138. Respondents who opposed the proposal argued that legal aid for judicial review was retained within the scope of the civil legal aid scheme as set out in the LASPO, in view of the importance of enabling public access to a form of redress against decisions by public bodies which affect them. They argued that the proposal would effectively reduce the availability of judicial review and therefore undermine the rule of law and access to justice. They also argued that it would affect the sustainability of the market as providers would be unwilling to do this work, and that this would have an impact on the junior Bar (who are often instructed to draft grounds of claim). Some respondents raised legal issues in respect of the proposal including in relation to Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights, and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

139. Some responses queried whether the proposal was necessary, arguing that the LAA already applies a merits test to determine whether or not public funding should be provided, and that this should be sufficient to prevent weaker cases from receiving legal aid. Respondents argued that the effect of the recent changes made under LASPO and the removal of the ability of providers to self-grant funding for emergency legal representation had not yet been felt and further changes should therefore not be made at this point.
140. Those opposed to the proposal argued that it would not be fair to expect providers to accurately assess the likelihood of permission being granted before an application was issued, as the outcome of public law claims is fact-specific and difficult to predict, and important evidence may often only be provided by defendants following issue.
141. Respondents argued that the grant of permission was the wrong indicator, and that the proposal was disproportionate particularly as, in addition to weaker cases, it would result in legal aid not being paid in:
 - Cases which were refused permission but where a substantive benefit to the client was recorded by the provider in their return to the LAA; and
 - Cases which are not unmeritorious but proceedings are issued and only then settle (or are withdrawn) prior to a court decision for good reason (e.g. the defendant grants the claimant the relief sought in their claim only after the claim has been issued; or the claim becomes academic through an external event or the grant of interim relief).
142. Respondents also queried whether the proposal would result in legal aid not being paid in urgent cases which bypass the Pre-Action Protocol for Judicial Review (PAP) but where the defendant concedes at the last moment and therefore the case does not issue.
143. Respondents further argued that, particularly in complex cases, a significant amount of work could be required to prepare an application for permission.
144. Respondents argued that it would be unfair to withhold payment in cases which issue but do not reach the permission decision stage and that providers would be unable to bear this burden. They argued that defendants may often offer to settle on the basis that no order should be made as to costs. Respondents argued that the proposal would therefore result in a conflict of interest between providers and clients in these situations, as providers would be incentivised to continue to take the case to the point of a decision on permission. Respondents argued that: it would be difficult for providers to assess the likelihood of the court granting a costs order; costs orders will not generally be made by the courts upon settlement unless it could be clearly shown that the claimant would have succeeded had the case proceeded; and that costs orders are rarely granted in favour of the claimant if permission is refused. Some respondents argued that the proposal would create an incentive for providers not to take on the strongest cases which were most likely to settle. For urgent cases which do not issue, respondents argued that providers would be unable to recover costs by means of settlement or a costs order.
145. Some respondents raised concerns that the proposal would affect the wider dynamics of judicial review. Although the proposal did not suggest any change in payment of legal aid for the earlier stages of a case, some responses argued that the PAP is only effective if there is a credible threat of judicial review. Therefore they considered that

the proposal would result in fewer cases being resolved through the PAP, on the grounds that defendants would have a disincentive to settle as they might consider that providers would be unwilling to take the case further.

146. Some responses noted that the court currently takes a flexible approach and may apply an enhanced test for permission, which is a higher standard than 'arguability'. Arguments were made both that this made the grant of permission an unfair determinant of payment, and that the courts could be reluctant to apply this enhanced test in future, resulting in more cases being granted permission which would ultimately fail.
147. A number of respondents raised concerns over the estimated savings figure for the proposal set out in the impact assessment. They argued that the proposal would result in further costs for the courts and public bodies as a result of more cases being pursued to the point where the judge has to consider the permission application, an increase in oral renewal hearings, an increase in costs orders against public bodies, increased satellite litigation where costs are not agreed, and an increase in litigants in person. Respondents argued that rolled up permission hearings would in future be separated out into two separate hearings, resulting in additional costs to the courts. If rolled up hearings continued, responses argued that it would be unfair and disproportionate if preparation for the whole of the rolled up hearing were to be at risk.
148. Many responses argued that the data provided in the consultation paper was incomplete and did not enable a full response to be provided. Particular concerns were raised about the lack of information on cases which issue proceedings but settle or are withdrawn before the court makes a decision on permission. Respondents argued that it was unclear how many such cases there were and that, without clearer data, it was not possible to respond fully to the consultation proposal. Some responses argued that the data presented did not provide evidence of a problem and in particular when compared to data on judicial reviews as a whole, legally-aided judicial reviews have a higher 'success rate' than non legally-aided cases and that this suggests providers are already assessing carefully whether to issue proceedings and that therefore the proposal is unnecessary.
149. A number of responses raised concerns over which work providers would be expected to undertake on a contingent basis and under which forms of service as a result of the proposal. Some responses queried whether interim relief hearings would perform part of this work.
150. Some responses queried the accuracy of the comparison at paragraph 3.70 of the consultation paper with the existing system for immigration and asylum Upper Tribunal appeals. Respondents argued that in those cases the provider is more likely to have been involved at first instance and will have clearer evidence (and a judgment of the First-tier Tribunal) on which to make a decision on the merits of the case and whether to work on a contingent basis. They also noted that the amount of work carried out in preparing an application for permission to appeal to the Upper Tribunal will be less.
151. Some responses suggested that, as an alternative, the Government should consider only withholding payments from permission applications which are certified by the courts as 'Totally Without Merit' (TWM). In addition, it was suggested that, where an oral renewal hearing is applied for and is unsuccessful, providers should not be paid for the costs of that hearing.

152. Many responses argued that judicial review is often the only means available to vulnerable people to challenge the decisions or failures of public bodies and that this proposal would have a particular impact on disabled people and their ability to access justice. Respondents have argued that this proposal (when considered alongside the proposed residence test and proposed removal of funding from cases with borderline prospects of success) will make it extremely difficult for people with protected characteristics to qualify for legal aid to challenge decisions made by the State. Some responses raised concerns about the impact on the junior Bar who would be required to undertake at risk work and responses argued that the proposal would therefore impact disproportionately on BAME and women barristers.

Government response

153. The Government continues to believe that taxpayers should not be expected to pay the legal bills for a significant number of weak judicial review cases which are not permitted by the court to proceed as they fail the test for permission in judicial review. This is entirely consistent with our approach to focus legal aid on individuals and cases which need it most. In the case of judicial review, it is not just a matter of costs to the legal aid fund, it also means more costs for the courts in considering applications and for public authorities in defending proceedings. Legal aid must be fair to the people who use it but also fair for the taxpayer who pays for it and we need to ensure that resources are carefully targeted so as to command public confidence in the system.
154. We recognise and agree with respondents that it is important to make legal aid available for most judicial review cases, to ensure access to a mechanism which enables individuals to challenge decisions made by public authorities which affect them. But access to justice cannot and should not be equated with access to taxpayer funding regardless of the strength of the case. Limits on access to public funding on the basis of the merits of the case are common and consistent with the principles underpinning access to court. The limit we have proposed is not based on the ultimate success or failure of the claim but simply on whether the claim passes the permission threshold.
155. It is legitimate for the Government to focus limited resources on the cases that really require it and legitimate to use the permission threshold as a test for that purpose. As set out in the consultation paper, we do not consider that the existing merits criteria are sufficient by themselves to provide appropriate control. Instead, we consider that a better and legitimate system is one in which the provider assumes some financial risk in relation to the application, in order to provide a greater incentive to give careful consideration to the strength of the case before applying for permission for judicial review.

Conclusion

156. We have listened carefully to the views of respondents, as set out above. We recognise concerns raised that our proposal, as set out in the consultation paper, might additionally affect meritorious cases which issue but do not reach the point of a court decision on permission. We therefore propose to introduce a discretion to permit the LAA to pay providers in certain cases which conclude prior to a permission decision. We intend to consult on this further proposal and the criteria which would be used to determine whether or not a discretionary payment is made. We will set out details of this proposal shortly in a separate paper.

Civil merits test – removing legal aid for borderline cases

157. The consultation paper proposed that cases assessed as having ‘borderline’ prospects of success would cease to qualify for civil legal aid funding. We asked:

Question 6: Do you agree with the proposal that legal aid should be removed for all cases assessed as having ‘borderline’ prospects of success? Please give reasons.

Key issues raised

158. A number of respondents welcomed the proposal and agreed that it was reasonable to limit public funding to cases with moderate or better prospects of success. However, the majority of those who commented (in particular civil legal aid practitioners) opposed the Government's proposal. Respondents were particularly concerned that the current exception for borderline cases allows for important and uncertain cases to continue receiving funding and helps to develop case law. Respondents' concerns can be grouped into five main categories.

Data, Evidence and Proportionality

159. A number of respondents were of the view that the data and evidence in support of the proposal were insufficient (not least because the data was not broken down by case category). Some respondents also thought that the current system is working as intended so there is no need for change. Some respondents suggested that the ability of judges to make cost orders already acts as a disincentive for providers to bring weak cases. Respondents also questioned whether the proposals were proportionate. They argued that the amount we have estimated we will save is minimal (£1m) and that, when compared with the importance of the cases affected, the impact is disproportionate.

Ability to Realise Savings

160. Respondents argued that the proposal would not save money but could actually lead to additional costs. One of the reasons advanced for this contention included concern that providers will simply take a cautious approach and, if in doubt, reassess prospects to ‘moderate’. Respondents also thought that there would be an increase in cases categorised as ‘unclear’ and an increase in appeals on merits decisions to Independent Funding Adjudicators. Some respondents suggested that the estimated savings were likely to be erroneous as they do not factor in the recovery of *inter partes* costs in successful cases. There were also broader concerns about cost impacts to HMCTS if the proposed change increases the number of litigants in person. Finally, some respondents considered that borderline cases have the potential to set useful precedents – thereby clarifying the law in difficult areas – and actually making legal aid funding less likely to be required in future cases.

Removal of Funding for Important Public Law Test Cases

161. Respondents argued that cases with borderline prospects have often ended in landmark decisions that have clarified or developed the law and that most decisions on appeal to the Court of Appeal or Supreme Court are almost bound to have borderline prospects. Some respondents have also suggested that novel, test or complex cases, particularly concerning judicial review, are less likely to be funded under the proposal – limiting access to justice and dispensing with an important check on the executive.

162. Some respondents considered that, by definition, it was actually more important to fund borderline cases than those with better prospects of success (which can often be settled). Some respondents considered that borderline cases often presented the most difficult issues. Certain respondents listed cases where prospects were borderline, but cases were won, and judgments made which are now important in their respective areas of law. One example provided was the Supreme Court's judgment in the case of *Manchester City Council v Pinnock*.

The Impact on Specific Categories of Case

163. Respondents had concerns about the effect of the proposal on asylum cases – particularly because of the potential consequences (i.e. deportation). Some responses stated that immigration practitioners do not use up the limited numbers of matter starts available to them under their contracts on cases they do not consider they can win – but the particulars of immigration law (e.g. cases affected by “country guidance” in the Upper Tribunal) mean that cases are taken on which they know will be difficult to win. That is why they considered the ongoing availability of funding for borderline cases to be particularly important in this context.
164. Respondents had particular concerns in relation to housing possession cases – also because of the significant consequences for applicants (i.e. potential loss of home). One response cited a case study concerning a victim of domestic violence, where the provision of legal aid allowed possession proceedings to be settled without the case coming to court – this was a borderline case. One response raised concerns that the Government continues to add new “products” to housing law (citing the example of “flexible tenancy”). They stated that this makes it difficult to predict how the courts will react to housing cases – and also cite borderline cases which were subsequently successful.
165. One response argued that judges currently use an element of discretion when ruling on cases where the applicant has, for example, mental health issues which are causing or exacerbating anti-social behaviour (such that they are likely to be evicted) and that in these circumstances eviction might be delayed. However, the response argued that these cases may fail to be brought if cases where prospects of success are borderline no longer qualify for funding.
166. There was more limited concern amongst respondents about domestic violence cases, family cases, education cases, public law cases, claims against public authorities and any cases involving children. Respondents argued that many of these will often involve significant human rights issues.

Other Issues

167. Some respondents considered the proposal was unlikely to be compliant with Article 6 ECHR⁵¹. Some respondents erroneously raised concern about the impact on cases where no prospects of success test is applied – for example mental health proceedings. In fact, there is no proposed change to the availability of funding in these cases.⁵²

⁵¹ Article 6(1) ECHR states that: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]”.

⁵² Under the Civil Legal Aid (Merits Criteria) Regulations 2013 (“Merits Regulations”) these are:

168. Some respondents also appeared to conflate the “borderline” and “unclear” categories. ‘Unclear’ cases are those where it is not possible to categorise the case as very good, good, moderate, borderline or poor, but where there are identifiable investigations which could be carried out, after which it should be possible to make a reliable estimate of the prospects of success. Our proposal does not affect civil legal aid for unclear cases.
169. Respondents raised specific concerns regarding the impacts of the proposal on disabled people, children, BAME and female clients. Other respondents suggested that clients who lead chaotic lives could be particularly affected. One response raised a specific concern regarding cerebral palsy cases and the impacts for vulnerable disabled children.
170. Some respondents also suggested potential alternative proposals.
- One response suggested that an alternative which should be considered is the re-creation of local committees of lawyers to advise the LAA on whether it should fund cases where the prospects are borderline. It argued that these committees worked well in the past as they consisted of informed, independent advisers who took a realistic and responsible view of which cases should be funded.
 - Other respondents presented further alternatives. One suggested alternative was the limiting, or capping, of funding for work carried out at an initial stage, which would then be subject to a mandatory review before any further funding was granted.
 - Another alternative suggested was that, for cases with borderline prospects, where the reason for that assessment is disputed law, funding should be retained. Whereas, for cases with borderline prospects, where the reason for that assessment is disputed facts or expert evidence, funding should be removed.
 - Other respondents suggested that the Government should change or clarify what is meant by success – for example, it should be significant benefit, or a significantly beneficial alteration, rather than definitive success on the substantive issue decided.

Government Response

171. The Government continues to believe that it is a reasonable principle that, in order to warrant public funding through civil legal aid, a case should have at least a 50% prospects of success (i.e. moderate or greater). Our underlying view is that the merits test aims to replicate the decisions that somebody who pays privately would make when deciding whether to bring, defend or continue to pursue proceedings. We do not think that a reasonable person of average means would choose to litigate in cases which only have a borderline prospects of success and we do not think it is fair to expect taxpayers to fund such cases either.

-
- Certain family cases under regulation 11(9);
 - Mental health cases under regulation 51;
 - Public Law children cases under regulation 65(2)(a);
 - Certain family cases (where the individual has benefitted from legal aid in the country of origin (under regulation 65(2)(b));
 - EU Maintenance Regulation cases under regulation 70; and
 - Hague Convention 2007 cases (concerning international recovery of child support and other forms of family maintenance) under regulation 71.

Data, Evidence and Proportionality

172. The Government does not accept that the data or evidence cited in support of the proposal is deficient or insufficient. In our impact assessment we estimated that approximately 100 fewer cases p.a. would be funded if this proposal was implemented and would save around £1m p.a. Those figures were based on LAA closed case administrative data concerning the number of borderline cases funded in 2011/12 – which were then adjusted to take into account the reduced scope of the civil legal aid scheme as LASPO came into force. These figures were then rounded. Further supporting data, consisting of a breakdown by category of law, is now included in the updated impact assessment.
173. We do not consider that, by dint of the savings estimated or number of cases affected, the policy is disproportionate. We are simply tightening the merits criteria that already exist, in order to ensure that public funding is not expended on cases that do not have at least a 50% chance of success.

Ability to Realise Savings

174. In terms of the estimated savings, we have already considered the potential cost drivers identified by respondents. Our original impact assessment refers to the possibility of increased internal LAA reviews, the possibility of increased Independent Funding Adjudicator appeals, the potential for some individuals to try and resolve their disputes without representation, the potential for providers to alter their assessment of prospects of success as a result of the policy, and the potential for an increase in investigative representation grants. We do not consider any of the other issues raised by respondents are likely to have a significant impact on the estimates we have made.

Removal of Funding for Important Public Law Test Cases

175. We recognise that there is some concern from providers, and representative bodies, concerning the impact of these proposals on the development of case law and the potential for precedents to be set. In essence, this returns us to the fundamental purpose of this proposal. Although legally aided cases may have led to the development of case law in the past, we do not consider this sufficient justification, in itself, for legal aid to be granted in cases which do not have at least 50% prospects of success. Further, we consider that it is doubtful that the proposal would prevent or even hinder the development of case law. In order to warrant such a development, the arguments for it are likely to be strong.
176. It is legitimate for the Government to focus limited resources through applying a prospects of success test. The principle on which we have consulted is that, where cases are subject to the merits criteria, limited public funding should in future only be directed at those which have at least 50% prospects of success.

The Impact on Specific Categories of Case

177. We recognise that there is concern about the impact on particular categories of case. We recognise that asylum cases have important consequences for the individuals involved. We also recognise that concerns have been raised about the impact on housing cases given that these concern the roof over a person's head. Other categories of borderline case may also involve serious impacts on the individual involved. However, as we set out in the consultation paper, even for such important cases there is an assessment of merits and a decision must be made as to whether the prospects of success justify the provision of public funds. This is already a principle of

the existing scheme – and it is right that public funding should be directed at cases that have at least a moderate prospect of success.

Other Issues

178. The Government has carefully considered the views of respondents on the equalities impacts of this proposal. In our equality statement we have acknowledged, having analysed 2011-12 closed case data, that disabled clients and those aged 25-64 are overrepresented as compared to the general population and so may be disproportionately affected. We cannot be sure whether BAME individuals will be disproportionately impacted. We remain of the view that any such impact is justified given the essential rationale for the policy. We do not accept, however, based on the evidence, that the proposal is more likely to affect children and female clients and therefore have a more pronounced impact on the protected characteristics of age and sex.
179. The Government also considers that concerns about the lack of evidence being available at the time the assessment of prospects of success is made, are misplaced. It is worth reiterating that there is no change proposed to the availability of legal aid funding for cases categorised as unclear (i.e. where there are identifiable investigations which could be carried out, after which it should be possible for a reliable estimate of prospects to be made). We consider that the concern raised in relation to cerebral palsy cases, for example, is mitigated by the continuing availability of legal aid for unclear cases.
180. The Government has also carefully considered some of the alternative options suggested by respondents. We cannot agree to the suggestion that a committee is created to advise the LAA on whether to fund borderline cases or not. This would result in borderline cases continuing to attract funding, contrary to the policy intention.
181. We do not consider any of the other specific alternative ideas suggested by respondents to be necessary or workable. The suggestion of a limitation or cap on borderline cases for a set period of time, or amount of work, again does not accord with the basic policy intention because it would still result in borderline cases being funded. In addition it does not seem to account for the ongoing availability of investigative representation for ‘unclear’ cases.
182. The suggestion that distinctions are drawn between cases with disputed law and disputed facts/evidence would not achieve the policy intention. In addition it would not be compatible with all the other tests for legal aid provision, and it would be inconsistent to make these distinctions here, without reflecting them anywhere else in the civil scheme.
183. In response to the suggestion that the Government clarify or redefine what it means by success; the existing definition is set out in existing regulations⁵³. “Prospects of success” means the likelihood that an individual will obtain a successful outcome at trial or other final hearing in the proceedings to which the application relates. “Successful outcome” in this context means the outcome a reasonable individual would intend to achieve in the proceedings in all the circumstances of the case. We consider that the current position is clear.

⁵³ See Regulation 4 of The Civil Legal Aid (Merits Criteria) Regulations 2013 – available at this location: <http://www.legislation.gov.uk/ukSI/2013/104/contents/made>

184. For the reasons set out above we consider that the proposed removal of funding from cases with borderline prospects of success is lawful, justified and appropriate.

Conclusion

185. Having considered and given due weight to the responses to the consultation, the Government has decided to proceed to remove legal aid for all cases assessed as having 'borderline' prospects of success.
186. It is intended that this reform will be introduced, subject to Parliamentary approval, via secondary legislation in late 2013.

Introducing Competition in the Criminal Legal Aid Market

187. The consultation paper sought views on a proposed model of competitive tendering for criminal legal aid contracts in England and Wales (referred to herein as "the April 2013 Model").
188. The following is a summary of responses and the Government response on each element of the April 2013 Model. The modified model on which we are seeking views is set out in Chapter 3.

General comments on the April 2013 Model

Key issues raised during consultation

189. Many respondents, including the Law Society, are clear that they do not object to the principle of competition in criminal legal aid and in fact highlight that current providers already operate in a competitive market (i.e. through own client work). However, they oppose the introduction of price competitive tendering in this context. A number of respondents, including the Bar Council, argued that they felt the case for competitive tendering had not been made.
190. A significant number of respondents, including the Law Society, Bar Council, specialist associations, individual practitioners and other interested parties argued that the April 2013 Model would not achieve the required objectives. The Law Society argued that the model was impractical to achieve in the timescales proposed and whilst the model might lead to savings in legal aid in the short term, it would cost the wider system in the longer term due to creating greater inefficiency and increasing miscarriages of justice.
191. These views were shared by the Bar Council which questioned the evidence for the consultation proposals. They stated that the proposals would have the effect of manipulating solicitors into merger, rationalisation and restructuring and that in fact the need for such an approach is not based on any evidence. The Bar Council also argued that there is also no evidence to support the Government's argument that further cuts are required to the extent described, particularly in light of falling crime figures and cuts already made.
192. The various specialist associations (e.g. London Criminal Court Solicitors Association (LCCSA), Criminal Law Solicitors Association (CLSA), Criminal Bar Association (CBA)) supported the views above made by the Law Society and Bar Council and added the following comments:

- It is not a true competition as it will just create cartels;
 - Price competition will not ensure sustainability and value for money;
 - Competition eliminates any intention of protecting the junior Bar from the extensive cuts imposed on advocacy fees as solicitors will use in-house advocates;
 - Lawyers will move away from defence work which will have a disastrous career effect on the judiciary;
 - History of competitive tendering trends towards lower quality. It will create a deterrent to new entrants to the profession;
 - The April 2013 Model relies on a rational market. The current market is not rational.
193. A number of individual practitioners cited the same concerns and criticisms of the April 2013 Model. One such practitioner argued that the economy of scope argument is flawed, as there is very little duplication in the current system.
194. The Judicial Executive Board (JEB), in its response, commented on the impact such a proposal may have on the operation of the Crown Court, particularly with regard to any lowering of quality standards both for litigation or advocacy.

Government response

195. Whilst a number of respondents expressed some serious misgivings about the principle of competitive tendering for criminal legal aid services and about the overall April 2013 Model, some of those same respondents accepted that the current market structure is not sustainable in the longer term. They cited a number of reasons for this, including reducing crime numbers, the effect of earlier fee reductions, and ultimately the effect of too many providers chasing too little work.
196. The Government still believes that the only way to ensure a sustainable market is to enable providers to explore opportunities to consolidate and in turn exploit the economies of scale of a less fragmented market. The Government continues to believe that without any Government intervention the market will not take any action to consolidate. Any disruption in the provision of legal services may lead to advice deserts. This would not be in the interests of clients, providers or the taxpayer.
197. The Government believes that the best possible way to achieve such a sustainable market is through a procurement process that involves an element of competition. However, having heard strong views from respondents and having had lengthy discussions with the Law Society, we are persuaded that a model of competition where price is set administratively would still enable us to achieve the overall policy objectives of a sustainable, more efficient service at a cost the taxpayer can afford.
198. In light of all the responses considered, the Government accepts that some of the elements of the April 2013 Model should be modified to meet some of the concerns raised while ensuring sustainable procurement in the future. In the paragraphs that follow we address each of those elements.

(i) Scope of the contract

199. The proposed scope of the criminal legal aid contract in the April 2013 Model included all litigation services⁵⁴ (with the exception of Very High Cost Cases (Crime) (VHCCs)) and magistrates' court advocacy services.
200. The consultation proposed the exclusion of certain services (Crown Court advocacy, VHCCs and call centre services) from the scope of the contract, replicating the same contract scope as is currently in place.
201. Under the proposed scope, remuneration for only certain services would be subjected to price competition; the other services would be set administratively. The consultation asked:

Question 7: Do you agree with the proposed scope of criminal legal aid services to be competed? Please give reasons.

Question 8: Do you agree that given the need to deliver further savings, a 17.5% reduction in the rates payable for those classes of work not determined by the price competition is reasonable? Please give reasons.

Key issues raised during consultation

202. Whilst the majority of respondents stated their objections to the entire competitive tendering proposal, a number of respondents did engage with the specific question.
203. The Law Society argued that the proposal that all firms undertake prison law and appeals and reviews work would be inappropriate. A number of other respondents supported this view, including the Association of Prison Lawyers (APL). APL argued that the proposal to require all holders of the new criminal legal aid contract to deliver all services, including prison law and appeals and reviews work is not viable. APL argued that prison law work is distinct from other types of criminal legal aid and is quality assured in a different way, using specific quality criteria. They suggested that requiring providers to deliver prison law and appeals and reviews work alongside all other criminal legal aid services will see the end of specialist providers, resulting in a lowering of quality.
204. With regard to VHCC work, the CLSA argued that firms wishing to undertake VHCC work should also be required to have a general crime contract, thereby stopping cherry picking of the more lucrative VHCC work. The Law Society suggested that there is scope for significantly greater savings from VHCC work by exploring a different way to remunerate those cases, e.g. including the work in the graduated fee scheme and amending that scheme accordingly.
205. The Law Society also argued that there are significant savings that can be made by looking at a different approach for dealing with the work currently provided by the Defence Solicitor Call Centre (DSCC). A number of respondents supported this view. An individual practitioner argued there is no evidence to demonstrate that the DSCC and the Criminal Defence Direct (CDD) Contracts deliver improved value for money for

⁵⁴ References to 'litigation services' throughout this chapter means all services currently in scope of the 2010 Standard Crime Contract.

the taxpayer; it was argued that they duplicate the work undertaken by providers and do not provide direct access between the client and solicitor.

206. A number of respondents wanted the Government to go further in consolidating criminal defence work and at least one firm of solicitors suggested there was no compelling reason why Crown Court advocacy should be excluded from the scope of the competition.
207. With regard to the proposal to apply a 17.5% reduction in the rates payable for those classes of work not determined by the price competition, the Bar Council, in its response to consultation stated that it would make some services “uneconomically viable”. They went further in arguing that there is no evidence offered in the consultation as to the ‘reasonableness’ or otherwise of cuts of 17.5%, either in relation to classes of work excluded from scope or through means of a price cap for work subject to competitive tendering. They suggest that firms will go out of business leading to advice deserts that are likely to expand.
208. On the same point, the LCCSA argued that the volume of work would not sustain such a reduction in rates. The LAPG supported this view arguing that the market is already competitive whereby firms are innovating to survive.
209. The CBA argued in its response that the result of such a reduction will be to place all Crown Court cases, with the exception of VHCCs into the hands of the lowest bidder. They explained that whilst the advocacy element in the Crown Court alone would not fall within the contract, the provision of the work to the Bar would be entirely in the gift of the provider, who will have financial profit as their sole incentive and not quality. This, they suggested, will provide for a natural ‘next step’ by which the providers would bring all advocacy in house and thereby destroy entirely the Bar as an independent referral profession.
210. A number of barristers responding to these questions suggested that in order to save the Bar from the impact of price competitive tendering, they would in fact tolerate a further cut in rates as an alternative. Other barristers and solicitors alike disagreed, arguing that it would be financially impossible for a sufficient proportion of the existing supplier base to bear these costs, recognising that the current supplier base is already fragile.
211. A great many respondents questioned the need to make reductions at all, arguing that there is a reduction in criminal cases overall and with large cuts already made (three successive reductions in AGFS rates from 2010 to 2012 following the Legal Aid Funding Reforms consultation; and further the reductions made in criminal legal aid remuneration following the Legal Aid Reform consultation) a further rate reduction is not necessary.

Government response

212. With the exception of appeals and reviews and the proposed approach to prison law services, the scope of the criminal legal aid contract proposed in the April 2013 Model is consistent with the current scope of the 2010 Standard Crime Contract.
213. The DSCC and CDD contracts have been awarded through competitive tendering processes and offer a different type of service to that delivered under current mainstream criminal legal aid contracts. Whilst we acknowledge the views expressed with regard to the services delivered by the DSCC and the CDD contracted providers,

both services delivered savings to the legal aid fund and therefore the Government is not persuaded that those services should either be delivered as part of the mainstream provision or that the alternative suggestion for delivering those services would deliver better value for money at the present time. We will take into consideration the views expressed by respondents with regard to exploring efficiency improvements when we need to commission these services again once current contracts expire.

214. We do accept however that those providers wishing to apply to deliver only prison law and/or appeals and reviews services should not be prohibited from doing so. Whilst the Government is not necessarily convinced that prison law or appeals and reviews services are niche areas of law (the majority of current 2010 Standard Crime Contract holders deliver those services alongside all other criminal legal aid services), they are not part of the mainstream criminal legal aid provision. Therefore, the Government believes the criminal legal aid contract should be structured in such a way to enable providers to apply to deliver prison law and/or appeals and reviews services only.
215. The Government maintains the view that Crown Court advocacy should be excluded from the scope of the contract. We remain convinced that whilst there are a small number of chambers and/or groups of barristers that would be in a position to enter into a contract with the Government to provide a full range of litigation and advocacy services, the majority of chambers would not. With approximately 75% of Crown Court advocacy services being delivered by the independent referral Bar, we do not consider it would be appropriate at this stage to include such services in the scope of a contract. We consider that, despite the concerns raised by the Bar Council, the CBA and individual barristers that solicitors' organisations will retain more advocacy work in house, solicitors acting in accordance with their professional code of conduct would continue to instruct members of the independent referral Bar where it is appropriate to do so. However, we stand by the view expressed in the consultation paper that whilst the majority of barristers and chambers are not yet in a position to apply for a criminal legal aid contract, there have been no obstacles introduced by Government which would prevent them from restructuring to enable them to do so.
216. In fact, we are encouraged by the recent changes introduced by the Bar Standards Board (BSB) which should aid those wishing to make such changes to enable them to bid directly for criminal legal aid contracts. The BSB recently announced that numerous practising restrictions would be lifted through their new Code of Conduct, whereby self-employed barristers will be able to apply for an extension to their practising certificate to conduct litigation (both publicly funded and privately funded); and previous rules preventing self-employed barristers from sharing premises and forming associations with non-barristers have been removed, allowing barristers to pool together risks and resources.
217. The Government also maintains its view with regard to VHCCs. In light of the change to the definition of VHCCs for litigators made in October 2011, the LAA classifies only 15 to 18 cases as VHCCs each year. Due to the relative infrequency, length of the case, the amount of evidence served by the prosecution, the complexity of issues that arise and the need to closely manage such cases with regard to expenditure, we remain convinced that VHCCs should continue to operate under a separate individual case contracting scheme and that we continue to enter into contracts with only those providers that are able to demonstrate the necessary skills and experience to manage such cases.

218. The modified model presented in Chapter 3 of this paper therefore involves a criminal legal aid contract which excludes Crown Court advocacy, VHCCs, DSCC services and CDD services.
219. With regard to the proposed reduction in administrative fees by 17.5%, we acknowledged in the April 2013 consultation paper that the current provider base would not be able to sustain such a fee reduction without some form of market restructuring and consolidation. Some providers have indicated they would be able to sustain such a fee reduction if they had enough work in order to exploit economies of scale. The Otterburn report⁵⁵ provided by the Law Society in its response supports this view. If it is possible to deliver the same quality legal aid services as now at 17.5% below the current price⁵⁶, the Government believes that it is self-evident that the current system is not delivering the best value for money for the taxpayer.
220. The modified model presented in chapter 3 would deliver savings of the same magnitude as the April 2013 Model.

(ii) Contract length

221. The proposed contract length in the April 2013 Model was a three year term, with the option of extending the contract term by up to two further years. In addition, it was proposed that the new contract would contain a six month no fault termination clause but would be modified to include provision for compensation in certain circumstances for early termination of the contract by the Lord Chancellor. The consultation asked:

Question 9: Do you agree with the proposal under the competition model that three years, with the possibility of extending the contract term by up to two further years and a provision for compensation in certain circumstances for early termination is an appropriate length of contract? Please give reasons.

Key issues raised in consultation

222. Again, the majority of responses to this question reiterated the objections to the entire competitive tendering proposal. However, a number of respondents did engage with the specific question.
223. The Law Society highlighted that the proposed model would require firms to invest significantly in order to restructure to deliver services in the way the Government requires. They argued that a three year contract is inadequate to recover and secure a return on that investment, a view that is supported by other respondents including the CLSA and individual practitioners who explained that banks are highly unlikely to lend to those firms practising in criminal legal aid. In support of their argument, the Law Society made reference to the Otterburn report accompanying its response which indicated that in most regions of the country, a three year contract on the terms proposed is a guaranteed loss-making proposition.

⁵⁵ <http://www.lawsociety.org.uk/representation/policy-discussion/transforming-legal-aid-consultation-law-society-response/>

⁵⁶ By current price we mean those rates of pay for litigation (except VHCCs) and magistrates' court advocacy services as apply at the time of publication. 17.5% would be the total reduction in fees which would include the proposed 8.75% reduction across the same rates in February 2014 (see paragraphs 3.52 to 3.55 of Chapter 3 on a proposed interim fee reduction).

224. The Law Society however also set out a number of dangers in a lengthy contract period, for example, likely changes in the criminal justice system, for example as a result of declining criminal activity, may not be financially viable. They argued that a contract entered into may not be manageable after even three years if there is no certainty of work. This, they suggested would not lead to a sustainable or stable system for providers. The Law Society proposed that firms should deliver services on an unlimited contract term basis provided that the market exists and they can meet the appropriate quality thresholds. These same views were expressed in the response from the Bar Council who also argued that there is a lack of evidence on which to base the proposed length of contract.
225. Some individual respondents argued that if the proposed competitive tendering model were implemented, the contract should be restricted to three years maximum. Other respondents argued that in fact five years would give greater certainty and allow for greater planning. They argued that three years is simply not sufficient to proceed with any certainty.

Government response

226. The Government recognises the need to strike a balance between providing as much certainty as possible for providers in order to give them the greatest opportunity to invest in their businesses; and not binding providers and the Government into a contract for too long a period, particularly in light of the views from a number of respondents about the inevitability and impact of change in the criminal justice system.
227. In light of those responses, we are minded to extend the proposed contract term to four years with the option for the Government of extending the contract term by up to one further year (subject to rights of early termination).
228. The modified model presented in Chapter 3 proposes a four year contract term (with in relation to Duty Provider Work only, provision for compensation in certain circumstances for early termination of the contract by the Lord Chancellor).

(iii) Geographical areas for the procurement and delivery of services

229. Subject to a number of exceptions, the April 2013 Model described procurement areas based on the current 42 CJS areas, whereby applicants would be invited to tender to provide the full range of services within that area.
230. For the purposes of competitive tendering, the consultation proposed to join the following CJS areas: Warwickshire with West Mercia; and Gloucestershire with Avon and Somerset, to form two new procurement areas. Given the volume of criminal legal aid work delivered in London, it was not considered feasible to require providers to cover the whole London CJS area. Therefore, the proposal was to break London into three procurement areas aligned with the area boundaries used by the Crown Prosecution Service (CPS). The consultation asked:

Question 10: Do you agree with the proposal under the competition model that with the exception of London, Warwickshire/West Mercia and Avon and Somerset/Gloucestershire, procurement areas should be set by the current criminal justice system areas? Please give reasons.

Question 11: Do you agree with the proposal under the competition model to join the following CJS areas: Warwickshire with West Mercia; and Gloucestershire with Avon and Somerset, to form two new procurement areas? Please give reasons.

Question 12: Do you agree with the proposal under the competition model that London should be divided into three procurement areas be aligned with the area boundaries used by the Crown Prosecution Service? Please give reasons.

Question 13: Do you agree with the proposal under the competition model that work tendered should be exclusively available to those who have won competitively tendered contracts within the applicable procurement areas? Please give reasons.

Key issues raised during consultation

231. The proposed procurement areas attracted a significant amount of criticism, from providers working in both urban and rural areas. In its response the Law Society referred to both the Otterburn and Deloitte reports⁵⁷, which stated that “the proposal fails in its aim to deliver a sustainable service where the benefits created by offering greater case volume is negated by a requirement for firms to cover a wide geographic area.” They argue that if firms are to absorb significant costs, they need to be able to generate additional volumes within their current local markets and in a way that does not require significant additional infrastructure.
232. The Law Society goes on to summarise the many local problems highlighted by firms operating in the areas. Their examples include:
- In the North East, Northumbria CJS area is vast, running from Berwick near the Scottish border, Hexham over in the West and down as far as Gateshead, Sunderland, Newcastle and North and South Tyneside. They suggest it is very hard to imagine any crime firm being geared up to deal with the whole of that area at the moment; significant expansion would be required, which, they suggested, is almost certainly not possible in the time frame proposed (referring to the reasons they outlined elsewhere in their response).
 - They suggested that vast distances from one side to the other of the Devon and Cornwall CJS area make it impractical for firms to operate to the model proposed, while the Solent causes its own unique problems for Hampshire and the Isle of Wight.
233. Both examples were also given by practitioners in their own individual responses. One provider based in Somerset argued that although Bristol is a large conurbation the rest of the work/suppliers are spread out over a large rural area with poor communication. One practitioner respondent argued that Hampshire is vast, with challenging rural travel links which are particularly difficult for providing services on the Isle of Wight.
234. Similar views were offered by practitioners working in Dyfed-Powys and Northumberland. With particular regard to CJS areas in Wales, a number of respondents highlighted the need for services delivered by providers to clients who request such services in Welsh.

⁵⁷ Both reports are available on the Law Society website at: <http://www.lawsociety.org.uk/representation/policy-discussion/transforming-legal-aid-consultation-law-society-response/>

235. A number of respondents, including the Law Society, Bar Council and almost all specialist associations, highlighted the difficulties such a proposal would cause for clients who would face significant travel to see their provider in the proposed new area. They suggested that it is highly unlikely that providers would be prepared to travel the same distances to see clients for the low fixed fees proposed. The Law Society set out by way of example, a provider in Gloucestershire who would be required to make a four hour round trip to represent a client in Yeovil Magistrates Court.
236. The Law Society acknowledged that delivery of services through the use of agents or a potential merger may provide a solution but they highlighted that it would take time to identify and establish such relationships and such a process can be expensive.
237. The Bar Council suggested that the proposed procurement areas would severely restrict access to justice in parts of the country – particularly for vulnerable clients and clients with a protected characteristic. The CBA argued that the proposed procurement areas are set by arbitrary geographical lines that fail to take into account the huge number of variables that arise in criminal litigation including: client access, diversity, local knowledge and the cost to the system caused by delay. The importance of maintaining providers with local knowledge was shared by a significant number of respondents citing the importance of relationships between the community, police, prosecution, defence and judiciary which have taken years to develop and maintain.
238. The Legal Aid Practitioners Group agreed that the CJS areas are a useful starting point but suggested that the Government consult with practitioners more locally to determine an appropriate division of work. They went on to highlight that in considering any geographic boundaries it is important to remember that there may be a need for specialist advice and access to such advice may be inhibited if strict rules on cross boundary working are applied.
239. In response to the proposal to align the procurement areas in London with the three CPS London operational areas, the Bar Council pointed out that CPS London has been geographically reorganised no fewer than three times over the last few years: in 2008, 2011 and 2012. The recent split into three areas has only been in place since October 2012 and it has not had an opportunity to ‘bed down’.
240. The Law Society added that with regard to London the areas currently proposed are too big and the proposed contract values too small. Central & West London comprises 9 court centres and 76 police stations. 38 contracts in Central & West London equates to £690,000 pa per contract. For most firms that will be a substantial reduction in revenue but with an increased number of courts and police stations to cover. They suggested that this would mean most firms, far from being more efficient would become less efficient.
241. Both the LCCSA and LAPG developed this argument, stating that such an approach would impact disproportionately on BAME firms as many are based in London. The CBA cited the following reasons why such a proposal would not work:
- i. Logistical difficulties – Providers would be required to cover a large area comprising multiple police stations, both magistrates’ and Crown Court and criminal activity covering a very broad range of classes and types of offence; and
 - ii. Specialisation – The current system is designed to deal with the huge variety of cases and the specialist types of expertise that are required to conduct them. The proposed scheme does not. For example, there are designated court centres that

try fraud, serious and organised crime, murder and terrorism cases, irrespective of where the defendant may have been arrested. Especially in London the court location may well fall outside of the designated procurement area.

242. Not all respondents felt that the proposed procurement areas were inappropriate. Some felt that for their areas the proposals were adequately sized. For example, a number of respondents suggested that the proposed procurement area and number of contracts were appropriate for the areas in which they worked. Some respondents agreed with the proposal to align the London areas with the CPS boundaries. A number of respondents in fact questioned whether procuring the whole London CJS area would be the best way to achieve true economies of scale.
243. With regard to the proposal that work tendered should be exclusively available to those who have won competitively tendered contracts within the applicable procurement areas, a number of individual respondents agreed that such an approach would be necessary to ensure the volume of cases to providers in that area. However, others felt that to do so is just another means of stifling competition and quality and provided their objections to the principle of competitive tendering in response to this question.

Government response

244. The Government continues to believe that for much of the country the use of CJS areas for letting contracts for duty work is appropriate. However, in the light of the responses to this element of the April 2013 model and the views expressed at the consultation events, we are persuaded that some modifications need to be made.
245. We accept that for Duty Provider Work some CJS areas are simply too large geographically for providers to cover the geographic spread of police stations and courts. The Government has therefore concluded that, whilst CJS areas are appropriate for the majority of procurement areas, we would look to deviate where circumstances necessitate relying instead on Local Justice Areas or combinations of police station duty scheme areas.
246. In the modified model presented in Chapter 3 we have examined what we consider, for Duty Provider Work, to be an appropriate divide for those CJS areas where practitioners expressed concern in response to consultation.

(iv) Number of contracts

247. The April 2013 Model was designed to deliver fewer, larger contracts, creating opportunities for providers to grow their businesses and invest in the restructuring required to achieve economies of scale and scope. In turn, providers would be able to deliver a more efficient service at a price that offers a saving to the public and is sustainable.
248. It was proposed that the number of contracts on offer in each procurement area would be based on the following four key factors:
- Sufficient supply to deal with potential conflicts of interest
 - Sufficient case volume to allow fixed fee schemes to work
 - Market agility

- Sustainable procurement

249. The consultation paper included an illustrative number of contracts based on LAA claim data for the period October 2010 to September 2011.
250. It was proposed that the Public Defender Service (PDS) continue to operate in those areas where the PDS is currently established but it would be allocated one share of the work in those areas automatically (i.e. they would not be required to compete). The consultation asked:

Question 14: Do you agree with the proposal under the competition model to vary the number of contracts in each procurement area? Please give reasons.

Question 15: Do you agree with the factors that we propose to take into consideration and are there any other factors that should be taken into consideration in determining the appropriate number of contracts in each procurement area under the competition model? Please give reasons.

Key issues raised during consultation

251. A significant number of respondents again provided their general objections to competitive tendering in response to this question. Some however commented on the proposed methodology for calculating the number of contracts under the April 2013 Model.
252. The Law Society argued that the contract sizes would be too inflexible and uncertain for firms to make money and in fact believed that a more appropriate way of managing services would be to offer an unrestricted number of contracts to those that meet certain standards. Whilst they did agree that the number of contracts should vary by area, the Law Society raised some concerns over the mechanism by which the contract numbers were determined. They queried for example that South London would have half the number of contracts compared with West and Central London, yet the total amount of work is of the same magnitude.
253. As with a number of other providers, the Law Society highlighted that the data used to calculate the number of contracts per area is out of date and point out that declining volumes will also play a part in the calculations when they are updated.
254. However, the analysis provided by Otterburn which accompanied the Law Society response to consultation supported the case that consolidation was necessary, agreeing that fewer, larger contracts were necessary in order for the market to be sustainable.
255. Both the LAPG and the CLSA expressed concern that such a model would create an oligopoly which will cause problems at the next tender round. They suggested it may also lead to cartelisation. The CBA raised a different concern in considering the impact on the current provider base that current providers would need to increase capacity by at least 250% to cope with the size of contract on offer. They argued that in many areas no provider exists that can fulfil such criteria.
256. Conversely, a number of large organisations (members of the Big Firm Group) argued that the proposed reduction in contract numbers coupled with the removal of client choice would mean that those providers with a large share of the market currently would have to scale their businesses down.

257. The CBA also highlighted the impact such a reduction on contract numbers would have on new entrants wishing to enter the market in subsequent rounds of contract tendering. They argued that experienced practitioners would gradually disappear from the market, making it more and more difficult for any new organisation to find the skilled and experienced professionals it would need to deliver criminal legal aid services. The Judicial Executive Board also raised this concern as did a number of individual practitioner respondents.
258. The Law Society also argued that BAME practitioners who tend to practise in smaller firms would be disadvantaged compared with larger providers by an approach that relied heavily on fewer, larger contracts. They suggested that the only way they could survive would be by acting as agents or sub-contractors for the larger firms and required to work at unsustainable levels of remuneration.
259. A number of individual practitioners expressed concern about the proposed number of contracts to deal with conflicts of interest between co-defendants. They gave examples of scenarios involving cases with more than four defendants all of whom were blaming one another and therefore four providers would be insufficient in managing such a case. They argued this was not uncommon.
260. Other factors highlighted by providers for consideration in determining contracts numbers included:
- the prevalence of particular types of case influenced by the charging practice of prosecuting agencies;
 - contracts in an area where Her Majesty's Revenue and Customs customs evasion cases are charged, or where Serious Organised Crime Agency departments are based or regional fraud courts are located will influence the type of case within those procurement areas, producing for example, a higher proportion of multi-defendant, document-heavy cases which do not easily fit within the standard model;
 - provision needs to be made to cater for under-represented groups to have their ethnicity/culture recognised; and
 - the geographical requirements of each procurement area.
261. A number of practitioners and representative bodies raised concerns regarding the impact of the proposed reduction in contract numbers on Welsh language provision. They claimed that clients seeking criminal legal aid services in Welsh would find it more difficult if not impossible to source such provision from the limited number of contractors in their area. They cited occasions where, in certain parts of Wales, entire criminal trials were held in Welsh. They suggested that as a result of the proposed limitation on the number of contracts (and the geographic restrictions with regard to the proposed procurement areas and the proposal to remove client choice) would also have a detrimental impact on such provision.
262. Whilst the consultation did not seek views on the proposed ring fencing of work for the PDS, a number of respondents commented, arguing that there is no basis for protecting the PDS from competitive tendering. The Law Society argued that they see no reason why shares of work should be ring-fenced for the PDS. They queried that if the PDS offices are truly cost-effective, what is there to prevent them from bidding for a contract on the same basis as everyone else. The Law Society went on to state that in fact based on the 2007 evaluation report, *'Evaluation of the Public Defender Service in*

*England and Wales*⁵⁸, it was more expensive to provide services using the PDS than private practice. A number of individual practitioner respondents also questioned the proposed ring fencing of the PDS. Some argued that the proposal was anti-competitive and that it was in fact speculative to suggest the PDS would act as a benchmark.

Government response

263. The Government remains of the view that variable contract numbers for each procurement area is the correct approach with regard to Duty Provider Work. This is reflected in the modified model set out in Chapter 3 which is developed having regard to the factors set out there..
264. In considering the impact of the proposals on Welsh language provision we have taken into consideration the views expressed by respondents. We are confident the modified model set out in Chapter 3 would deliver the same access to criminal legal aid services in Welsh where it is required. Providers delivering services in those procurement areas in Wales would be required, to ensure that services are accessible to, and understandable by, clients whose language of choice is Welsh, in accordance with the Welsh Language Act 1993 (as amended) and Welsh Language (Wales) Measure 2011.
265. The Government remains convinced of the importance of retaining a PDS for all of the reasons set out in the April 2013 consultation paper. The PDS is not currently a contracted provider; it is a body we have established to deliver criminal legal aid services on behalf of the Government. The arguments made by respondents that the PDS is more expensive to run are based on a report published in 2007. Since that time, the PDS has made a number of changes to the way it delivers its service and the way it is structured to ensure it remains cost effective.
266. Under the modified model set out in Chapter 3, we propose to maintain the PDS and to ring fence a share of work in the areas the PDS is currently established.

(v) Types of provider

267. The consultation paper described the flexibility of delivering services through the use of agents or by forming joint ventures or an Alternative Business Structure with other providers.
268. There was no specific question on this element of the April 2013 Model. However, a number of respondents argued that the use of agents or subcontracting would be unprofitable and the time available to establish any relationships in which to create a joint venture is insufficient.
269. The Law Society did suggest that any model must take into consideration more flexible business approaches. For example, some of the proposed areas are large – e.g. Devon and Cornwall, North Wales – and the Law Society suggested that it is simply not practical for firms to instruct agents on the other side of the county to undertake court hearings and police station attendances. The Law Society proposed that providers be able to deliver the service:

⁵⁸ (Lee Bridges, Ed Cape et al), 2007 - <http://www.law.cf.ac.uk/research/pubs/repository/1622.pdf>

- through the use of both agents and consultants, not necessarily employed by the firm on traditional employment contracts;
- through using "virtual" offices or temporary premises in order to cover the whole CJS area;
- through employees working from home, or wherever is most convenient to service the police stations and courts in the area;
- through use of technology to advise clients, e.g. video conferencing, Skype.

270. The Law Society made a number of suggestions for any future tendering process. They agreed that providers will require a base / office of some sort within each CJS area, or in many cases more than one office since the areas are so large. They suggested that there must also be flexibility over the use of agents, who should be able to work for more than one contract holder in a CJS area; and contract holders should also be allowed to use other contract holders as agents.

Government response

271. In light of the views in response to this element and also in response to the implementation timetable set out in the consultation paper, we propose, as part of the modified model set out in Chapter 3, to extend the timetable for the procurement process. This we believe would give potential applicants more time to explore opportunities, such as setting up or adapting a business structure which uses agents; or alternatively to establish a joint venture. One approach may be more desirable to some providers when considering profitability and other factors; others might take a different approach. We maintain the view that any new criminal legal aid scheme must offer more flexibility to providers in terms of structuring their business than exists currently.

(vi) Contract value

272. The April 2013 Model described the allocation of an equal share of volume of police station attendance work in the given procurement area over the life of the contract. Legal aid for all follow-on work (i.e. subsequent criminal proceedings in the magistrates' court and/or Crown Court) would be accessible by the provider allocated. The consultation asked:

Question 16: Do you agree with the proposal under the competition model that work would be shared equally between providers in each procurement area? Please give reasons.

Key issues raised during consultation

273. While some respondents supported the proposal to share work equally between providers in each procurement area, the majority expressed general disagreement. Respondents raised a number of concerns about the potential difficulty of ensuring an equal share of police station attendance work in practice, as well as the proposal's possible impact on competition, provider sustainability, provider growth, and service quality.
274. In its response, the Law Society suggested that the proposal may not ensure an equal share of work for providers in practice. They were concerned that each individual case was not equal - requiring differing amounts of work depending on whether it was

ultimately dealt with in the police station, or progressed to a magistrates' court or the Crown Court. They also explained that other factors like the location of a police station could impact on the type of cases available for providers in that area. They gave an example of police stations near a port or airport possibly having more drug-smuggling cases than police stations elsewhere in that CJS area or police stations in another area.

275. The Bar Council, specialist associations and some individual practitioners considered the proposal to be anti-competitive, providing no incentive for any provider to grow their business. The LAPG suggested that it would provide insufficient work for large firms and too much work for small ones. One firm of solicitors explained that those firms that had worked hard to build their own client base and gain a large market share would be penalised, and that the proposal would prevent growth.
276. Respondents criticised the proposal for appearing to ignore the importance of quality in criminal legal aid services. An individual barrister questioned what incentive there would be for providers to maintain a high quality service if they were effectively assured an equal share of the work, apparently irrespective of the quality of their service.
277. Respondents also expressed considerable concern about the general future and sustainability of the criminal legal aid market. Existing providers felt that they would face the prospect of decreased volumes of work at reduced rates. The Law Society saw the proposal as a 'recipe for market stagnation, rather than a vibrant sustainable market', mirroring the view of one solicitor, who felt that the proposal would lead to a homogenised market. To help new providers entering the market, CLSA suggested that the April 2013 Model needed to facilitate the keeping back of a proportion of cases for new providers.
278. Alternative suggestions for the allocation process were also proposed. One respondent suggested that allocation should be based on a firm's ability to meet the volume of work, with another proposing that work should be allocated under a duty rota which would not be dependent on the number of duty solicitors employed, but rather the capacity to do the work by appropriate fee earners.

Government response

279. We recognise that the April 2013 Model means that some current providers may have had to change the way in which they delivered their services, whether that meant scaling up or scaling down. Having taken into consideration the views expressed in consultation and the desire from some providers to expand their businesses, we have explored how we might address these concerns in the modified model.
280. The modified model presented in Chapter 3 would give providers the opportunity to apply for a contract which would give unrestricted access to Own Client Work. With regard to Duty Provider Work, the model would maintain the proposal to allocate equal shares of work amongst a limited number of providers who successfully tendered and were awarded contracts to deliver Duty Provider Work.

(vii) Client choice

281. The April 2013 Model included the proposal that clients would generally have no choice in the provider allocated to them at the point of request for advice. However, it was

proposed that there would be a number of exceptional circumstances where the client might seek a transfer to a different provider, including where there was a conflict of interest or where some other substantial compelling reason exists why that provider should not be appointed or why a change in provider is needed. For example, where a client who is detained at the police station has particular needs which cannot be addressed by the allocated provider, a change in provider may be authorised. The consultation asked:

Question 17: Do you agree with the proposal under the competition model that clients would generally have no choice in the representative allocated to them at the outset? Please give reasons.

Key issues raised during consultation

282. This element of the April 2013 Model was widely criticised [by 99%] based on three key arguments.
283. First, respondents argued that client choice is an essential driver of quality. The LCCSA argued that to remove such choice would “diminish trust and confidence” and many practitioners agreed, stressing that a crucial element in delivering a quality service is the importance of trust between client and lawyer. They argued that removing the choice a client has in selecting their trusted provider is more likely to lead to an increase in litigants in person. This they suggested is likely to lead to slower court processes, trials will take longer and ultimately legal aid and wider costs will increase.
284. The CBA cited Lord Carter’s Review of Legal Aid procurement in making an argument to retain client choice: “Clients need to have confidence in their legal representative in order for justice to be fair and effective”⁵⁹. The CBA suggest that there are many reasons why an accused person may wish to choose a particular solicitor or firm. Most commonly they include:
- An earlier and possibly longstanding association with the solicitor or firm;
 - A solicitor or firm possesses particular qualities, experience or personnel rendering it most suitable to deal with his or her case;
 - Ethnic, cultural and language reasons; and
 - Location.
285. The JEB commented that where a defendant has been given no choice as to representation it is much more likely that they will seek a change of representative at some later stage leading to greater costs.
286. Second, respondents argued that the removal of client choice is an attack on a fundamental human right. They argued that the proposal, if implemented, would be in breach of both domestic and European law. The Law Society and a number of other respondents suggested that introducing the proposal through secondary legislation would be ultra vires and said they would legally challenge the decision to do so.
287. Third, a number of respondents, including the Law Society argued that the proposed removal of choice would adversely affect clients with a protected characteristic. The

⁵⁹ ‘Legal Aid: A market-based approach to reform’, July 2006, Lord Carter of Coles, paragraph 5, page 94, <http://www.legalaidprocurementreview.org.uk/docs/carter-review-p2.pdf>

LCCSA developed this argument further in its response claiming that the proposal is discriminatory for the young, vulnerable and “those who feel most invested in a lawyer from a BAME firm”.

288. The Bar Council argued that the extent to which the proposal would impact on both BAME clients and BAME practitioners is ‘seriously underestimated’. They go on to suggest that such an approach would not only have a profound effect on the wider communities BAME providers serve and support but also on the profession as a whole, submitting that it would have “an obvious retrograde impact on the enormous progress that has been made in recent years in improving the diversity of the Bar and the judiciary”.
289. A number of respondents, including the Bar Council, suggested that the proposal to remove choice goes against the Government’s July 2011 White Paper on ‘Open Public Services’. Contrasting the proposed approach to that taken for other public services, one individual practitioner noted that “... people have the right to choose a doctor, whether life may be at stake. People have the choice to choose a dentist, their method of travel, schools their children attend, employment, a bank -- but in terms of their liberty, they are not [under the April 2013 Model] allowed to choose their own solicitor/lawyer.” One respondent argued: “The state chooses who will prosecute the individual. It is a fundamental freedom in a democracy that the accused can choose who will defend him/her. It is frankly sinister that the State can impose a representative on those it accuses.”

Government response

290. The rationale for proposing this change was to give greater certainty of case volume for providers, making it easier and more predictable for them to organise their businesses to provide the most cost-effective service to the taxpayer. It was not a policy objective in its own right. In light of the strong views expressed by all but a few practitioners that client choice is fundamental to any future criminal legal aid scheme, we have considered how to develop a model of competitive tendering which includes client choice. For example, we have explored what modifications would be necessary to the proposed procurement areas, the fixed fee remuneration scheme and the structure and number of the contract(s).
291. The modified model presented in Chapter 3 would retain the same level of choice for clients seeking criminal legal aid as now.

(viii) Case allocation

292. The April 2013 Model set out in the consultation paper included a number of options to seek views from respondents on the most appropriate way to allocate cases under a new criminal legal aid scheme.
293. Outlined in the paper were two broad options for case allocation: allocate on a case by case basis; or allocate by way of duty slots. A number of sub-options were highlighted to initiate discussion.
294. The consultation paper also set out the proposal that once allocated, the general principle would be that the provider allocated would deliver all criminal legal aid

litigation services subject to the client changing provider in exceptional circumstances. The consultation asked:

Question 18: Which of the following police station case allocation methods should feature in the competition model? Please give reasons.

- Option 1(a) – cases allocated on a case by case basis
- Option 1(b) – cases allocated based on the client’s day of month of birth
- Option 1(c) – cases allocated based on the client’s surname initial
- Option 2 – cases allocated to the provider on duty
- Other

Question 19: Do you agree with the proposal under the competition model that for clients who cannot be represented by one of the contracted providers in the procurement area (for a reason agreed by the LAA or the Court), the client should be allocated to the next available nearest provider in a different procurement area? Please give reasons.

Question 20: Do you agree with the proposal under the competition model that clients would be required to stay with their allocated provider for the duration of the case, subject to exceptional circumstances? Please give reasons.

Key issues raised during consultation

295. Whilst a number of respondents did choose between one of the options of case allocation presented in the consultation paper, again a significant number of respondents repeated their general concerns about competitive tendering.
296. In its response, the Law Society stated that it felt none of the case allocation models proposed take account of the effect of the prolific offender whereby under option 1(a), that offender would end up with several solicitors to whom he/she had been assigned simply because they were next on the rota. In doing so, the Law Society argued that the benefits for the client in being represented by a provider they trust and who is aware of their individual circumstances would be lost. Under Options 1 (b) and (c) they would avoid the problem of multiple representation, but would not address the issue of client confidence in his/her solicitor, since that solicitor would not have been chosen by the client.
297. The Law Society also highlighted its concern that providers would not get a truly equal share of cases as in practice the variation of case type generally and by area is quite diverse. Some firms would get more clients than they should, others would get fewer; some would get a disproportionate number of cases which are resource intensive; others would get cases that are less so. They argue that “[w]hile this can be adjusted over time, given the marginal economics of this model, the Government cannot be confident that the firm will not be insolvent before this happens....”
298. The Law Society claimed that option 2 would still not address the issues of client care, client confidence, saving of time, duplication of representation, increased costs of multiple representation, etc but said that at least it enables a firm to deal with all the work at one police station at any given time. They suggested that this would allow economies of scale by cutting out travel and waiting for the additional clients detained at that police station during the duty period. They argued that any of the other methods

would mean firms only ever getting one person at a time at each police station, thereby increasing average costs per case from those currently.

299. The CBA argued in its response that “under the current system firms of solicitors thrive by their reputation, experience and expertise, and this enables them to have a particular share of the market. Under the proposals the allocation of work by arbitrary or random means cannot be an improvement nor would it promote true competition.”
300. Some respondents made suggestions on how to improve the current duty solicitor slot allocation scheme. For example, a number of individual practitioners complained that the current system enables providers to use ‘ghost’ solicitors (i.e. solicitors that no longer practise, do not reside in the country or who have died) to apply for a greater share of duty slots. Another respondent suggested that the scheme should be modified so that it operates a rota for each custody unit and linked police stations in each CJS area for 24 hour periods allocating a different provider to each rota.
301. With regard to the proposal that for clients who cannot be represented by one of the contracted providers in the procurement area (for a reason agreed by the LAA or the court), the client should be allocated to the next available nearest provider in a different procurement area, there was a difference of opinion. The Law Society submitted that “in the context of the proposed model, this is about the most practical solution”. Whereas the CBA claimed “it is arbitrary in its application, which cannot be right where an individual is at peril of loss of liberty”.
302. With regard to the principle of continuing representation, the Law Society agreed with the suggestion that firms should in principle be able to represent a client all the way through the case from start to finish. A number of individual practitioner respondents agreed with this view, submitting that “it is necessary to protect the public purse from clients who continuously change lawyers”. But this view was not unanimous; a number of respondents argued that forcing clients to stay with a provider they are not happy with will increase litigants in person and consequently costs. Others argued that clients should be able to move to an alternative provider if they are genuinely unhappy with the service received.

Government response

303. It follows from the Government’s decision set out above (paragraphs 290 to 291) that clients would be able to choose any provider that holds a contract in England and Wales. Therefore, the case allocation method for Own Client Work would operate as now.
304. However, the method of allocating cases for those clients who do not select their own provider still needs to be considered. Having considered the views of respondents on the options presented in the consultation paper, we consider the most appropriate mechanism would be to allocate those cases through a duty rota system. Under such a system, providers with a contract to deliver Duty Provider Work would be entered onto a duty rota to cover police stations and magistrates’ courts in their procurement area.
305. We acknowledge that a number of respondents expressed some serious concerns about the way in which the current duty slot allocation mechanism operates. The modified model presented in Chapter 3 proposes the allocation of an equal share of duty slots to those organisations who have demonstrated their capacity to deliver the service.

(ix) Remuneration

306. In an effort to simplify the administration of the criminal legal aid scheme, under the April 2013 Model, as far as reasonably and economically practicable, providers would be remunerated by way of a fixed fee scheme for their criminal legal aid services.
307. The provider would be remunerated for each stage of the case (police station attendance, magistrates' court representation etc) but at the price they bid as part of their tender. It was proposed that due to the nature of the top 5% of Crown Court cases, the current graduated fee scheme should be maintained for cases where the count of prosecution pages of evidence exceeds 500.
308. As part of the fixed fee scheme, it was proposed that magistrates' court duty work would not be remunerated separately but the cost of delivering such a service would be factored into the price of the magistrates' court representation work. It was also proposed that travel and subsistence disbursements be included within fixed fee bids. The consultation asked:

Question 21: Do you agree with the following proposed remuneration mechanism under the competition model. Please give reasons.

- **Block payment for all police station attendance work per provider per procurement area based on the historical volume in area and the bid price**
- **Fixed fee per provider per procurement area based on their bid price for magistrates' court representation**
- **Fixed fee per provider per procurement area based on their bid price for Crown Court litigation (for cases where the pages of prosecution evidence does not exceed 500)**
- **Current graduated fee scheme for Crown Court litigation (for cases where the pages of prosecution evidence exceed 500 only) but at discounted rates as proposed by each provider in the procurement area**

Question 22: Do you agree with the proposal under the competition model that applicants be required to include the cost of any travel and subsistence disbursements under each fixed fee and the graduated fee when submitting their bids? Please give reasons.

Key issues raised during consultation

309. In its response to the consultation, the Law Society commented on each of the proposed levels of remuneration.

a) Police station attendance block payment

The Law Society argued that a block payment for police station attendances is problematic because the volumes can change, potentially significantly, for reasons not within the control of the provider. The Law Society suggests that if such a mechanism were implemented, a clear tolerance which would trigger an additional sum or require retender should be considered. In the event a fixed fee were implemented, the Law Society argued that it should contain an escape mechanism for exceptional cases.

b) Representation in the magistrates' court

The Law Society disagreed strongly with the proposal not to have any sort of escape mechanism in the remuneration for magistrates' court cases. They argued that firms would be at permanent risk of being destabilised financially.

Whilst recognising the proposal to include the cost of magistrates' court duty work in the fixed fee for all other magistrates' court representation, the Law Society highlighted the very real concern that the arrangements for court duty have been significantly under estimated, failing to take account of potential increases in volume.

c) Crown Court litigation fixed fee (cases with less than 500 pages of prosecution evidence)

d) Crown Court litigation graduated fee (cases with 500 PPE or greater)

The Law Society highlighted their concern that the fee structure for the Litigator Graduated Fee Scheme (LGFS) was already skewed in favour of the higher page count cases to the detriment of the majority of routine cases. The Law Society suggested continuing the dialogue with the Ministry of Justice on how to restructure the LGFS in order to remunerate cases more fairly.

310. With regard to the proposal to include the cost of travel and subsistence disbursements in the fixed fees, the Law Society argued that such a proposal would not be financially viable for providers. They argued that on top of a fee cut of over 17.5%, suppliers will be expected to absorb an unknown amount for travel and subsistence costs. They suggest travel distances would be completely unknown, as would other possible disbursements. The LAPG supported this view.
311. In addition to those arguments by the Law Society set out above, a number of specialist associations commented on the proposed remuneration mechanism. The LCCSA argued that the proposed fixed fee scheme would undermine the relationship between lawyer and client as it would create a perverse incentive in relation to advising clients on how to plead.
312. The CBA argued that a block payment at discounted rates would lead to an acute conflict of interest for many, if not all providers. They argued that the financial pressure to maximise profit under a contract, which rewards volume alone will place the provider at odds with appropriate and effective client service.
313. A number of individual practitioners responded to this question. One such respondent argued that there should be one fee scale for all providers - not their individual bid fees. Once the bidding is over the bid prices for the successful number of providers should be averaged so that they all get the same rate of remuneration.
314. Another practitioner suggested that magistrates' court work should be remunerated by way of a graduated fee scheme with a sliding scale based on the nature of the offence and estimated length of time to resolve, as currently happens in the Crown Court.
315. A number of individual respondents argued that under the proposed remuneration mechanism providers will do the least amount of work possible. Others argued that the Government was "labouring under the misapprehension that lawyers spin cases out in order to milk the system".

Government response

316. We maintain the view that the current remuneration mechanism is unnecessarily complex but in light of responses to these questions the Government accepts that a fixed fee without any escape mechanism for the remuneration of magistrates' court representation would not be economically viable for providers.
317. Similarly, we accept the views made by a number of individual practitioners that one fixed fee for all Crown Court work with less than 500 pages of prosecution evidence would create too much of a financial risk for providers.
318. We have therefore explored modifications to the proposed remuneration mechanism in the model presented in Chapter 3.
319. The modifications to address these points would also help to mitigate the increased level of uncertainty with regard to case volumes as a result of including client choice. Without exploring such modifications, in order to counteract the increased level of uncertainty, we would need to increase the contract size, thereby reducing the number of contracts on offer. However, the proposed remuneration mechanism set out in the modified model looks to mitigate the need to reduce contract numbers so significantly.
320. In light of the proposal to distinguish between Duty Provider Work and Own Client Work in the modified model presented in Chapter 3, we also propose to modify the remuneration mechanism for police station attendance. Under the model we propose that police station attendance be remunerated on a case by case basis under a fixed fee scheme, rather than a block payment.
321. The suggestion made at paragraph 313 above with regard averaging the bid prices would not be an acceptable mechanism, in our view, to set the price for all winning applicants. Such an approach would lead to a protracted negotiation period with applicants to determine the final price. In any event, the modified model set out in Chapter 3 proposes a non-price based competitive tendering process. We believe a model of competition where price is set administratively would still enable us to achieve the overall policy objectives of a sustainable, more efficient service at a cost the taxpayer can afford.
322. Finally, we acknowledge the views from respondents that magistrates' court duty work should continue to be remunerated by way of hourly rates. Whilst the intention behind the original proposal was to streamline the payment mechanisms, we are persuaded that such an approach would be more complex for providers to plan the financial viability of the proposed scheme. We are also minded to keep the payment of travel and subsistence disbursements separate from the fixed fees.

(x) Procurement process

323. The consultation paper included a section to explain how the LAA intended to run the competitive procurement process to procure new crime contracts. The consultation sought views on any other factors to be taken into consideration in designing the criteria.
324. The April 2013 Model also included the proposal to introduce a price cap for each fixed fee and graduated fee under which applicants would be asked to submit bids. The

proposal was to introduce a price cap at 17.5% below current levels of remuneration. The consultation asked:

Question 23: Are there any other factors to be taken into consideration in designing the technical criteria for the Pre Qualification Questionnaire stage of the tendering process under the competition model? Please give reasons.

Question 24: Are there any other factors to be taken into consideration in designing the criteria against which to test the Delivery Plan submitted by applicants in response to the Invitation to Tender under the competition model? Please give reasons.

Question 25: Do you agree with the proposal under the competition model to impose a price cap for each fixed fee and graduated fee and to ask applicants to bid a price for each fixed fee and a discount on the graduated fee below the relevant price cap? Please give reasons.

Key issues raised during consultation

325. Whilst very few respondents made suggestions on what other factors should be taken into consideration when designing criteria for any future tendering process, some respondents commented on the proposed criteria set out in the consultation paper.
326. The Law Society explained in its response that they have contacted a number of banks who told them that they could not guarantee investment in a business that first has no guarantee of a contract at all, and secondly even if they do obtain a contract, it will be for only 3 years with no guarantee of an extension or a new contract. They argued that the notion that firms will be ready with guaranteed finance at the point of bidding on such an uncertain basis was completely unrealistic. The CBA supported this view.
327. The CBA highlighted the importance of not only assessing the quality of a supplier but also the quality of services supplied. However, they made no suggestions as to what factors should be considered in doing so.
328. A number of individual practitioner respondents made suggestions on factors that should be taken into consideration when designing criteria, including the following specific comments:
 - Experience of managing a legal team and preparing complex cases;
 - At the very least, the existence of a functioning, staffed office within the CJS area, and should be able to demonstrate experience of legal services work, not merely comparable work;
 - The necessary standard of professional qualification to provide legal advice;
 - The most crucial aspect of tender should be quality;
 - Any adverse observations made by judges during court proceedings;
 - References in support of applications, provided by other practitioners and/or judges;
 - There should be requirements as to numbers of qualified staff and minimum number of years experience in the relevant area of law;
 - Regulatory compliance;
 - Previous peer reviews, quality, ability, experience and past performance;

- Priority for established professionals; those with local links. Disqualification for non-lawyers with no local links, and for unrealistically low bids; and
- Providers need to demonstrate up front that they can provide the cover required.

329. With regard the proposed price cap, the Law Society believed it to be economically unsustainable and the LAPG considered the price cap to be anti-competitive.

Government response

330. The Government will take into consideration the suggestions made by respondents when designing the procurement process.

331. As explained at paragraph 197 above, we are persuaded that a competitive tendering process where price is set administratively would still achieve our overall policy objectives of delivering a sustainable and more efficient service at a price the taxpayer can afford. However, with regard to the complaint that such a reduction in fees would not be economically viable, it is important to highlight the work presented by Otterburn in support of the Law Society response which showed that 25% of current providers surveyed said they could sustain a reduction in fees of 17.5% without making any structural changes and without the redistribution of work from those providers that would leave the market.

332. The modified model set out in Chapter 3 proposes a non-price based competitive tendering model but sets prices administratively at 17.5% below current rates⁶⁰.

(xi) Contract award / implementation

333. It was proposed that subject to the outcome of the consultation the competitive tendering process would commence in all procurement areas in October 2013 with a new contract commencing in September 2014. The consultation paper included an indicative milestone timetable.

334. Whilst there was no specific question on this element of the April 2013 Model, a number of respondents provided comments as set out below.

Key issues raised during consultation

335. The majority of respondents, including the representative bodies and specialist associations argued that the implementation timetable set out in the consultation paper was unworkable for a number of reasons.

336. The Law Society explained in its response that it would take longer than proposed for both new entrants and existing providers to establish the viable businesses necessary to submit an application. The reports from Otterburn and Deloitte commissioned by the Law Society set out what the Law Society described as the difficulties with the proposed timescales in terms of obtaining:

⁶⁰ By current rates we mean those rates of pay for litigation (except VHCCs) and magistrates' court advocacy services as apply at the time of publication. 17.5% would be the total reduction in fees which would include the proposed 8.75% reduction across the same rates in February 2014 (see paragraphs 3.52 to 3.55 on a proposed interim fee reduction).

- Finance
 - Accommodation
 - IT systems
 - Staffing
 - Regulatory approvals
337. Specifically with regard to the financial requirements, the Law Society explained that two major high street banks they spoke to expressed concerns regarding the “uncertainties inherent in the contract model proposed, and the timescales within which firms would need to secure investment.”
338. In addition, the Law Society suggested that whilst larger organisations may already have the necessary expertise in place for advising on tendering, the majority of current providers would need external professional advice on how to prepare an application for a large public contract. This, the Law Society submitted, would give an unfair advantage to larger organisations, contrary to EU Treaty principles.

Government response

339. The Government acknowledges the concern that successful applicants would need longer than the proposed three month mobilisation period to secure all necessary resources to deliver services effectively at the point of Service Commencement. Therefore, we are proposing a more appropriate mobilisation period.
340. In light of this further consultation we are proposing to move the start date of the procurement process for the modified model to early 2014.

Conclusion

341. Having considered, and given due weight to the responses to the consultation on the April 2013 Model, the Government has decided to consult on a modified model which seeks to address many of the concerns expressed in response to the original proposal. The details of the modified model are set out in Chapter 3 and we seek views on the proposal.

Interim Payments

342. The Government has decided to proceed with a suggestion put forward by respondents, including the Law Society and Bar Council, to improve cash-flow for litigators and advocates.
343. Current Regulations make explicit provision for interim payments to be made in longer Crown Court cases and cases of hardship. However, the LAA receive very few claims under these provisions. The existing Staged Payment facility under the Advocates’ Graduated Fee Scheme (AGFS) allows for interim payments to be made in cases where 100 hours of preparation has been carried out and it is estimated that the case will last a year from sending for trial to disposal. Alternatively, there is also a hardship provision for all providers, which currently require the provider to show instruction was over six months ago; no payment is likely in the next three months; and the provider can show to a determining officer that they are suffering financial hardship.

344. The LAA will work with professions' representative bodies to consider further how best to provide a facility or improve an existing mechanism by which cash-flow issues for litigators and advocates would be addressed.

Reforming Fees in Criminal Legal Aid

Introduction

345. Chapter 5 of the consultation document set out a number of proposed reforms to remuneration under the criminal legal aid scheme with a view to delivering further savings in areas not included in the proposed model of competition and complementing work in the wider criminal justice system to embed the principle of "right first time".

Restructuring the Advocates' Graduated Fee Scheme

346. The consultation paper proposed restructuring the current Advocates' Graduated Fee Scheme (AGFS) to encourage earlier resolution and more efficient working through a harmonisation of guilty plea, cracked trial and basic trial fee rates to the cracked trial rate, and a reduction in and tapering of daily trial attendance rates from day 3. The consultation asked:

Question 26: Do you agree with the proposals to amend the Advocates' Graduated Fee Scheme to:

- **introduce a single harmonised basic fee, payable in all cases (other than those that attract a fixed fee), based on the current basic fee for a cracked trial;**
- **reduce the initial daily attendance fee for trials by between approximately 20 and 30%; and**
- **taper rates so that a decreased fee will be payable for every additional day of trial?**

Please give reasons.

Key issues raised

347. Most respondents disagreed with the introduction of a harmonised Basic Fee payable for guilty pleas, cracked trials and trials. Respondents, including the Bar Council and the CBA opposed the proposals on the grounds that there have already been substantial cuts in recent years and savings are also being achieved from the decline in cases. Many respondents said that it was unfair to harmonise trials with cracked trials and guilty pleas, given the fact that trials require more work, and more skilled work. Some felt the proposals would place an incentive on lawyers to advise a plea of guilty. A small number of respondents, including the Law Society, said that they understood why the fees for an early guilty plea and a cracked trial could possibly be harmonised. The Bar Council suggested that the increase in fees for guilty pleas would provide an incentive for solicitors to keep as much guilty plea work in house as possible.
348. Most respondents said that it was wrong to target reductions on the longest, most complex, cases. It was argued that defence advocates have little influence over the length of a trial, which can be affected by any number of factors such as other work judges have to fit into the court day or the timely production of defendants from

custody. Respondents felt that advocates were being penalised for something that was largely beyond their control and that the initial reduction in daily attendance fees was too harsh in itself, but made worse in longer cases most affected by the taper. While not commenting directly on the proposed taper in daily attendance rates, the JEB supported the idea of effective preparation and the expeditious conduct of trials.

349. Many respondents did not agree that the proposals would affect the advocates with the highest fee income most and have little impact on the the advocates with the lowest fee income. They argued that the combined effect of the proposals for competition and the proposed fee changes would affect the behaviour of solicitors and advocates and reduce the work available for the most junior barristers.
350. Consultees suggested that, contrary to our expectations, the combined impact of our criminal fee proposals, and competition proposals, would most affect the junior Bar, as senior advocates would 'cherry pick' the more profitable cases. Consultees also suggested that competition proposals for litigation would drive solicitors to do as much magistrates' courts advocacy and non-trial Crown Court work in house as possible, rather than instruct the junior Bar. It was suggested this would drive people away from advocacy as a profession and adversely affect clients, victims and witnesses if there were insufficient quality advocates available.

Government response

351. The existing Basic Fees within the graduated fees scheme are proxies for work done. Different cases within each of the categories of guilty pleas, cracked trials and contested trials may require significantly different amounts of preparation, but within each category, all cases receive the same Basic Fee. The scheme relies on proxies for complexity that determine an average payment for a case of each type, which does not necessarily reflect the amount of preparation undertaken in an individual case, but over an average workload will ensure fair compensation overall. Our proposal was based on the same principles and on simplifying the fee scheme further by eliminating the separate categories of guilty pleas, cracked trials and trials.
352. However, in the light of responses to consultation we have reconsidered our approach. We have always accepted that in many cases the amount of preparation will be greater in contested trials. We have concluded that harmonisation of the Basic Fee for trials with those for cracked trials and guilty pleas would lead to too great a discrepancy between the amount of preparation required and the fee payable. We have been persuaded by consultees that such a payment system would not be a fair reflection of the amount of work undertaken. We have also been persuaded that the proposed approach to tapering daily attendance payments for trials should be reviewed in order to ensure that very long trials are not disproportionately affected. We have set out, in Chapter 4, our proposed alternative approaches for reforming advocacy fees on which we are now seeking views.

Reducing litigator and advocate fees in Very High Cost Cases (Crime)

353. This proposed to reduce the rates for all Very High Cost Crime cases by 30%. We asked:

Question 27: Do you agree that Very High Cost Case (Crime) fees should be reduced by 30%? Please give reasons.

Question 28: Do you agree that the reduction should be applied to future work under current contracts as well as future contracts? Please give reasons.

Key issues raised

354. Most respondents disagreed with the proposed reduction in fees and the application to future work in current VHCCs. However, some respondents, including the Law Society and the CLSA, accepted there was potential to reduce fees in VHCCs. Other respondents argued that a reduction in fees of 30% was not sustainable and that the contracting regime was inefficient and resource intensive. Some also suggested that a system based on hourly rates did not provide an incentive for efficiency. It was also argued that there was no rationale supporting a cut of 30% and that a marked difference between prosecution and defence VHCC rates would violate the principle of 'equality of arms'. Some suggested that an alternative scheme proposed by the Bar Council in 2009, known as 'GFS Plus', was a better way to achieve savings.
355. Some respondents suggested there would be a significant impact on senior advocates, whereas others argued that the impact would be greater on junior advocates as their senior colleagues would avoid taking on VHCCs and concentrate on graduated fee cases instead.
356. There was agreement among respondents that the reduction should not apply to future work in current cases. There were concerns that it would be unfair and unlawful unilaterally to change the terms of a contract that had already been entered into. It was suggested there was a risk that some advocates would return briefs in on-going cases if fees were reduced and that this would lead to increased expenditure paying new advocates to get up to speed.
357. As set out above, consultees suggested that, contrary to our expectations, the combined impact of our criminal fee proposals, and competition proposals, would most affect the junior Bar. It was suggested that these potential effects would impact disproportionately on female and BAME barristers, who are better represented among the junior Bar.

Government response

358. As set out in our revised proposals for the procurement of criminal legal aid services, VHCC litigation and Crown Court advocacy services are not included within the new approach to procurement. Our rationale for proposing a reduction of 30% in fees is to reduce spending in these long-running cases, which attract a disproportionately high proportion of legal aid expenditure. Some respondents to consultation explicitly accepted that this was an area where savings could be made.
359. As we said in the consultation document, VHCCs are high value, long duration cases that bring certainty of income for providers, so we believe a reduction of 30% is sustainable in this context. VHCC work is typically undertaken by more senior advocates and established firms of solicitors and, in our assessment, a reduction of this level is sustainable for individuals and firms with the highest fee income. We noted in the consultation paper that our indicative analysis showed that 12% of advocates received fee income of over £100,000 and 3% received fee income of over £200,000. In 2012/13, more than half of those with fee income over £200,000 worked on VHCCs,

compared to just 20% of those with fee income between £100,000 and £200,000. Just 4% of barristers who earned below £100,000 worked on a VHCC in 2012/13. We believe it is right that our reductions should affect such advocates rather than those who are on much lower fee income. That said, the response of higher earning advocates to our proposed rate reduction may be to seek to undertake more non-VHCC criminal work, which could have some impact on the generally lower earning advocates currently doing such work, although there is a limit on their capacity to undertake non-VHCC work. In any event, if higher earning advocates did respond in this way, then lower earners might have increased access to VHCC work.

360. Given the overall costs and exceptional nature of these cases we believe that the current contracting regime is necessary to scrutinise costs in each individual case. While we generally support graduated or fixed fees to promote efficiency, the exceptional nature of these cases make a system of graduated fees (such as the GFS Plus model outlined below) impractical as it would less closely reflect the amount of work that is generally required on a case, which means that those who take on a simpler case are likely to benefit, whilst those who take on more complex cases would lose out. This is a particular problem in VHCCs as the small volume of these cases means that suppliers will not necessarily be undertaking a mixed basket of cases over a given time.
361. The GFS Plus model favoured by some respondents, was first proposed in 2009 by the Bar Council as a potential scheme that they believed would be acceptable to advocates wishing to conduct VHCC work as a long-term sustainable solution (given there had been difficulties with the panel scheme that was then in place).
362. The scheme created two new proxies for complexity that would have been factors in working out the appropriate level of fees. Those proxies were the seriousness of the case and the defendant's role. While it might be possible to define case seriousness, the role of a defendant is largely subjective. With the prospect of the introduction of new proxies, it was considered essential in 2009 that sufficient modelling was undertaken to ensure that the impact was understood. In the absence of robust data there would be no way to tell if the proposal would cost more or less than the VHCC scheme.
363. In order to test the validity of that scheme, data was required on concluded VHCCs, which the Bar Council offered to collect from their members to test the scheme. It would have also given the then Legal Services Commission (LSC) the opportunity to test the proposals on the basis of the financial impact. Despite a great amount of work by the Bar and others, the response rate from advocates remained low. Only 24 data collection forms were found to contain sufficient information to be usable by the LSC analysts. Given that the scheme was modelled on a very small number of cases, we are not convinced that the GFS Plus model is sufficiently robust nor can we be certain that it would achieve savings.
364. It was also accepted in 2009 by the Bar that even if GFS Plus were implemented there would need to be an escape to hourly rates in exceptional cases. We agree and accept that hourly rates will always be needed for the most exceptional cases, so GFS Plus alone would never be a complete answer. Since 2009 the scope of the VHCC scheme has been significantly reduced and there are now only approximately 15 new VHCC cases that are contracted per annum. Introducing a new GFS Plus scheme, plus a separate hourly scheme for exceptional cases is not, in our view, justified for such a small number of cases.

365. We do not accept that a distinction in legal aid and CPS rates for VHCCs undermines the principle of 'equality of arms' solely because legal aid rates for VHCCs are lower than the CPS rates. We are confident that defendants will continue to receive effective representation under the revised rates. The vast majority of VHCCs have multiple defendants and only one prosecution team; the prosecution team therefore has a different role to perform than defence teams in VHCC cases, which is reflected in differences in remuneration. Moreover, the CPS scheme and the defence scheme differ in a number of ways which undermine direct comparison, for example, the CPS scheme covers cases over 40 days, rather than 60 days.
366. We consider it appropriate to apply the fee reduction to existing cases as well as any case classified on or after the implementation date. In order to bear down on the cost of these expensive cases, which typically run for several years, we need to ensure that the rates being paid on an on-going basis represent value for money. In line with the approach taken on our standard legal aid contracts, the Lord Chancellor may make secondary legislation to include the rates applicable to VHCC cases and amend the applicable contract arrangements/documents to reflect these legislative changes.
367. Even after a 30% reduction VHCCs will remain high value, long duration cases that bring certainty of income for providers, which is important, particularly for self-employed advocates. For that reason, in addition to their professional obligations to clients, we do not consider there is a significant risk that advocates will return briefs or that solicitors will exercise their unilateral right of termination under their VHCC contracts.
368. We have decided to apply the reduction to individual VHCC contracts issued since July 2010 and VHCC 2008 Panel contracts. There are a small number of pre-panel cases that remain live, but the outstanding work is negligible, so we are not amending rates under pre-2008 contracts.
369. Given the high value and long duration of VHCC cases and certainty of income for providers that they provide, we believe a reduction of 30% is sustainable in this context. VHCC cases will remain attractive as they will still be high paying cases that provide certainty of income over a sustained period, which is important to providers seeking to increase the volume of work they undertake. VHCCs tend to be high profile cases which are also attractive from the point of view of career progression and reputation, so it is less likely that suppliers will turn away from the work. LAA analysis of fraud⁶¹ VHCCs shows that the average value of a contract is £1m and contracts run for three to four years on average.
370. Our revised analysis of the equality impacts of the reforms is addressed at Annex F.

Conclusion

371. Having considered, and given due regard to the responses to the consultation, the Government has decided to proceed with the proposed 30% reduction in fees payable to all new criminal VHCCs and to future work in existing cases⁶².
372. It is currently anticipated that this proposal will be implemented through secondary legislation, subject to Parliamentary approval, and changes to contracts later this year.

⁶¹ Most VHCCs are now fraud cases.

⁶² i.e. live cases being run under the 2008 VHCC Panel Scheme or under the VHCC Arrangements 2010.

Reducing the use of multiple advocates

373. The consultation proposed to tighten the rules governing the decision to appoint multiple counsel in a case, changes to litigator contracts to require greater support to counsel from the litigation team, and the introduction of a more robust and consistent system of decision-making. The consultation asked:

Question 29: Do you agree with the proposals:

- **to tighten the current criteria which inform the decision on allowing the use of multiple advocates;**
- **to develop a clearer requirement in the new litigation contracts that the litigation team must provide appropriate support to advocates in the Crown Court; and**
- **to take steps to ensure that they are applied more consistently and robustly in all cases by the Presiding Judges?**

Please give reasons.

Key issues raised

374. Most respondents, including the Council of HM Circuit Judges, disagreed with these proposals and felt any change was unnecessary, both in terms of the criteria used to make decisions and the involvement of Presiding Judges. Respondents said that there was no evidence that two advocates were being allowed too often and it was not unexpected that the small number of courts where the most serious cases are heard allow more than one advocate more often than other courts. Many suggested that trial judges were best placed to make these decisions as they knew the details of the case and that seeking the approval of Presiding Judges was an unnecessary burden that might cause delay. Given that decisions are made on the individual facts of a case, respondents suggested that Presiding Judges would not be able to make decision-making more consistent. Many respondents said that it was not common for every single defendant to be allowed multiple advocates in multi-handed cases; usually leading counsel would be restricted to the main players in a case. However, the JEB said there were very few cases where the volume of paperwork or other business meant that two or even three advocates are necessary or where even a highly competent leading advocate would be overwhelmed.
375. Some respondents said that where the prosecution had more than one advocate then the defence should also have more than one to ensure equality of arms. The JEB said there was a need to preserve the incentive to engage experienced trial advocates, including Queen's Counsel, where they were needed.
376. We received mixed responses to the question of greater litigator support to Crown Court advocates. Solicitors said they could not afford to provide more support at present and would be even less able to if fees were reduced by 17.5% as proposed under the model of competitive tendering for criminal legal aid in the consultation. Advocates generally welcomed greater support, but some suggested this was a not a substitute for a second advocate in appropriate cases.

Government response

377. We acknowledge that there are circumstances in which it is necessary and appropriate for the defence to engage more than one advocate where the prosecution has done so.

However, we remain concerned that there are too many cases where multiple advocates are being appointed unnecessarily, particularly in cases with multiple defendants, particularly where each and every defence team is being allowed two advocates.⁶³ In our view, change is necessary. There is evidence that two advocates are being allowed more often than necessary. The JEB referred to a considerable body of anecdotal reports from the judiciary that the “second” advocate position has been filled by advocates with rights of audience who played no real part in the conduct of the case.

378. We accept that there will be a small number of courts where the most serious cases are heard and so might allow more than one advocate more often than other courts. Nonetheless, we think multiple advocates are being used too routinely even in such cases. We also accept that Presiding Judges may not be as close to the detail of a case as an individual resident judge or the trial judge. However, Presiding Judges’ oversight on a circuit-wide basis would allow them to ensure there was consistency of approach between court centres, where differing practices may have evolved over time. We consider it appropriate that Presiding Judges have appropriate oversight of the grant of QCs and multiple advocates and that initial recommendations are made by resident judges to ensure consistent principles are being applied at each court centre.
379. We originally considered that delegation of that function may be necessary in London in relation to cases heard at the Central Criminal Court and Southwark given the high volume of applications for multiple advocates at those court centres. However, having considered respondents’ views on the potential for delay we intend to give all Presiding Judges the power to delegate their function (e.g. to a resident judge) where they consider it appropriate. We consider this will provide flexibility to ensure that bureaucracy and delay might be minimised.
380. For the reasons set out in the consultation paper, we intend to amend the prosecution condition criterion for the appointment of multiple advocates to make clear that it is not sufficient to demonstrate the need for multiple advocates for each and every defendant just because the prosecution have multiple advocates. Many respondents said this was unnecessary, but we are satisfied that there is sufficient evidence of cases where defendants are granted multiple advocates unnecessarily, for example those who face trial on lesser offences, and that it is appropriate to tighten the criteria.
381. On the question of greater litigation support for advocates, we consider it appropriate to defer taking a decision until deciding the terms of the new criminal litigation contracts generally, rather than making a decision on a single aspect of a new contract at this stage.

Conclusion

382. Having considered, and given due regard to the responses to the consultation, the Government has decided to change the prosecution criterion applicable to determining the selection of multiple advocates and the process for determining the appointment of QCs and multiple counsel.
383. It is intended that we will introduce these reforms, subject to Parliamentary approval, through amendments to secondary legislation later this year.

⁶³ Exceptionally three advocates might be allowed, but only in cases prosecuted by the Serious Fraud Office.

384. We will take forward the question of litigator support for advocates separately as we develop the policy on future contracts.

Reforming Fees Civil Legal Aid

385. The consultation sought views on three proposed reforms to remuneration in civil and family proceedings.
386. Many respondents raised concerns that the proposed fee reforms threatened the ability of providers to deliver legally aided services. Responses to specific questions relating to civil and family fees are considered below.

Payments to family solicitors

387. The consultation asked:

Question 30: Do you agree with the proposal that the public family law representation fee should be reduced by 10%? Please give reasons.

Key issues raised

388. There was general opposition from respondents to this proposal, particularly from solicitors and barristers. This included both the Law Society and the Bar Council who felt that the legal profession had already suffered, in real terms, from an income cut as a result of the previous Legal Aid Reform fee changes and a continuing inflationary freeze. Several respondents also argued that the Government was acting in bad faith in trying to reduce payments for legal services so soon after the new contracts had commenced.
389. Some respondents also argued that the workload reductions anticipated as a consequence of the Family Justice Review (FJR) reforms had not yet been delivered and should not be used by Government as the basis for immediate cuts. Some respondents went further and disagreed that the FJR reforms, in particular those being made in relation to experts, would deliver any reductions in workload, taking the view that the absence of expert reports would require solicitors to work more in gathering evidence themselves. Also, some argued that the focus on the earlier settlement of cases under the revised Public Law Outline (PLO) would require greater preparation up front.
390. Some respondents, including the Bar Council, expressed the view that reducing the fixed representation fees would increase costs as the escape threshold would be reached more quickly. Generally, respondents from all sectors argued that the Government had given insufficient consideration to the impact of the proposed fee cut on the reforms already taking place as a result of FJR and the delivery of those reforms. Respondents claimed that such cuts would lead to experienced practitioners leaving the market, affecting the quality of service. There was particular concern about the impact on small firms and those who undertook both family and criminal work.
391. Overall, there was general consensus that Government should await the outcome of the full impacts of LASPO and the FJR reforms before trying to implement further changes.

392. Respondents took the view that if providers left the market as a result of a fee cut, this would impact on vulnerable groups of people, particularly children, by reducing the availability of publicly funded advice and the timely resolution of family cases. Some respondents suggested that previous fee cuts had already resulted in experienced practitioners withdrawing from legal aid work and a further fee cut would exacerbate this problem which would have the greatest impact on women, BAME and disabled legal aid clients.
393. Some respondents suggested that an alternative means of delivering savings would be to address the current regional price differentials that existed in the Care Proceedings Graduated Fees scheme.

Government response

394. The current fixed fee regime is based on the codification of the average of the bills paid at hourly rates in care proceedings in 2007. As the family justice system becomes more streamlined and efficient, the Government remains of the view that these fees increasingly do not necessarily represent value for money.
395. One of the key findings of the FJR was the fact that unnecessary and inappropriate expert reports were being commissioned, usually in public law family cases, resulting in delays in case resolution. Where no or fewer experts were used, the length of care proceedings decreased significantly⁶⁴. The Government has already accepted the FJR recommendation in this area which resulted in changes being made to the Family Procedure Rules which came into effect on 31 January 2013. In addition, other reforms including the implementation of a revised PLO for care cases (which is currently being piloted and which seeks to streamline the court process thereby reducing the number of hearings), are also likely to lead to a reduction in case duration and, therefore, to a reduction in workload. Latest court statistics for Q1 2013 show that the average duration of court proceedings has already fallen to 42 weeks, down 24% since Q1 2012⁶⁵.
396. Therefore, while the Government notes stakeholders' views about the delivery of the FJR reforms, it considers that with continuing fiscal pressures and the pressing need to deliver immediate savings from legal aid fee reforms, it is essential for Government to ensure that the fees paid for public family law proceedings represent value for money. This means reflecting more closely the amount of work involved, including the reduction in the duration of cases already being seen, as well as the likely reduction in the amount of work involved in care cases that is anticipated from the full implementation of the FJR reforms. In this context, while it recognises that there may also be changes to the stage at which particular work must be completed, the Government remains of the firm view that a reduction in the use of experts and the other procedural improvements being introduced by the FJR reforms will reduce the overall amount of work required of solicitors on a case. We consider that the proposed 10% reduction represents a reasonable reflection of these efficiencies.
397. As set out in paragraph 6.13 of the consultation paper we intend to introduce revised fees to coincide with the introduction of the Single Family Court in April 2014, by which time the key elements of the FJR reforms will have already been in place for a period of

⁶⁴ Cassidy, D and Davey S (2011) Family Justice Children's Proceedings – Review of Public and Private Law Case files in England & Wales, Ministry of Justice.

⁶⁵ Court Statistics Quarterly January-March 2013.

time. The Government is satisfied that this will give providers sufficient opportunity to adjust to these new requirements before the new fees take effect.

398. Hourly rates are currently - and will continue to be - payable in the most complex cases where the issues are such that the time that a provider must take on the case reaches the escape threshold, which is currently calculated by using the hourly rates payable on escape. However, as set out in paragraph 6.11 of the consultation, these rates will be reduced by 10% to promote the efficient resolution of cases and avoid creating any incentive to delay. Our intention is to continue to use the hourly rates, revised as proposed in the consultation, to calculate the escape threshold, on the basis that this will ensure that only those types of cases that reach the escape threshold now continue to do so in future. As now, the LAA will continue to assess these costs and the Government is satisfied that this will be sufficient to manage the likelihood of providers inappropriately and routinely claiming hourly rates
399. The proposed reform will necessarily reduce the income of affected providers but this is on the basis that they will need to do less work on these cases, therefore providing an opportunity to take on other work. While the ability of providers in this market to take on private work is unclear, the rising volume of public family law cases is likely to provide potential additional work for providers in this sector.
400. The general thrust of responses to the consultation suggested that the proposed reduction would not be sustainable and would impact on market supply, disproportionately affecting vulnerable groups who would not be able to access services. Similar arguments have been made in respect of each proposed reform to civil legal aid remuneration since the introduction of Phase I of the fixed fee scheme in 2007. Despite this there have remained significant numbers of providers working in this area who, where they represent children, must independently demonstrate that they meet the necessary quality standards for undertaking such work by being registered on the Law Society's Children's Panel.
401. The only firm indication of market reaction, - the outcome of the 2013 civil legal aid tender process for contracts (which reflect the LASPO scope reforms) suggests that this remains the case. While the outcome of this tender process indicated a very small reduction in the actual number of contracted firms bidding for contracts, there was an increase in the number of offices from which those firms planned to deliver family services (see Annex D). Given that this market reaction was in the light of the significant reductions in publicly funded family work under LASPO, this could arguably indicate that there currently remains a strong appetite amongst providers to do legal aid work and that overall the market should be able to meet the future levels of expected demand at current prices. This does not tell us whether there will be a sufficient number of providers in the market in the long-term, the actual current viability of any contracted firm or how this might be impacted by the fee changes. However, it does suggest that there is currently competition for work and therefore scope for at least some providers to withdraw from the market while still maintaining a sustainable market supply.
402. Taking into account all of the available data, on balance the Government considers that the proposed reductions are likely to be sustainable. We consider that they draw an appropriate balance between the need to reduce spending, taking account of the opportunities and efficiencies provided by wider system reforms, and ensuring that clients can continue to access legally aided services. Our revised analysis of the equality impacts of the reforms is addressed in Annex F. Although there is a risk of

short term disruption to supply in some areas if providers withdraw from the market, we are confident that these could be dealt with should they arise by appropriate mitigation action by the LAA, such as distributing additional work to other providers in the area and running additional bid rounds to find new suppliers.

403. The Government has considered an alternative approach suggested by respondents which would involve removing regional price differentials. However, the effect of removing these could be to reduce rates for solicitors and barristers in affected areas of civil and family work by up to 34% depending on the level at which any revised fee was set. The main differentials are in public family law cases and were initially introduced in 2007 on a temporary basis to ensure the sustainability of market supply in the four regions ahead of the potential introduction of competitive tendering for services. The Government takes the view that their long term retention would only be justifiable in the context of market supply shortages and, therefore, does intend to address these in due course. However, the current assessment is that given the recent changes to scope introduced under LASPO which are yet to fully impact on providers, a cut of that size, may not be sustainable at this time. Instead we intend to review the existing regional price differentials in light of the impact of both the LASPO scope changes and the reforms that are implemented following this consultation.

Conclusion

404. For the reasons set out above, the Government has decided to proceed with the proposal as set out in the consultation paper to implement the proposed 10% reduction to the:
- fixed representation fee; and
 - the hourly rates that apply when a case reaches the escape threshold
405. The revised hourly rates will be used for the purpose of calculating the escape threshold from the fixed fee scheme.
406. The revised rates that will apply are set out at Tables 1 and 2 of Annex E.
407. It is intended that these changes will be introduced by way of amendments to secondary legislation, subject to Parliamentary approval, in April 2014. The timing is intended to coincide with changes to the family advocacy scheme, required to facilitate the introduction of the new Single Family Court on which the Government will consult later this year.

Payments to civil barristers

408. The consultation asked:

Question 31: Do you agree with the proposal that fees for self-employed barristers appearing in civil (non-family) proceedings in the county court and High Court should be harmonised with those for other advocates in those courts. Please give reasons.

Key issues raised

409. Some respondents, including the Law Society and a number of solicitors, agreed that the fee differential between barristers and other advocates should not continue.

However, most respondents, in particular self-employed barristers but also some solicitors, disagreed with the proposed reform. Barrister respondents were particularly concerned about the impact on the junior Bar, suggesting that the proposed change would be likely to make civil legal aid commercially unviable for them. They argued that this would be damaging to the make-up of the Bar as lower fees were likely to restrict the ability of people from poor socio-economic backgrounds to enter the Bar which would have a disproportionate impact on representation from women and BAME groups. This in turn would impact on judicial diversity.

410. A major concern amongst barristers was the lack of certainty around fee income that this proposal would introduce. Some respondents argued that there were fundamental differences between the two sectors that justified the retention of a different fee structure, including the higher personal overheads faced by barristers and the fact that they tended to focus on particular specialised fields of law.
411. Respondents generally argued that the type of cases remaining within the scope of civil legal aid following the implementation of LASPO were typically complex matters that required specialist representation and were not usually undertaken by solicitor advocates. They argued that the proposed fee reduction would therefore impact on the market supply of advocates in these areas.
412. Barrister respondents also argued that any harmonisation should be to the Treasury Solicitor's Department (TSol) panel rates as opposed to the current legal aid rates for other advocates, on the basis that this group tended to appear in similar cases. Other suggestions included harmonising self-employed barrister and other advocate fees at a set fee, for example £100 per hour with a limited range of enhancements, on the basis that this would reduce the administrative burden and make the scheme more feasible.

Government response

413. The Government made clear in its 2010 consultation on legal aid reform that our long term intention was to pay advocates working on civil (non-family) cases similar rates for advocacy and related tasks, regardless of whether they were solicitors or barristers⁶⁶. The Government considers that paying higher rates may be justifiable where work differs significantly, but does not believe there is any justification for using public money to pay one particular group routinely higher rates where the basic work being undertaken is similar in nature to that undertaken by others at lower rates, simply because they belong to different branches of the legal profession.
414. As set out in the response to its 2010 consultation, the Government takes the view that the amount that it pays for any service must represent maximum value for money and must ensure that it pays only those fees that are absolutely necessary to secure the level of services that are required.⁶⁷ In this context, the Government does not accept that any variation in fees as between the claimant and defence undermines the principle of equality of arms, rather it is satisfied that the market should determine what rates are necessary to secure effective representation. We take the firm view that increasing the standard fees currently payable to other advocates, generally, is unlikely to deliver value for money and would necessarily fail to deliver the necessary level of savings.

⁶⁶ Paragraph 7.10 of the Reform of Legal Aid in England and Wales – Consultation Paper.

⁶⁷ Paragraph 6.13 of the general specification of the Standard Civil Legal Aid Contract 2013.

415. Although the Government recognises that remunerating all civil advocates on a common basis as proposed in the consultation would result in some uncertainty for civil barristers as to the total remuneration that they would receive on a particular case. This was, to some extent the situation preceding the codification of civil (non-family) barrister rates in October 2011. Prior to that time, while the then LSC did pay barristers with reference to benchmark rates it was possible (and still is in some limited areas⁶⁸) for total remuneration to vary, especially where a case was assessed by the court.
416. While the Government understands the concern that can accompany any change in approach, we do not agree that the current scheme, which provides up to £135 per hour for advocacy services provided by a newly qualified junior barrister⁶⁹ appearing in a simple case but only £59.40 in respect of similar services provided by any other advocate in the same type of case, represents value for money. Instead it takes the view that the proposed scheme, which explicitly provides for the complexity of the case and the role/performance of the advocate to be taken into account through the availability of enhancements, to be a more effective way of ensuring appropriate remuneration for self-employed civil barristers while also delivering value for money to the taxpayer.
417. While the proposed change would result in lower guaranteed rates applying, if as has been suggested by the Bar Council and others, self-employed civil barristers focus on complex cases in specialised areas of law where they add real value to the resolution of the case, there is no reason that they should not be confident about routinely satisfying the criteria for substantive enhancements to be paid in those cases in which they appear. For example, depending on the complexity of the case, the manner in which the barrister conducted the case and their particular role in that case, the rate paid for advocacy services provided by a self-employed barrister under the harmonised scheme could be increased from:
- a minimum of £59.40 per hour to up to £89.10 per hour for a county court case; and,
 - a minimum of £67.50 per hour to up to £135.00 per hour for a High Court case.
418. Indeed, taking into account that the hourly rate payable to an advocate for preparation work in the High Court or Upper Tribunal is around 6% higher⁷⁰ than the fee for advocacy, the availability of enhancements would mean that some barristers could receive more under this proposal than under either the TSol panel rates or, in some cases, the current civil legal aid fee scheme.
419. The proposed reform would therefore ensure that self-employed barristers were appropriately remunerated through the availability of enhancements which would explicitly permit case complexity and the skills brought by the barrister to that case to be recognised on top of the guaranteed minimum standard fee, which will be paid to provide a certainty of income. These enhancements would allow, for example, a self-employed barrister undertaking preparatory work to be paid up to £94.50 per hour for a complex county court case in London and up to £143.10 per hour (which would be higher than current specified rates) for a complex High Court case. It would be the case

⁶⁸ See Regulation 7(3) of the Civil Legal Aid (Remuneration) Regulations 2013.

⁶⁹ The rate currently payable for any junior appearing in any civil cases in the county court in London.

⁷⁰ The standard rate for preparation in the High Court and Upper tribunal is £71.55 compared to £67.50 for advocacy. See Table 10(a) of Part 3 of Schedule 1 of the Civil Legal Aid (remuneration) regulations 2013.

that if, as suggested by the Association of Prison Lawyers, newly qualified juniors appear, at least initially, in simpler cases in order to develop their skills, they would be unlikely to satisfy the criteria for a maximum enhancement. However, under these proposals, all self-employed junior barristers would still be paid a minimum for £59.40 per hour for advocacy services in the county court, representing an annualised salary of around £95,000 per annum assuming that they worked full-time at that minimum rate only.

420. Our revised analysis of the equality impacts of the reforms is addressed in Annex F. The Government takes the view that the specific level of representation within given practice areas at the Bar is primarily the responsibility of the Bar in ensuring equality of opportunity to all areas of practice. Although it is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity generally, the Government does not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve judicial diversity.
421. Taking into account all of the available data, on balance the Government considers that the proposed reform is likely to be sustainable. It considers that an appropriate balance has been drawn between the need to reduce spending whilst ensuring that clients can continue to access legally aided services. The Government acknowledges that as with any change there is a risk of some short term disruption, for example, as barristers adjust to the new approach or some opt to leave the market and providers need to seek alternative sources of advocacy services. However, it is anticipated that the overall number of advocates willing to undertake legal aid work is likely to be sufficient to meet the reduced demands of the market following the implementation of the LASPO scope reforms.

Conclusion

422. For the reasons set out above, the Government has decided to proceed with the proposal as set out in the consultation paper to harmonise the fees payable to barristers in civil non-family proceedings with those of other advocates.
423. The effect of this will be that noters, pupils and second junior counsel will also become subject to the rates paid to other advocates and would receive the rates payable for *Attendance at court and conference with Counsel*. As is now the case for other advocates, while eligible, these rates are unlikely to attract enhancements.
424. The Government will also codify the current LAA practice of paying self-employed barristers appearing in civil (non-family) cases equivalent rates for travel as other advocates as set out in the consultation paper. As is now the case for other advocates, while eligible, these rates are unlikely to attract enhancements.
425. The revised rates that will apply are set out at Table 3 of Annex E⁷¹.
426. It is intended that the revised rates will be introduced, subject to Parliamentary approval, by way of secondary legislation later this year.

⁷¹ This includes a correction of an error in Table 16 as originally published on page 93 of the consultation document. The revised maximum rate payable for advocacy in the county court in London is £89.10, not £104.10 as set out there.

Removing the uplift in the rate paid for immigration and asylum Upper Tribunal cases

427. The consultation paper proposed to remove the 35% uplift in the rate for immigration and asylum Upper Tribunal appeal cases. The consultation paper asked:

Question 32: Do you agree with the proposal that the higher civil fee rate, incorporating a 35% uplift payable in immigration and asylum Upper Tribunal appeals, should be abolished? Please give reasons.

Key issues raised

428. The majority of those who commented (in particular civil legal aid practitioners) opposed the Government's proposal. Respondents were particularly concerned that the proposal would represent a fee cut and argued that the uplift should remain. However, a number of respondents welcomed the proposal and agreed that it was reasonable to seek to reduce spend in this area when financial circumstances are challenging.
429. Respondents generally acknowledged that the uplift was introduced under an old scheme of retrospective funding which no longer applies. However those who opposed the proposal argued that the uplifted rate remains justified, on the grounds that the rates have not risen for over 10 years, even though the work has become more complex and expenses have increased. They argued that the uplift had been factored in (by providers and the LAA) every time rates were not increased. They argued that the proposed removal of the uplift represents a fee cut which (following the changes introduced by LASPO) will drive providers from the market, leading to cases not been taken forward.
430. Respondents further argued that the uplift should remain as, without the uplift, these cases will be paid at a lower level than the proposed standard advocates' fee for other Upper Tribunal cases and where there is an enhancement of the fee and for the High Court.
431. Some respondents also argued that the proposal would make it unworkable for specialist advocates to focus on immigration work and would violate the principle of equality of arms.
432. A number of respondents did agree with the proposal, for example, questioning how in a time of financial challenge any sort of uplift could even be considered.

Government response

433. The Government's view remains that there is no justification for the continuing payment of the higher rate. Under the previous scheme (abolished in 2010) a Tribunal judge awarded a cost order retrospectively at the end of a reconsideration (full) hearing based on their assessment as to whether a case had significant prospects of success at the time the review application was made. If a permission application did not succeed and a reconsideration hearing was not ordered, the application was not funded and the supplier received no payment. If a reconsideration hearing was ordered, the costs of the permission application and the reconsideration hearing itself were dependent on the judge determining at the end of the case that a costs order should be made. A risk premium of 35% was therefore added to mitigate the risk of providers taking forward review and reconsideration work.

434. However, under current arrangements, the costs order element and judicial assessment as to the award of costs have been abolished. Only work on the application for permission to appeal to the Upper Tribunal is at risk. Although payment may only be made at the end of a case, payment is now guaranteed⁷² once a case has been granted permission. We therefore consider this reduction in risk removes the justification for a compensatory uplift. Although the uplift has remained in place since 2010, its continuing availability was not intended to compensate providers for a lack of fee increase.
435. The Government considers that a difference in fee levels between the fee paid for immigration and asylum Upper Tribunal appeals and the fee paid for other civil cases heard in the Upper Tribunal is justified. Immigration and asylum cases in the Upper Tribunal are funded as Controlled Work; other civil cases in the Upper Tribunal are funded as Licensed Work. We do not accept that a difference in rates as between claimants and defendants alone undermines equality of arms. We are confident that legal aid recipients will continue to receive effective representation under the revised rates for the reasons set out below.
436. Whilst the Government recognises fees have not increased in several years, we consider that the market is sufficiently able to continue to provide a high quality service to enable individuals to be adequately represented with the removal of the uplift. The 2013 civil legal aid tender that introduced the LASPO scope reforms demonstrated that for immigration and asylum there was a significant increase in the number of firms bidding for contracts and over three times as many bids for Matter Starts than cases available.
437. Although the general thrust of responses to the consultation suggested that the proposed reduction would not be sustainable, similar arguments have been made in respect of each proposed reform to civil legal aid remuneration since the introduction of Phase I of the fixed fee scheme in 2007. Despite this there have remained significant numbers of providers working in the civil area and the only firm indication of market reaction - the outcome of the 2013 civil legal aid tender process for contracts reflecting the LASPO scope reforms – suggests that this remains the case. While the outcome of the 2013 tender indicated a very small reduction in the actual number of contracted firms, there was around a 20% increase in the number of offices bidding for contracts in 2013 compared to 2010, and the total number of offices bidding for contracts in 2013 was almost twice as high as the number of existing contract holders at that point. Given that this market reaction was in the light of the significant reductions in publicly funded asylum and immigration work under LASPO, this could arguably indicate that there currently remains a strong appetite amongst providers to do legal aid work and that overall the market should be able to meet the future levels of expected demand at current prices. This does not tell us whether there will be a sufficient number of providers in the market in the long-term, the actual current viability of any contracted firm or how this might be impacted by the fee changes. However, it does suggest that there is currently competition for work and therefore scope for at least some providers to withdraw from the market while still maintaining a sustainable market supply.
438. Taking into account all the information available, together with the current financial climate, and the purpose of the uplift no longer being applicable, the Government considers that the proposed removal of the uplift is justified and appropriate.

⁷² Subject to usual contractual assessment rules.

Conclusion

439. Having considered, and given due regard to the responses to the consultation, the Government has decided to proceed with the proposal to remove the current 35% uplift in the rate payable for immigration and asylum Upper tribunal cases.
440. The revised rates that will apply are at Table 4 of Annex E.
441. It is intended that the revised rates will be introduced, subject to Parliamentary approval, by way of secondary legislation, later this year.

Remuneration to experts in civil, family and criminal proceedings

442. The consultation paper sought views on a proposed 20% reduction in fees payable to experts in civil, family and criminal proceedings.
443. The consultation asked:

Question 33: Do you agree with the proposal that fees paid to experts should be reduced by 20%? Please give reasons

Key issues raised

444. There was general opposition to the proposed reduction in fees paid to experts from all sectors, including the Law Society and the Bar Council, as well as expert groups, such as the Academy of Experts. While concerns focussed on the difficulties that the proposal would introduce in procuring experts, with respondents generally arguing that this would significantly reduce both the supply and quality of expert services, some respondents, especially experts, also commented on operational issues. These included problems with payment and in securing prior authority to pay higher rates or permission for an expert to spend a high number of hours in particular cases. In addition, some respondents, including the Academy of Experts, reported difficulties with late and/or unclear instructions from providers which sometimes resulted in experts being unable to take on a case and therefore impacted on market supply.
445. A number of respondents suggested that it was already difficult to find suitably qualified experts willing to work at current legal aid rates and that further reductions would increase this difficulty, as the most experienced experts would leave the market, impacting on quality which would have implications for vulnerable groups such as disabled clients, families and children who were dependent on legal aid. Particular concerns, including amongst the judiciary, were raised in relation to experts involved in specialised clinical negligence cases, for example those involving brain damaged babies, where it was argued the work was so specialised that there was a very limited supply of experts with the necessary expertise. Many respondents also noted that the Government had only recently reduced expert fees across the board in October 2011.
446. Some respondents, including members of the judiciary, argued that rates paid by the CPS were not an appropriate comparator, as the questions/issues that required analysis in CPS cases generally tended to be more focussed, for example, on a single individual where expert evidence was required to determine the issue of fitness to plea. By comparison, experts in other areas, such as those in public family law cases, were generally required to carry out a more complex assessment. Alongside this, a number of respondents, including the Bar Council and the JEB, noted that some of the criminal

legal aid rates, in particular those for many London based experts in crime, were already lower than those elsewhere and therefore already within the range of standard CPS rates. They were particularly concerned that the implementation of the proposed 20% reduction in these areas could result in lower rates being payable under legal aid than by the CPS which could impact on the number and/or the quality of experts available to parties funded under legal aid.

447. Some respondents also argued that the Government had not taken proper account of the cumulative impact of the proposed fee reductions and the proposed introduction of new quality standards for experts appearing in the family courts later this year, which could be expected to have an impact on market supply. They generally also took the view that the Government should await the savings resulting from the FJR as a result of the reduction in the use of experts in family proceedings and through the current standards being developed to ensure the level of expertise expected of experts before seeking to reduce fees further.
448. A number of suggestions were made about alternative ways of addressing expert fees. These included revising them in line with professional consensus on issues such as benchmarking and clearer definitions of the rates payable to experts against their professional titles/qualifications.

Government response

449. The amount that we pay out for any service must represent maximum value for money. In this context while the Government notes the views from stakeholders about fee levels taking more account of professional titles/qualifications, it considers that it needs to ensure it pays only those fees that are absolutely necessary to secure the level of services that are required. While the Government notes stakeholders' views about the delivery of the FJR reforms, we consider that given continuing fiscal pressures, it is essential that we take steps now to ensure that the fees paid for experts represent value for money, reflecting more closely the rates paid elsewhere for such services.
450. The majority of legal aid funded expert services are used in public law family proceedings. The Government acknowledges that there were operational difficulties in this area following the initial codification of expert rates in October 2011, particularly as providers and experts adjusted to the new fee scheme and there was a significant increase in the number of applications for prior authority. However, the Government is satisfied that appropriate mechanisms are now in place to deal with such matters. Current LAA data confirms that very few requests for prior authority to pay higher rates are now being received. This suggests that the market has now adjusted and there are a sufficient number of most expert types willing to provide services at existing rates. Alongside this, following discussions with Representative Bodies of contracted legal aid providers, the LAA introduced guidance on the number of hours routinely claimed by the most frequently used expert types in public family law proceedings, providing greater clarity for both providers and experts about when prior authority was necessary to exceed those hours, significantly reducing the numbers of applications being received.
451. While the length of time employed by a particular expert may differ depending on the type of case they are involved in, the Government considers that the expertise representative of their profession should not. It is reasonable therefore for similar hourly rates to be paid where the type of expert service required is the same, for example, a psychologist, reflecting the professionalism/expertise brought to the case.

The correct way to remunerate variation in the amount of work required in different cases is through allowing more hours to be claimed. In the case of, for example, a family expert who is required to consider significant amounts of evidence and interview multiple family members, the total amount of remuneration is likely to be higher than that paid to a similar expert in a criminal case who may only be carrying out an assessment of whether an individual is fit to plead, reflecting the amount of work involved. As set out in the consultation paper, it will remain possible to secure higher rates where absolutely necessary and the Government therefore takes the view that there is no justification for standard legal aid rates to be higher than those paid for similar services elsewhere.

452. The Government notes the reported difficulties with late and/or unclear instructions from providers and that this could impact on effective market supply. It is unclear why such difficulties should exist. However, this is an issue for experts and their instructing solicitor and the Law Society has recently developed new forms and procedures for providers to use when commissioning experts services. We intend to work with the sector to explore how best use can be made of this to support the effective commissioning of experts.
453. Following engagement with contracted legal aid providers who had expressed evidenced concerns about market supply, the Government had previously identified two specific areas, housing disrepair cases and clinical negligence (cerebral palsy) cases where it was necessary to authorise higher rates to ensure the availability of experts in these highly specialised areas. The higher rates were codified for surveyors in housing disrepair cases in April 2013 and new guidance was issued to LAA caseworkers in May 2013, authorising them to routinely pay specific higher rates to Neurologists, Neuroradiologists and Neonatologists working on clinical negligence (cerebral palsy) cases. Given the specialised nature of housing disrepair and clinical negligence (cerebral palsy) cases, the key role that these types of experts play and the very limited supply of these experts that has been evidenced by providers, the Government has decided to maintain the higher rates for these specific experts where they appear in these types of case.
454. Separately, the Government acknowledges that the current legal aid rate for interpreters in London is already below CPS rates and that the proposed 20% reduction to interpreter rates outside of London would take them below current CPS rates. We are not aware of any market supply issues with interpreters at the current legal aid rates but we accept that reducing the rates in and outside of London significantly below current CPS rates could give rise to market supply issues. The Government has therefore decided to retain the current legal aid rates for interpreters in London and limit the proposed reduction in interpreter rates outside of London to 12.5% to ensure that they remain within the range of current CPS pay rates.
455. The lack of a single representative body for experts means it is not possible to develop an accurate picture of either the total number of experts or the number of experts of a particular type working in legally aided cases. However, there are a number of websites that list numbers and locations of some of the most frequently used types. While the information contained on these sites varies, generally speaking, they do indicate that there are a significant number of experts willing to work at current legal aid rates, in particular in those areas where demand is currently highest, such as psychologists and psychiatrists in public family law care proceedings. The effect of the proposed new minimum standards for experts appearing in the family courts on this supply is unclear. On the one hand it could reduce the supply of experts available. However, on the other,

it would ensure that all experts appearing in those courts met necessary standards and so could assist to address existing perceived quality issues and mitigate concerns about the quality of expert reports in the future.

456. Given the lack of data, the market reaction by this disparate sector to the proposed fee reduction remains unclear. However, the Government takes the view that while it is possible that some experts may withdraw, the affect that this will have on overall market supply needs to be balanced against the:
- impact of the LASPO scope reforms, which will reduce the demand of experts (the full effect of which are yet to materialise);
 - FJR reforms, in particular the:
 - reforms to the use of experts, which are expected to significantly reduce the numbers commissioned (commenced in January 2013); and
 - proposed new minimum standards for experts in the family courts, which will ensure that only suitably qualified experts provide evidence, and are expected to come into effect later in 2013;
 - generally lower standard rates payable for experts elsewhere; and
 - the flexibility the LAA have to pay higher rates where these are appropriate and necessary.
457. Overall, this suggests that there is a potential for experts to withdraw from the market while still maintaining a sustainable market supply.
458. Taking into account all of the available data, on balance the Government considers that the proposed reform, as adjusted above, is likely to be sustainable. It considers that the rates proposed draw an appropriate balance between the need to reduce spending and ensuring that clients can continue to access legally aided services. Given the need for Government to continue to address the fiscal deficit and with the reduction in demand as a result of the FJR (through the use of fewer experts in family proceedings) and the introduction of new standards for experts in the family courts, it is not anticipated that the number of experts willing to undertake legal aid work is likely to decline sufficiently to render the market unsustainable.

Conclusion

459. For the reasons set out above, the Government has decided to proceed with the proposal to reduce the fees payable to experts in all civil, family and criminal proceedings by 20% as proposed in the consultation paper with the exception of:
- Neurologists, Neuroradiologists and Neonatologists in clinical negligence (cerebral palsy) cases where the higher rates recently set out in guidance to the LAA will be codified;
 - Surveyors in housing disrepair cases where the rates codified in the Civil Legal Aid (Remuneration) Regulations 2013 will be retained; and
 - Interpreters, where the:
 1. current rates payable to interpreters inside London will be retained; and
 2. rates payable to interpreters outside London will be reduced by 12.5%.

460. The revised standard rates payable to all experts under the civil and criminal legal aid schemes are set out at Tables 5 and 6 of Annex E.
461. It is intended that the revised rates will be introduced, subject to Parliamentary approval, by way of secondary legislation, later this year.

Impact Assessments and Equality Statements

Introduction

462. Chapter 8 of the consultation document sought views on whether the Government had correctly identified the impact of the proposals, in particular on groups with protected characteristics. We asked:

Question 34: Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.

Question 35: Do you agree that we have correctly identified the extent of the impacts under these proposals? Please give reasons.

Question 36: Are there forms of mitigation in relation to impacts that we have not considered?

463. A number of respondent highlighted data or information which could be used to support the impact assessment (IA) of the proposals and build on the analysis set out in the initial Impact Assessments and statement of Equalities Impact. We have considered this information and, where relevant and reliable, have taken it into account in the analysis in the relevant sections of the IAs and/or Equality Statement that accompanies this document.

Key issues raised

464. Comments on the IAs and statement of equalities impacts from respondents were largely negative.
465. Most respondents criticised the quality of the data used to determine the impact of the proposals. They criticised the Impact Assessments and equalities analysis, suggesting it had not identified the full range or extent of the equality impacts across all protected characteristics, particularly the potential for the proposals to affect children, women, Black and Minority Ethnic (BAME) and disabled people.
466. Many respondents argued the Government had not exhaustively met its obligations under the Public Sector Equality Duty (PSED) and had failed to consider the positive arms of the duty. This was thought to be particularly relevant to the proposal for price competitive tendering and the changes to remuneration of providers, with a significant proportion stating the proposals would not promote equality of opportunity or foster good relations.

467. Other key issues raised included that:

- the Impact Assessments did not sufficiently assess the sustainability of the proposals, nor did it quantify their knock-on, downstream impacts
- some data was out of date and insufficient attempt had been made to source and use non-legal aid data and research, leading to incomplete analysis of likely impacts;
- the proposals did not propose measures to enhance collection of and/or improve the quality of equalities data;
- those most likely to be affected by the proposals are vulnerable people such as children, disabled prisoners, refugees, the homeless, and victims of domestic violence, forced marriage, and human trafficking; and,
- the proposals may undermine efforts to broaden the diversity of the legal professions and, as a result, the judiciary.

468. Respondents also raised specific equalities issues and these are set out in more detail in the relevant chapters of this document and in the Equality Statement at Annex F which accompanies this response to consultation.

Government Response

469. The initial Impact Assessments and statement of equalities impact, which were published with the consultation Transforming Legal Aid: delivering a more credible and efficient system, set out our assessment of the potential impact of the reforms.

470. Following consultation we have decided to consult further on a modified model of procurement for criminal legal aid, two alternative graduated fees proposals for criminal advocacy fees and amended proposals for payment for permission work in judicial review cases. We have decided to press ahead, without modification, with the reforms relating to borderline cases, crown court eligibility, immigration and asylum uplift, reducing the public family law representation fee, and harmonising fees paid to self-employed barristers with other advocates. However, we have made modifications to our proposals relating to prison law, a residence test and expert fees with the aim of lessening the potential for negative equalities impacts and to ensure that their implementation is fully consistent with our wider objectives

471. We have therefore updated our Impact Assessments and statement of equalities impacts, reflecting these changes and incorporating feedback on the proposals and impact assessments from respondents to the consultation.

472. While we remain of the view that the initial Impact Assessments and equalities analysis appropriately identified the range and extent of the potential impacts of the consultation proposals, we have attempted where possible, to address the key criticisms of the IAs and equality analysis made by respondents to the consultation. For the proposals we are proceeding with as proposed or with some minor modifications, the final impact assessment documents and equality statement published alongside this Government response set out an assessment of the range and extent of the impacts that the proposals will have, based on the full range of evidence available. For the proposals on which we are further consulting, we set out our initial assessment of the equality impacts of the modified proposals in Annex F, building upon our previous analysis and the responses to consultation.

473. The Impact Assessments received for the limited assessment of sustainability on the proposed policies. It is extremely difficult to provide a definitive answer on sustainability for a reform package such as this. On the civil side, the most substantial piece of information was from the recent tender which was heavily over-subscribed. Although it does not give a definitive answer on future sustainability, it does show there is currently an over-supply of firms willing to provide civil Legal Aid services. Similarly on the criminal side, there is anecdotal evidence that there are too many firms, with too little work. The Impact Assessments were also criticised for the lack of detailed consideration about down-stream impacts of the policies; the specific issues raised were litigants in person and appeals. The Impact Assessments flagged these as risk areas, but behavioural responses such as these are very difficult to forecast and quantify. Investigating these impacts in more detail is unlikely to be enlightening given the uncertainty. These impacts were associated most with the credibility proposals, which in general tended to affect smaller numbers of individuals. Where respondents submitted additional information, we have considered it and taken it into account in assessing the range and extend of impacts where reliable and relevant. The Impact Assessments published alongside this document set out a comprehensive assessment of the impacts the proposals will have, based on the full range of evidence available.
474. We received a number of representations regarding the impact on Wales and Welsh language speakers of the proposed model of competitive tendering of criminal legal aid services. With regard to the provision of services in Wales, currently no change has been proposed regarding providers' obligation under the current 2010 Standard Crime Contract. Where a provider delivers contract work within Wales, it should ensure it is accessible to, and understandable by, clients whose language of choice is Welsh, in accordance with the Welsh Language Act 1993 (as amended) and Welsh Language (Wales) Measure 2011. We therefore consider that there will be no detrimental affect on services provided to the people in Wales. The impacts of the modified model on Wales and Welsh language speakers are addressed in Annex F.
475. Respondents to the consultation suggested a range of possible impacts on individuals based on their personal circumstances, in particular those deemed to be vulnerable. While our analysis of equalities impacts is focussed on the protected characteristics set out in the Equality Act 2010, we have, throughout, considered carefully the impact of our proposals on vulnerable groups, with particular regard to the best interests of children, as addressed in the relevant chapters, the IAs and the equality statement.
476. As indicated above, in finalising our analysis of the proposals with which we are proceeding and assessing the impact of the revised proposals on which we are seeking further views, we have taken account of respondents' additional information on the potential impacts of the original proposals. Where additional data or sources were suggested by respondents we have considered them and taken account of those which are reliable and relevant. However, overall, we remain of the view that our analysis based on LSC/LAA data is the most appropriate and robust way to assess the impact of the proposals on clients and providers.

477. We have used the available data and evidence sources we consider to be most relevant and reliable. In the absence of data on particular protected characteristics, we have assessed the impacts on the basis of what may be reasonably anticipated. For example, data on protected characteristics such as religion and belief is not routinely collected in respect of legal aid. In these instances we have done the best we can to consider possible impacts. Our approach throughout has always been to exercise caution, and take account of how robust the evidence is when drawing conclusions about the impacts the proposals are likely to have.
478. Consideration of how the reforms have been amended in light of feedback and how the impacts of the reforms for implementation are justified by the need to achieve the Government's objectives is set out in the relevant sections of the Government response and the accompanying combined Equality Statement at Annex F. As set out above, for the proposals on which we are consulting further, the likely impact of the revised proposals is addressed in the relevant sections of the document and in the Equality Statement at Annex F. Chapter 5 asks three impact and equality based questions in relation to these proposals on which we seek views.

Annex C: Alternative Proposals

Introduction

1. Many of the responses, and in particular those from the Bar Council, the Law Society and the CLSA, suggested alternative ways of making savings in legal aid expenditure, which it was said would reduce or remove any financial imperative to make the changes proposed in the consultation paper. We are keen to tap into the expertise of the legal profession in exploring ways to make the criminal justice system, including the legal aid systems, more efficient. To support this work we are establishing a panel of experienced defence lawyers to examine ideas in detail.
2. There are a number of common themes that can be identified from the alternative proposals put forward by respondents.

A Proposals which increased Criminal Justice system efficiencies

3. A number of proposals sought to reduce spending on legal aid by suggesting reform to court processes.

Restricting the admissibility of expert evidence

4. There were suggestions that the Law Commission's proposals for restricting admissibility of expert evidence (estimated by the Law Commission as likely to save around £3 million per annum) should be implemented.

Changing hearings

5. There were proposals which suggested abolishing or changing the medium used for various hearings. Many of these suggestions related to 'mentions'. A mention hearing can be ordered by the court, or requested by either party in the case, for any reason – perhaps where something has occurred that could prevent the case progressing to trial. The proposals for reform included: abolishing automatic preliminary hearings; conducting plea and case management hearings (PCMH) by telephone where possible; requiring the production of CCTV evidence before PCMH hearings and abolishing mention hearings which currently take place for the sole purpose of fixing a new trial date after a case has come through a warned list without having been called on, and refine the listing of other mention hearings.

Abolition of virtual courts

6. It was suggested that Virtual Courts should be abolished to save costs. The reasoning given for this suggestion was that the technology breaks down a lot, there are frequent staffing problems which prevent its use delaying justice and keeping courts, lawyers and more importantly people in custody waiting. It was also claimed that 'recent data' from the Virtual Court areas indicated that unrepresented defendants facing offences carrying imprisonment were more likely to be sent to prison than represented defendants.

Digitalisation

7. There were a variety of savings related to digitisation proposed in the response to consultation. It was suggested that firms should be required to accept service of papers via secure Criminal Justice Secure Mail (CJSM). Digitisation could be much more widely used because many firms are already using digital systems but this is being hampered because the CPS, LAA and the courts are not yet geared up to operate digitally. Courts still require paper copies; there is a lack of secure WiFi in the courts and no facility to access CJSM at court or to share files before a case. Conversely, it was suggested that firms who do not already have the technology would be unwilling to make the investment on a three year contract to deliver criminal legal aid services where it is unlikely to show a return for the scale of investment that is required.

Page counts

8. It has been suggested that there should be a return to the system whereby page counts were agreed by the court clerk rather than the Crown deciding what is served.

Courts

9. It was suggested that the courts could operate more efficiently and cost effectively if the appearance requirements in uncontested extensions to custody time limits (CTLs) or bail variation applications were ended; if there were more efficient listing of cases; and if there were fewer instances of non-production of defendants.

Prisons

10. It was suggested that more effective non-custodial sentences are used to prevent re-offending and that prison inefficiencies as regards allowing solicitors access to their clients were addressed. For example, video conferencing could be made more efficient by having a fax machine at each end to enable transfer of documents. Greater usage of video conferencing would lead to savings in time and money. Lawyers should be allowed all day access to clients and prisoners should be able to take phone calls from their lawyers as required.

Returning the Magistrates' Courts to the Magistrates' Courts Association

11. It was suggested that magistrates' courts should be returned to the control of local organisations rather than operate as part of HMCTS.

Government response

12. The Government is committed to transforming criminal justice into a modern public service that provides a swift, determined response to crime, treats victims and witnesses with the care and consideration they deserve, and provides much better value for money to the taxpayer.
13. In June 2013 the Government published *Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System*. It sets out a comprehensive programme of work that will drive system wide improvement in the delivery of justice. Following input from the defence community into the development of this document a number of the actions address points that were raised through this consultation, however the Government is clear that the potential savings to be achieved through these proposals is minimal and does not remove the financial imperative to deliver the changes proposed in the consultation. The Government will continue to listen to the views of practitioners

through the new panel of experienced defence lawyers we intend to establish in order to explore ways to help drive efficiency.

14. The Government considers all reform to legal processes on their merits, bearing in mind that changes to processes may have unintended consequences. The figure quoted by the Law Commission is the “net saving” which they estimate would result from full implementation of their proposed “reliability test” for expert evidence. Application of the new test would involve additional pre-trial hearings, with the concomitant additional costs, but without sufficient reliably predictable savings to compensate for those costs. Without certainty as to the offsetting savings which might be achieved, when set against current resource constraints it is not feasible to implement the proposals in full at this time.
15. As set out in the *Strategy and Action Plan* we will continue to work with the judiciary, wider CJS partners and through the Criminal Procedure Rules Committee to consider how to ensure the efficient use of court time. To reduce the number of mentions is unlikely to produce more than minimal savings. We only pay about £3-4m per annum for mentions at present. Admittedly, some work can certainly be undertaken without a hearing; others – including those preliminary hearings where a guilty plea is expected or the defendant is required to answer bail because he has failed to co-operate with his solicitor – require the physical presence of the parties.
16. Graduated fees already include the first five ‘mentions’ (including preliminary hearings and PCMH), so any reduction in the number of mentions may not make any difference to the fee if it were a reduction from e.g. five to three mentions. To make savings would require fees to be cut to compensate for there being fewer hearings.
17. In relation to the proposal regarding the courts, the courts operate within fixed costs (e.g. staff, judges and estate costs). Savings would only be made if there were a sufficient change in workload as a result of changing working practises to reduce those fixed costs (i.e. close a court or reduce staff). For example, in relation to non production of defendants there would be no efficiency savings to courts because the staff and estate will still be used. However NOMS continue to work on this issue to support the efficient running of the courts.
18. It is argued that the production of CCTV evidence prior to PCMH would encourage earlier guilty pleas if a defendant sees the CCTV evidence. There are a number of considerations, including around the operational difficulty of enabling CCTV evidence to be made available prior to PCMH, but the early production of CCTV remains a priority.
19. A change to the way in which page counts are carried out is unlikely to produce anything other than minor administrative savings. The alternative model along the lines of the CPS graduated fees scheme, on which we are seeking views, would obviate the need for a precise page count in most cases if implemented.
20. Savings in terms of court efficiency would in some instances mean a reduction in ineffective trial fees, though many trials will be ineffective for reasons other than the non-production of defendants. Only a proportion of defendants are remanded in custody awaiting trial, whereas most are remanded on bail, so any savings would be small and depend on improvements being made.

21. The potential savings from the introduction of more non custodial sentences are unclear and crime volumes are currently decreasing in any event (a reduction of 9% year on year from 2012 to 2013⁷³).
22. Increased access by lawyers to prisoners would lead to increased costs to NOMS to provide the staff to supervise longer access. It is not always simple or straightforward to facilitate a prisoner taking a phone call from a lawyer. There are operational reasons why all day access to lawyers by prisoners without breaks are not workable, but we recognise the need to ensure prompt and effective communication between those in custody and their lawyers.
23. A digital CJS is central to the change the Government has committed to delivering which will incorporate much greater use of video as well as presenting evidence digitally and putting Wi-Fi in courts so that everyone in the building can work efficiently.
24. More broadly the Government has committed to a range of ways in which it will support a more efficient and effective CJS that should deliver benefits to the defence as well as wider criminal justice partners: reducing the length of long trials; making first hearings as effective as possible; applying all Criminal Procedure Rules robustly; and supporting judicial efforts to improve disclosure and case management. We will be actively working with defence lawyers, including the panel we intend to establish, to take these ideas forward and further develop the criminal justice ideas received through this consultation.
25. The Government takes the view that it would be unlikely to separate the magistrates' courts from the rest of HMCTS by returning control to Magistrates' Courts Committees because separate organisations would cost more to run and this would not allow greater efficiency across the whole courts and tribunals estate.

B Proposals which suggested changes to Legal Aid Agency administration and contracting

26. Some respondents proposed that reforms could be made to Legal Aid Agency administration and contracting.

Reform of duty slots

27. It has been suggested that the system of duty solicitor slot allocation should be reformed and simplified. The current system has been described as being inefficient and said to produce perverse outcomes. It is also suggested to be unfair in that a firm's total share of slots is dependent on the number of duty solicitors they employ. The greater the number of duty solicitors, the higher the number of slots. It has been suggested that some firms employ 'ghost solicitors' – i.e. they have solicitors on their books who do not actually engage in defence work purely to increase a firm's slots and market share.
28. A fairer system of allocation of duty is proposed on the basis of allocating slots in proportion to the amount of crime lower work spend received in the preceding 12 months.

⁷³ Crime Statistics, period ending March 2013. Available at <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-march-2013/index.html>

Abolish the Duty Solicitor Call Centre (DSCC) and CD Direct

29. Having the dual call centre model is argued to add both delay and cost as the police first call DSCC, who then decide whether the CD Direct call centre can provide advice or whether advice needs to be delivered face to face by a solicitor. It has been suggested that the current model should be replaced by a less time consuming system. The police would contact the local duty solicitor via a national automated system. The solicitor then decides how the call is dealt with.
30. One respondent suggested that, on his interpretation of the figures in the consultation, that the CDD should be abolished as it had increased the cost of telephone advice and that CDD should be replaced by a flat fee of £20 per case telephone advice. This interpretation involved the conflation of figures which referred to different types of work.

Abolish waiting time for court duty solicitors

31. It was suggested that paying for waiting time for court duty solicitors is abolished on the ground that there is no need for it in most courts and it will enable duty solicitors to get on with other work until or unless called.

Abolish the LAA

32. Several respondents have suggested that the operation of the legal aid system should be undertaken by the Law Society and/or HMCTS. In addition to this it has been proposed that the scheme could be financed by imposing a 1% levy on turnover of fees of all practices.

Transfer recoupment to HMRC

33. It has been suggested that the recoupment of legal aid costs could be transferred from the LAA to HMRC. This could then be administered through tax codes as a claimant's income levels would be automatically available.

Graduated Fee Scheme Plus for VHCCs

34. This scheme was first proposed by the Bar Council in 2009 as an alternative approach to remuneration for advocates wishing to conduct VHCC work, in light of difficulties with the panel scheme then in place (see paragraphs 365-368 for more information).

Government response

35. With regard to the reform of the duty solicitor slot allocation process, the level of savings is unclear. There was no indication of how the proposed reform would be implemented. The LAA and the Law Society are working together to address the concern over 'ghost solicitors'. Additionally, the modified model of competition in Chapter 3, on which we are seeking views, explores a number of factors applicable for delivering Duty Provider Work other than the number of Duty Providers an organisation employs. We considered the suggestion to allocate duty slots based on historic volume and determined that an approach which determines allocation just on this factor is unlikely to be viable.
36. In relation to the DSCC and CD Direct, replacing these systems with new systems would only make small savings and may in fact incur a one-off cost of early termination of existing contracts. The LAA is already looking to explore with representative bodies how best to streamline the existing services delivered under these two contracts, for example, exploring the allocation of cases using IT. The current CD Direct contract remunerates providers at an average of £12 per case. Over the lifetime of the contract, this will save

£680k per year when compared with 2011/12 spend data, resulting in a saving to the Legal Aid Fund of £2.04m for the contract term.

37. Abolishing payments in relation to waiting time for court duty solicitors would only offer small savings. Court duty solicitors are not permitted to see own clients unless they are first released by the court from providing duty solicitor services. The argument that court duty solicitors should be able to do other work while waiting for the next legally aided client rather than just being paid for waiting time is superficially attractive and providers are perfectly entitled to apply to the court to be released in order to do so. However, not all courts are willing to do so and therefore, the Government would be reluctant to abolish separate remuneration for waiting time.
38. On the operation of the legal aid system, the courts already deal with the grant of legal aid under a Service Level Agreement with the LAA. Returning responsibility for payments to the courts is unlikely to generate savings.
39. Many firms do not do legal aid work and it is questionable whether they should pay a levy to fund legal aid (see also paragraph 10.55 below).
40. In relation to recoupment of legal aid costs, the suggested transfer of responsibility for recovery of legal costs to HMRC would cause greater administrative costs working across two organisations rather than one.
41. The response to the Graduated Fee Scheme Plus proposal put forward by the Bar Council can be found at paragraph 364 of Annex B.

C Proposals which shifted the burden of payment

42. A number of proposals suggested variations on the polluter pays theme.

Application of 'polluter pays' principle

43. There were suggestions that where one party causes unnecessary costs then they should bear those costs. In criminal cases it was argued that courts should have the power to make a summary wasted costs order against any party which caused additional costs in the process. Prosecutors, courts, prison delivery services and others were identified as causing these additional costs. There would be tariff basis so that any time a hearing was caused to be ineffective there would be a set fee that the offending party would pay to the other parties involved.

Require convicted defendants to pay court costs/ impose a defence costs surcharge

44. It was suggested that over £110 million of savings could be made by introducing court costs in criminal cases. In 2012, the CPS brought just under 900,000 prosecutions in the magistrates' court with a total conviction rate of 86.5% – over 750,000 successes. It was suggested that, for example, a 70% collection rate on an average cost of just £100 would raise between £40 million and £52.5 million.

Recoup money recovered from charging orders on houses in civil cases

45. It was suggested that there should be greater concentration on the effective recovery of the statutory charge placed upon family homes which had been the subject of litigation in the Family Courts, and an assessment of the sums recovered and their impact on the

legal aid fund. March 2009 figures showed some £199 million to be recoverable under the statutory charge; furthermore the interest on the legal aid statutory charge is 8%, a return to the Government unavailable anywhere else in the market. It was argued that the Government should re-invest the Statutory Charge into the legal aid budget for this is not truly independent revenue for the Government, but the repayment over time of legal expenses incurred by the legal aid fund.

Recoup money from restrained assets

46. It has been suggested that any monies obtained as result of restraining assets under the Proceeds of Crime Act 2002 (POCA) should go straight to the legal aid fund on conviction.

Legal Loans

47. The CLSA suggested that there should be a system of 'Legal loans' akin to the system of student loans. These would be collected through the tax and benefit systems. It is claimed that this should result in an annual saving of around £55.5m.

Top up fees

48. It has been suggested that there could be a system of subsidy whereby fees are paid at a reduced hourly rate across the board but lawyers are allowed to charge a supplement to those who can afford it.

Government response

49. The concept that the polluter pays was raised by respondents to the 2010 Legal Aid Reform consultation⁷⁴. This can be found in Annex L: Alternative Proposals, paragraphs 17 – 20 on page 258 of that document. For the reasons set out there, the Government confirmed it had no plans to extend the polluter pays principle further. Nothing has been raised on the issue of polluter pays in response to the current consultation to alter the conclusion that we reached in June 2011.

50. We have an established system to recover criminal legal aid costs incurred in the Crown Court, which requires convicted defendants to pay back some or all of their criminal legal aid costs where they can afford to do so. We have recently taken steps to strengthen that system, including tougher powers to enforce debts. We are exploring the scope to increase the current level of recovery of criminal legal aid from convicted defendants.

51. In terms of charging orders this issue was raised in the 2010 *Reform of Legal Aid in England and Wales* consultation. Our position has not changed following the response to that consultation, i.e. that there is no strong body of evidence that the charge could be collected significantly more successfully or efficiently.

52. The Government has already acted in response to concerns raised about those with substantial assets receiving free legal aid, the Government having brought forward proposals which were enacted by Parliament in the Crime and Courts Act 2013. That Act contains powers to amend the Proceeds of Crime Act 2002 to recoup legal aid

⁷⁴ Proposals for the Reform of Legal Aid in England and Wales CP12/10. Available at <http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/legal-aid-reform.htm>

contributions from restrained assets in certain circumstances. The detail of how this would be implemented is under consideration.

53. On the suggested loan scheme, the collection and enforcement costs of a legal loan scheme may be considerable. The potential increase in payment to duty solicitors is not quantified.
54. We have several concerns regarding the proposal for top-up fees. If all fees are paid at a reduced rate, but lawyers are only able to charge a subsidy to those who can afford then there could be a shortfall in recoupment. There is no mention of how this gap will be bridged. If everyone could potentially be charged top up fees, that could have a substantial impact on those of limited means. There is no mention of how the fees would be set and at what rate. It is not clear how the amount of top up fee would be determined or by whom. It is noted that we already have a means test in place to determine Crown Court eligibility for legal aid and whether a contribution should be made and we are exploring the scope to increase the current level of recovery of criminal legal aid from convicted defendants.

D Proposals for alternative sources of funding

55. A number of proposals sought to reduce spending on legal aid by securing alternative sources of funding. These included proposals placing a levy on the financial services industry to cover the legal aid costs of fraud cases as much fraud takes place within that sector, returning the responsibility and cost of the prosecution of shoplifting cases to the retail industry, compulsory insurance for company directors for a criminal defence so that any legal costs could be covered rather than drawing on the legal aid fund and the creation of a government funded criminal justice insurance scheme.

Government response

56. Some of these proposals would mean creating a new form of tax and the Government's policy is to consider these on their own merits. Such consideration should not give extra weight simply on the grounds that new taxes could be hypothecated against specific areas of expenditure. The Treasury's consolidated Budgeting Guidance sets out the criteria used to aid decisions whether to hypothecate taxation against expenditure. These are based on the general presumption that tax revenue should not be used to offset specific expenditure. They have been devised in order to support decisions that hypothecated tax revenues are agreed only on the grounds of efficiency. Therefore hypothecation is not normally agreed if it would; increase spending power; erode the ability of the Government to raise tax efficiently and in the sectors of its choosing, and erode its ability to allocate spending according to its priorities.
57. In addition the relevant macroeconomic objective is to cut overall public spending rather than to increase overall levels of taxation and the two are not simply interchangeable. Tax policy is based on a variety of factors, including whether the tax base is broad or narrow, how regressive or progressive the tax might be, taxpayers' ability to pay, and the behavioural and other consequences of applying tax. In this instance the proposal regarding a levy on the financial services industry seems to be based on some notion of causality between fraud and financial services.

58. The Government is therefore not minded to consider recommendations to introduce new taxes to offset the costs of legal aid. Instead legal aid expenditure will continue to be funded primarily through general taxation.
59. We do not see Directors & Officers (D & O) insurance as a viable alternative to legal aid for criminal matters because funding ultimately depends on the outcome and a finding of guilt negates any benefits and there are practical and policy arguments against compulsory insurance such as proportionality and practicality. Because of the ECHR obligation to provide criminal legal aid, D & O Insurance could not be universal. Further, only a small proportion of legal aid fraud cases would be cases involving company directors.
60. Likewise, public policy would be against the creation of general criminal justice insurance and returning the role of prosecutor to the retail industry.

E Proposals which suggested reform of the current payments scheme

61. There were a variety of proposals which suggested that the current methods of funding legal aid work could be reformed. Most of these have been dealt with in the chapters relating to criminal and civil fees and expert fees.

Terrorism cases

62. It has been suggested that terrorism cases should be removed from the general legal aid fund and instead these cases should be financed from the budget designated for tackling terrorism.

Government response

63. There would be no overall saving to Government by reallocating legal aid for cases involving allegations of terrorism as the expenditure would still occur, but would not be drawn from the legal aid budget.

F Packages of reforms

64. Some respondents suggested packages of reforms to produce savings as an alternative to the model of competitive tendering that was set out in the consultation.

Government response

65. Although many of the schemes reflected elements of the consultation proposals, it was clear that they would generally not deliver the level of savings and/or deliver savings to the same timescale as our original proposals
66. This document sets out a revised approach on competitive tendering for criminal legal aid (Chapter 3) and reforms of criminal advocacy fees (Chapter 4) for further consultation.

G Economic crime

67. There were a number of suggestions for making savings in relation to economic crimes. These included:

Deferred Prosecutions

68. It was suggested that deferred prosecution agreements could be used as an alternative to trial. A percentage of the monies obtained by imposing significant financial penalties could be ring fenced to offset against the legal aid budget.

Forensic Accountants

69. It has been suggested that the Institute of Chartered Accountants of England and Wales (ICAEW) scheme, where groups of forensic accounts worked with county police forces on economic crime cases, should be revived. Under this scheme the costs of using forensic accountants were met by police forces. The proposal suggested the scheme should be re-launched but with the cost shared between the courts, CPS and police. This would, it was claimed, greatly improve the quality of evidence that is presented in economic trials.

Government Response

70. A draft Code of Practice on deferred prosecutions was published jointly by the Director of the Serious Fraud Office and Director of Public Prosecutions on 27 June. It would be inappropriate for the government to comment before that consultation response is published.

71. There is nothing to stop police forces continuing the practice of forensic accountants' panels and it appears that some forces such as Greater Manchester have gone beyond sharing a panel of forensic accountants and employ their own forensic accountants directly.

H Other Government legal tender processes

72. Some respondents suggested a link between the Government tendering for providers of legal advice and the level at which legal aid is set. It was argued that if Government legal advice was funded at the same level as legal aid there would be significant savings. It was also proposed that those firms tendering for contracts to advise the Government should pay a percentage of their fees to the Legal Aid Fund.

Government response

73. The type and scale of legal advice provided to Government under tendered contracts is wholly different to the type of work done under the Legal Aid scheme. Accordingly, the suggested proposal is not appropriate.

Annex D: Outcome of the 2013 civil legal aid tender

Table D1. Results of the 2013 civil contract tender for Family, Housing, Debt, Immigration and Asylum and comparison with previous tender exercises

Category	Bids and contracted providers														
	2010					2012					2013				
	No of cases available	Volume of cases bid for	Cases bid to available case	Offices bidding for contracts	Offices with existing contract	No of cases available	Volume of cases bid for	Cases bid to available cases	Offices bidding for contracts	Offices with existing contract	No of cases available	Volume of cases bid for	Cases bid to available cases	Offices bidding for contracts	Offices with existing contract
Family	N/A	N/A	N/A	N/A	N/A	284,280	334,341	1.17	2,444	2,367	95,761	163,852	1.71	2,494	2,296
Housing & Debt (only)*	296,920	538,765	1.81	815	794	N/A	N/A	N/A	N/A	N/A	51,889	146,820	2.83	828	533
Immigration & asylum (only)**	96,496	244,246	2.53	418	249	N/A	N/A	N/A	N/A	N/A	40,831	140,424	3.44	506	225

The 2013 contract tender only covered those categories of law where new contracts were required to implement the LASPO reforms.

All data presented in the above table is based on bids received and does not reflect where providers were assessed as failing or where bids received were reduced in line with capacity caps. While efforts have been made to remove duplicate bids, there may be a small number of cases where these have not been identified.

The volume of cases bid for in Housing & Debt in 2010 reflects any volumes clarified with bidders prior to any capacity assessment.

* In the 2010 tender exercise, housing and debt were tendered alongside welfare benefits. 2010 figures therefore include Welfare Benefits which did not form part of the 2013 tender exercise.

** In the 2010 tender exercise, immigration and asylum advice were tendered for together but immigration advice formed a very minimal part of the 2013 tender exercise given the scope of changes.

Annex E: New Civil, Family and Expert Fees

Table E1: Fixed rates for representation – Section 31 Children Act 1989 Care of Supervision proceedings only⁷⁵

Party	Court	No of Clients	Midlands	North	London & South	Wales
Child	Other	1	£1754	£1438	£2013	£1965
Child	Other	2+	£2630	£2156	£3019	£2947
Child	High Court	1	£2332	£1913	£2677	£2613
Child	High Court	2+	£3498	£2869	£4015	£3919
Joined party	Other		£930	£718	£1081	£1171
Joined party	High Court		£1237	£1442	£1437	£1557
Parent	Other	1	£2300	£1911	£2616	£2370
Parent	Other	2	£2876	£2388	£3270	£2962
Parent	High Court	1	£3059	£2541	£3479	£3152
Parent	High Court	2	£3824	£3177	£4349	£3940

Table E2: Hourly rates for representation – Parts IV and V of the Children Act 1989, including proceedings under section 25 of that Act⁷⁶

Activity	Higher Courts	County Court & Family Proceedings Court
Preparation and attendance (London rate)	£63.06 per hour	£55.24 per hour
Preparation and attendance (non-London rate)	£59.26 per hour	£52.57 per hour
Attendance at court or conference with counsel	£33.42 per hour	£29.40 per hour
Advocacy (London rate)	£63.06 per hour	£57.91 per hour
Advocacy (non-London rate)	£59.26 per hour	£57.91 per hour
Travelling and waiting time	£28.96 per hour	£26.29 per hour

⁷⁵ See table 2(c) of Part 1 to Schedule 1 of the Civil Legal Aid (Remuneration) Regulations 2013 see <http://www.legislation.gov.uk/ukxi/2013/422/contents/made>

⁷⁶ See Table 9(a) of Part 3 to Schedule 1 of the Civil Legal Aid (Remuneration) Regulations 2013 (as footnote 85).

Table E3: Rates payable to advocates in civil (non-family) proceedings

Court	Activity		Standard rates (£ per hour)	Maximum enhanced rates (£ per hour)	
County Court	Preparation	London	63.00	94.50	
		Non-London	59.40	89.10	
	Advocacy	London	59.40	89.10	
		Non-London	59.40	89.10	
	Travel and waiting time			26.28	39.42
	Attendance at court and conference with Counsel			29.25	43.88
Upper Tribunal and High Court	Preparation	London	71.55	143.10	
		Non-London	67.50	135.00	
	Advocacy	London	67.50	135.00	
		Non-London	67.50	135.00	
	Travel and waiting time			29.93	59.86
	Attendance at court and conference with Counsel			33.30	66.60

Table E4: Rates payable in immigration and asylum Upper Tribunal cases

<i>Immigration and Upper Tribunal cases where permission is granted</i>		
	London rate	Non-London rate
Preparation and attendance (per hour)	£55.08	£51.53
Travel and Waiting time (per hour)	£27.27	£26.51
Routine letters out and telephone calls (per item)	£3.96	£3.69
Advocacy (per hour)	£62.64	£62.64

Table E5: Civil (and family) experts fees

Expert	Non-London – Hourly rate unless stated to be a fixed fee	London – Hourly rate unless stated to be a fixed fee
A&E consultant	£100.80	£108
Accident reconstruction	£72	£54.40
Accountant	£64	£64
Accountant (general staff)	£40	£40
Accountant (manager)	£86.40	£86.40
Accountant (partner)	£108	£115.20
Anaesthetist	£108	£108
Architect	£79.20	£72
Cardiologist	£115.20	£115.20
Cell telephone site analysis	£72	£72
Child psychiatrist	£108	£108

Expert	Non-London – Hourly rate unless stated to be a fixed fee	London – Hourly rate unless stated to be a fixed fee
Child psychologist	£100.80	£100.80
Computer expert	£72	£72
Consultant engineer	£72	£54.40
Dentist	£93.60	£93.60
Dermatologist	£86.40	£86.40
Disability consultant	£54.40	£54.40
DNA (testing of sample)	£252 per test	£252 per test
DNA (preparation of report)	£72	£72
Doctor (GP)	£79.20	£72
Employment consultant	£54.40	£54.40
Enquiry agent	£25.60	£18.40
ENT surgeon	£100.80	£100.80
General surgeon	£108	£72
Geneticist	£86.40	£86.40
GP (records report)	£50.40 fixed fee	£72 fixed fee
Gynaecologist	£108	£72
Haematologist	£97.60	£72
Handwriting expert	£72	£72
Interpreter	£28	£25
Lip reader/Signer	£57.60	£32.80
Mediator	£100.80	£100.80
Medical consultant	£108	£72
Medical microbiologist	£108	£108
Meteorologist	£100.80	£144 fixed fee
Midwife	£72	£72
Neonatologist (non-clinical negligence-cerebral palsy case)	£108	£108
Neonatologist (clinical negligence-cerebral palsy) case)	£180	£180
Neurologist (non-clinical negligence-cerebral palsy case)	£122.40	£72
Neurologist (clinical negligence-cerebral palsy case)	£200	£200
Neuropsychiatrist	£126.40	£72
Neuroradiologist (non-clinical negligence-cerebral palsy cases)	£136.80	£136.80

Expert	Non-London – Hourly rate unless stated to be a fixed fee	London – Hourly rate unless stated to be a fixed fee
Neuroradiologist (clinical negligence-cerebral palsy case)	£180	£180
Neurosurgeon	£136.80	£72
Nursing expert	£64.80	£64.80
Obstetrician	£108	£108
Occupational therapist	£54.40	£54.40
Oncologist	£112	£112
Orthopaedic surgeon	£115.20	£115.20
Paediatrician	£108	£72
Pathologist	£122.40	£432 fixed fee
Pharmacologist	£97.60	£97.60
Photographer	£25.60	£18.40
Physiotherapist	£64.80	£64.80
Plastic surgeon	£108	£108
Process server	£25.60	£18.40
Psychiatrist	£108	£108
Psychologist	£93.60	£93.60
Radiologist	£108	£108
Rheumatologist	£108	£108
Risk assessment expert	£50.40	£50.40
Speech therapist	£79.20	£79.20
Surveyor (housing disrepair)	£85	£115
Surveyor (non-housing disrepair)	£40	£40
Telecoms expert	£72	£72
Toxicologist	£108	£108
Urologist	£108	£108
Vet	£72	£72
Voice recognition	£93.60	£72

Table E6: Criminal experts fees

Expert	Non-London – Hourly rate unless stated to be a fixed fee	London – Hourly rate unless stated to be a fixed fee
A&E consultant	£100.80	£108
Accident reconstruction	£72	£54.40

Expert	Non-London – Hourly rate unless stated to be a fixed fee	London – Hourly rate unless stated to be a fixed fee
Accountant	£64	£64
Accountant (general staff)	£40	£40
Accountant (manager)	£86.40	£86.40
Accountant (partner)	£115.20	£115.20
Anaesthetist	£108	£72
Architect	£79.20	£72
Back calculations	£144 fixed fee	£151.20 fixed fee
Benefit expert	£72	£72
Cardiologist	£115.20	£72
Cell telephone site analysis	£72	£72
Child psychiatrist	£108	£72
Child psychologist	£100.80	£72
Computer expert	£72	£72
Consultant engineer	£72	£54.40
Dentist	£93.60	£72
Dermatologist	£86.40	£72
Disability consultant	£54.40	£54.40
DNA (testing of sample)	£252 per test	£252 per test
DNA (preparation of report)	£72	£72
Doctor (GP)	£79.20	£72
Drug expert	£72	£72
Employment consultant	£54.40	£54.40
Enquiry agent	£25.60	£18.40
ENT surgeon	£100.80	£72
Facial Mapping	£108	£72
Fingerprint expert	£72	£37.60
Fire investigation	£72	£54.40
Firearm expert	£72	£72
Forensic scientist	£90.40	£72
General surgeon	£108	£72
Geneticist	£86.40	£72
GP (records report)	£50.40 fixed fee	£72 fixed fee
Gynaecologist	£108	£72
Haematologist	£97.60	£72

Expert	Non-London – Hourly rate unless stated to be a fixed fee	London – Hourly rate unless stated to be a fixed fee
Handwriting expert	£72	£72
Interpreter	£28	£25
Lip reader/Signer	£57.60	£32.80
Mediator	£100.80	£100.80
Medical consultant	£108	£72
Medical microbiologist	£108	£72
Medical Report	£79.20	£72
Meteorologist	£100.80	£144 fixed fee
Midwife	£72	£72
Neonatologist	£108	£72
Neurologist	£122.40	£72
Neuropsychiatrist	£126.40	£72
Neuroradiologist	£136.80	£72
Neurosurgeon	£136.80	£72
Nursing expert	£64.80	£64.80
Obstetrician	£108	£72
Occupational therapist	£54.40	£54.40
Oncologist	£112	£72
Orthopaedic surgeon	£115.20	£72
Paediatrician	£108	£72
Pathologist	£122.40	£432 fixed fee
Pharmacologist	£97.60	£72
Photographer	£25.60	£18.40
Physiotherapist	£64.80	£64.80
Plastic surgeon	£108	£72
Process server	£25.60	£18.40
Psychiatrist	£108	£72
Psychologist	£93.60	£72
Radiologist	£108	£72
Rheumatologist	£108	£72
Risk assessment expert	£50.40	£50.40
Speech therapist	£79.20	£72
Surgeon	£108	£72
Surveyor	£40	£40

Transforming legal aid: Next steps

Expert	Non-London – Hourly rate unless stated to be a fixed fee	London – Hourly rate unless stated to be a fixed fee
Telecoms expert	£72	£72
Toxicologist	£108	£72
Urologist	£108	£72
Vet	£72	£72
Voice recognition	£93.60	£72

Annex F: Equality Statement

1 Introduction

- 1.1 The Government is mindful of the importance of considering the impact of the legal aid proposals on different groups, with particular reference to users and providers of legally aided services.
- 1.2 In accordance with our duties under the Equality Act 2010 we have considered the impact of the proposals on individuals sharing protected characteristics in order to give due regard to the need to eliminate unlawful conduct, advance equality of opportunity and foster good relations.
- 1.3 In **Part 1** of this Annex we set out our initial analysis and Government response on the impact of the introducing competition into the criminal legal aid market and restructuring the advocates graduated fee scheme proposals. As we are consulting further on these proposals, we have also set out our initial analysis of the impact we anticipate our revised proposals would have, if implemented. The proposals set out for consultation can be found in *Part Two: Further Consultation* of the *Transforming Legal Aid: Next Steps* document.
- 1.4 In **Part 2** of this Annex, we set out our response to the key issues raised by respondents and our final analysis of the impact of the proposals the Government intends to implement, as described in *Part One: The Programme of Reform* of the *Transforming Legal Aid: Next Steps* document.
- 1.5 This Annex builds on our initial equality analysis included in the April 2013 consultation (Annex K Equalities Impact). It considers the general equality themes for the broad policy areas in relation to our responsibilities under the Equality Act 2010. In the individual sections of the Government response, for each of the areas of reform we also consider the specific equality issues raised by respondents.

2 Legal duties

- 2.1 Under section 149 of the Equality Act 2010 (“the Act”), when exercising its functions the Ministry of Justice is under a legal duty to have ‘due regard’ to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Act;
 - Advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and
 - Foster good relations between different groups.
- 2.2 The relevant protected characteristics for those purposes are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

- 2.3 Consistent with that duty, and with the statutory objectives of section 149 of the Act in mind, we have considered whether and how the policies in question are likely to impact on people sharing protected characteristics.
- 2.4 The provisions of the Act currently in force contain, in Chapter 2, several forms of prohibited conduct, namely:
- direct discrimination (section 13)
 - discrimination arising from disability (section 15)
 - pregnancy and maternity discrimination (section 17 and section 18)
 - harassment (section 26)
 - victimisation (section 27)
 - breach of a non-discrimination clause (section 61)
 - indirect discrimination (section 19)
 - failure to comply with a duty to make reasonable adjustments (section 20 and section 21)
- 2.5 Those forms of prohibited conduct are considered, where relevant, in more detail in the analysis that follows.
- 2.6 In relation to the second and third statutory objectives – advancement of equality of opportunity and fostering good relations – to which, under section 149, the Ministry is obliged to have due regard, guidance is provided in section 149(3) and (5):
- ‘(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to – remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; take steps to meet the needs of persons who share a relevant protected characteristic that are connected to that characteristic; encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.’*
- ‘(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to— tackle prejudice and promote understanding.’*
- 2.7 Those provisions indicate that the matters to which the Ministry must have due regard include the need for steps to be taken – although the duty remains one of due regard (as opposed to, for example, a duty actually to take steps or a duty to achieve a particular result). We have considered the relevance and implications of the policies in question for the advancement of equality of opportunity and the need to foster good relations with the guidance in section 149(3) and (5) in mind. Where relevant, we address the second and third limbs of the duty in more detail in the analysis that follows.

3 Data Sources

- 3.1 We have identified the following data sources as providing the most relevant information on potential equality impacts:
- Legal Aid Agency (formerly the Legal Services Commission) (LAA) data on clients collected through provider billing for financial year 2011/2012 (LAA Client Data). This includes records of clients' sex, age, race, and illness or disability status.
 - Legal Services Research Centre (LSRC) provider data, collected to support their *Routine Diversity Monitoring of the Supplier Base* reports. The survey was most recently undertaken in 2010 and represents the diversity profile of those managing / controlling legal aid providers' offices.
 - The Bar Council publications *Bar Barometer: Trends in the Profile of the Bar, November 2012*, and *Barristers' Working Lives: A Biennial Survey of the Bar 2011*. These provide information for practising barristers on age, sex, and ethnicity.
 - Published 2011 Census data, to enable comparisons with the general population to be made.
- 3.2 All of these data sources have some limitations. None of the data cover all of the protected characteristics. Our statistical analysis therefore only considers the available data on age, sex, race and disability. In addition:
- LAA client data is recorded by providers, not legal aid clients themselves, and is therefore unlikely to be as accurate as self defined data, particularly in respect of disability / illness and race.
 - As with many administrative datasets, the quality of the LAA client data is affected by the extent of missing data, particularly regarding illness / disability status and race.
 - LSRC's provider equality data is based on a survey of providers which collectively have a 69% response rate.
- 3.3 Our statistical analysis of client and LAA supplier demographic data is set out in Section 21 of this Annex. We are currently unable to assess the extent of any impact of the proposals on providers' legal aid income by protected characteristic, as the implementation of scope and fee changes under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 will alter the 2011/12 baseline that income reduction can be assessed against. Any assessment, therefore, could potentially be misleading.
- 3.4 In some instances, respondents to the consultation suggested additional data or sources of data as to the protected characteristics of affected persons. As indicated in the Impact Assessments and Equality Statement section of Annex B, we have considered the data and sources provided and, where considered reliable and relevant, we have taken the information into account in the analysis that follows.

4 Equalities Evidence, Research and Monitoring

- 4.1** The Ministry of Justice has a rolling programme of research and monitoring looking at the delivery and provision of publicly funded legal advice to understand the makeup and needs of users. Current activities include:

Monitoring and reviewing the implementation and operation of the mandatory telephone gateway for legal advice

- 4.2** We have been monitoring the gateway since its implementation on 1 April 2013 and made a commitment to review its implementation and operation and publish a report of the review by April 2015. A key element of this review will focus upon the impact of the gateway on vulnerable and disadvantaged groups. It will include the exploration of any barriers or obstacles that different types of users may experience when accessing (including contacting and using) the gateway operator service, and consider how these may be addressed.
- 4.3** As standard, Civil Legal Advice monitors the protected characteristics of age, disability, race, religion or belief, sex and sexual orientation of callers and the use of the service's reasonable adjustments (including, for clients with disabilities, BSL, text relay, and use of third parties). This information will be used as part of the review.
- 4.4** The review will begin this September (2013) with the results being published by the end of 2014.

Exploring the Legal Aid Client Baseline Profile

- 4.5** Currently we have data on the race, sex, disability and age of those people who use our Legal Aid services. We plan to analyse this to provide a baseline profile of clients prior to, and following, the LASPO reforms. This work will cover different types of civil and family law and include available information on protected characteristics.
- 4.6** The work will provide a baseline profile of clients prior to the implementation of the Legal Aid reforms introduced by LASPO. It will cover different types of law and will include all the available information on protected characteristics. This will be used to identify any changes to this established baseline after the reforms when we will further analyse LAA data for any equality impacts. We have conducted preliminary analysis of LAA data to help develop a profile of legal aid clients seeking legal help and representation prior to the implementation of the LASPO reforms. We are currently awaiting 2012/13 data from LAA and will seek to keep this under review on an ongoing basis.

Court User Survey - feasibility study

- 4.7** MoJ continues to scope out the feasibility of surveying a range of court users to improve our evidence base on our users, their experiences of problems and how they resolve them. The ability to robustly survey users will depend on the quality of sampling frame data available. A pilot survey of civil court users is due to be undertaken in 2013/14.

Research into Litigants in Person

- 4.8 We have made some funding available for five not-for-profit organisations, identified in conjunction with the Civil Justice Council (CJC), to provide additional support to Litigants in Person (LiP). The funding provided will deliver recommendations coming out of the CJC's report 'Access to Justice for Litigants in Person', which was published in November 2011. We have also provided further sums of money for Royal Courts of Justice Citizen's Advice Bureau (RCJ CAB) and the Personal Support Unit (PSU). £90k has been allocated for RCJ CAB and £200k for PSU in this financial year, with a further £200k being committed for PSU in each of the next two financial years.
- 4.9 Furthermore we have commissioned a research project on LiPs. This project focuses on private family law cases and is largely qualitative in nature, based on a combination of observational work in courts, interviews with LiPs and professionals within the family justice system, and scrutiny of the court file. The study will develop our understanding of the experiences and support needs of LiPs. The evidence will help to develop strategies to aid in ensuring appropriate support for LiPs. Given the nature of the study we are not collecting statistical evidence on the protected characteristics of LiPs other than sex. However it may highlight some particular issues associated with other protected characteristics.

Survey of Legal Aid Supplier Base

- 4.10 Currently we have information on the race and sex of the majority ownership of not-for-profit and solicitor provider firms. We also know whether these firms employ an ill or disabled manager.
- 4.11 We have worked collaboratively with the Law Society and Legal Services Board to commission research to provide a robust baseline assessment of the current provision of legal services by high street law firms. Our baseline survey was conducted last year by TNS BMRB in association with three academic experts. The resulting report "A Time of Change: Solicitors' Firms in England and Wales" has now been published jointly by the Law Society, Legal Services Board and Ministry of Justice and provides information on a number of areas including the profile of high street law firms, and the sex and race of legal partners.
- 4.12 The LAA is also planning to monitor the demographic profile of the LAA's supplier base. This will update information from the Supplier Diversity Surveys conducted by the Legal Services Research Centre (LSRC).

Additional future work includes:

- 4.13 A review of the removal of legal aid from onward immigration appeals. This work will be informed by the first full 12 months of operation and so will commence in 2014/15. It will explore the nationality, sex and age of those affected.
- 4.14 The Ministry is also exploring the possibility of carrying out a legal needs survey. This would follow in the tradition of other domestic and international surveys, including the Paths to Justice Survey and the Civil and Social Justice Survey. It would examine the extent of rights based problems experienced by people in the general population and how these problems are addressed.

5 Methodology

- 5.1 In line with guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposals has been to identify the individuals whom the proposals would impact (the 'pool'). Looking at the pool, we have then drawn comparisons between the potential impacts of each proposal on those who share particular protected characteristics, with those who do not share those characteristics. We have in addition compared the characteristics of individuals affected by the proposals with the characteristics of the general population (England and Wales) and the appropriate legal aid client or provider population where relevant. Where there are large differences we have considered the equality impacts of this.
- 5.2 Some respondents to the consultation queried the relevance of assessing the impact on providers on the basis of the protected characteristics of the managers of an organisation rather than its staff. Although the LSRC Supplier Diversity Survey captures the demographic profile of the advice workforce employed in LAA/LSC contracted organisations, we consider it more appropriate to assess impact on providers according to their Ownership and/or Managerial Control (OMC) profile, as opposed to that of their workforce, for the following reasons.
- 5.3 Firstly, those with OMC were identified as providing organisations' strategic steer, and would be specifically responsible for determining the areas of law, client groups and type of service the organisation offered, including the decision about whether or not to deliver legal aid funded services. Secondly, the relationship between the LAA/LSC and its supplier base is at the organisational level. The allocation of work within organisations is therefore beyond the LAA or its predecessor's control. Such decisions are the responsibility of those with OMC of the organisation.
- 5.4 Banding organisations based upon the profile of those with responsibility for organisational decision making is also more appropriate as it is not possible to separate the workforce by those involved in legal aid funded advice and those that do other, non-publicly funded legal work.
- 5.5 In seeking wider views we also asked three equalities-related questions in the consultation as follows:
- Q34. Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.**
- Q35. Do you agree that we have correctly identified the extent of impacts under these proposals? Please give reasons.**
- Q36. Are there forms of mitigation in relation to impacts that we have not considered?**
- 5.6 Whilst some respondents answered these questions directly, many raised other equality issues which have been considered in this updated Equality Statement. Please see Annex B for additional analysis of the three questions above.

6 Conclusions

- 6.1 We have considered our duty to have due regard to the need to eliminate discrimination, harassment, victimisation and unlawful conduct, and to advance equality of opportunity and foster good relations.
- 6.2 A large number of responses were received relating to equality impacts. At the general level, a common theme concerned the Government's duties under the Act, suggesting that whilst the aim of the reforms may be legitimate, they are not proportionate. However, having considered those responses carefully and modified our proposals where practicable, we consider that, particularly in the overall macroeconomic context and taking account of the need to make such savings, these reforms are a proportionate and necessary means of achieving the legitimate aims set out in Chapter 1 and below.
- 6.3 The primary objective of the reform package is to bear down on the cost of legal aid, ensuring that every aspect of expenditure is justified and that we are getting the best deal for the taxpayer. Unless the legal aid scheme is targeted at the persons and cases where funding is most needed, it will not command public confidence or be credible. Moreover, there are compelling reasons for seeking to reform legal aid in any event. Accordingly, the reforms seek to promote public confidence in the system by ensuring limited public resources are targeted at those cases which justify it and those people who need it, drive greater efficiency in the provider market and for the Legal Aid Agency, and support our wider efforts to transform the justice system.
- 6.4 These objectives are of critical importance, ensuring we can live within our means while maintaining a sustainable and credible legal aid scheme. We consider them to be legitimate aims which we intend to pursue whilst having due regard to the statutory principles of equality and non-discrimination.
- 6.5 The reforms will apply to all people, irrespective of protected characteristics, and we do not therefore consider that they give rise to direct discrimination or discrimination arising from a disability. We also do not consider that they are likely to give rise to a need for any particular 'reasonable adjustments'. Nor do we consider that these reforms will have any impact on instances of harassment or victimisation.
- 6.6 Proceeding on the basis that the proposals amount to provisions, criterion or practices, we have identified the potential for disproportionate impacts on some persons with protected characteristics. In these instances we have done the best we can to consider possible impacts. Although we accept that some of the proposals do potentially have a greater effect on those with a particular protected characteristic, we do not consider that they necessarily amount to a particular or substantial disadvantage.
- 6.7 We consider that, both as a whole and individually, the proposals are a proportionate means of achieving a legitimate aim for the reasons set out above and in the paragraphs below.
- 6.8 In relation to the protected characteristics of gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief and sexual orientation, no information is collected, for either clients or providers. It has not been possible, therefore, to assess the impacts of the proposals in respect of these protected

characteristics using statistical analysis. Furthermore, the nationality or immigration status of civil legal aid recipients is not routinely recorded.

- 6.9 We have used the available data and evidence sources we consider to be most relevant and reliable. In the absence of data on particular protected characteristics, we have assessed the impact on the basis of the impacts which may be reasonably anticipated. We consider that the nature of the reforms is such that they are unlikely to put people with these protected characteristics at a particular disadvantage. However, even were such a disadvantage to materialise or there were to be a disproportionate effect on a particular group, we believe that (a) the changes are justified in pursuit of the objectives referred to above; and (b) it would not be proportionate or practicable to make other changes to seek to deal with such impact.
- 6.10 For those reforms directly affecting the remuneration of providers, we do not consider that they are likely to have a direct impact on clients. As discussed in the Impact Assessments which accompany the Response clients could be affected if the changes have an impact on the sustainability of the legal aid market resulting in an adverse effect on service provision, however we believe this is unlikely. Potential impacts on clients are likely to depend upon the provider response to the changes and as such remain unquantifiable.
- 6.11 We have considered the implications of the reforms for the advancement of equality of opportunity and the need to foster good relations. For example, where it has been said in a consultation response that a particular change may affect the participation of persons who share a relevant protected characteristic and are under-represented in public life, we have considered the extent to which the proposed changes are compatible with the need to encourage such participation. We consider that where relevant, the reforms do not undermine attainment of those objectives.
- 6.12 The reforms are intended to focus legal aid resources on those who most need it and those cases which most justify it, ensuring value for money and a sustainable system that is fair on recipients, providers and taxpayers alike. For the most part, we do not consider changes in legal aid remuneration to be relevant to the need to advance equality of opportunity or foster good relations. Respondents to the consultation suggested that reductions in levels of remuneration would result in a less diverse Bar, in turn resulting in a less diverse judiciary. We do not consider that the reforms will put women or BAME practitioners at a particular disadvantage over others in practice at the Bar and that this would ultimately reduce the diversity of the pool of practitioners applying for judicial office. However, if there is a particular disadvantage to a particular pool of practitioners with relevant characteristics, we believe our reforms are a proportionate means of achieving the legitimate policy aims set out above.
- 6.13 The primary responsibility of MoJ in administering the legal aid system must be to provide fair and effective legal aid to those clients most in need. The specific levels of representation within given practice areas at the Bar and Solicitors profession are primarily the responsibility of the Bar and Law Society to ensure equality of opportunity in all areas of practice. Given the finite resources available it would not be proportionate for MoJ to recommend any lower protection for the most needy clients in order to subsidise the legal profession.
- 6.14 Although MoJ is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity generally, MoJ does not believe that legal aid remuneration is the most

appropriate policy instrument by which to achieve diversity within the professions or the judiciary. Were the reform to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above.

- 6.15 Throughout, we have considered how potential adverse impacts could be mitigated. In many instances, we have revised our proposals as a result of consultation responses relating to the nature or extent of impact. Thus we are further consulting on a modified model of competitive tendering for criminal legal services which retains client choice, revised proposals for payment for permission work in judicial review cases and alternative options for reducing criminal advocacy fees. On prison law, we have amended our proposals to ensure criminal legal aid for prison law remains available for all proceedings before the Parole Board in which it has the power to direct release and sentence calculation cases where the date of release is disputed. Acknowledging the importance of ensuring that there is a robust prisoner complaints system in place, we are reinforcing compliance with current arrangements.
- 6.16 We have revised the proposed residence test so that children under 12 months of age would not be required to have at least 12 months of previous lawful residence. We also accept that in certain types of cases, there should be an exception to the requirement for an individual to demonstrate a strong connection to the UK. On expert fees we are retaining the rates payable to experts in those areas where recent increases have been made to address market supply issues as well as the current fees payable to interpreters in London and will limit the reduction in rates payable to interpreters outside of London to ensure none fall below rates paid elsewhere.

Part One: Re-consultation

7 Introducing Competition into the Criminal Legal Aid Market

7.1 Initial Analysis of Original Proposals

Impact on Individuals

- 7.1.1 We anticipated the proposed competition model may have an adverse impact on eligible individuals suspected or accused of a crime (“Individuals”) because they would no longer have the choice of selecting any provider with a LAA contract to deliver criminal legal aid services (assuming for this purpose the proposal amounts to a provision, criterion or practice). As men and BAME people are overrepresented among criminal legal aid clients generally, in comparison to the population as a whole, we concluded the proposals may have a disproportionate impact on them. However we did not anticipate that the proposal would have a disproportionate impact on persons with other protected characteristics. Where clients with protected characteristics needed to request a change in allocated provider, due to exceptional circumstances, including where there is a breakdown in the relationship between the client and provider, or where some other substantial compelling reason exists as to why a different provider might be better suited to the client’s particular needs, it would be possible to request a change in provider. To the extent that there were any disproportionate impact, we considered any such impact to be justified for the reasons set out below.
- 7.1.2 Although there could be an indirect impact on clients if the changes have an impact on the sustainability of the legal aid market affecting service provision, the move to competition was designed to ensure that legal aid services are procured at a rate the market was able to sustain, and therefore we did not anticipate adverse impacts on clients in terms of sustainability. Furthermore, the quality controls which we intended to put in place in order to win a contract and the quality measures that would have been adopted to ensure that quality was maintained throughout the life of the contract would help to ensure that there was no impact on the quality of advice received by clients.

Impact on providers

- 7.1.3 The model we proposed was based on the premise that economies of scale and market inefficiencies could be exploited by those providers wishing to expand their businesses and deliver a greater share of work in their area. We accepted that the ability for current providers to grow their business to the scale required to meet the demands of a larger case volume was likely to be more challenging for some smaller providers in a procurement area compared with some larger providers. To the extent that BAME majority managed firms were more likely to be small, the proposal may have had a disproportionate impact on them.
- 7.1.4 Some rates of pay for work within the scope of the competed contract would have been set by competition, others such as appeals and reviews and prison law would be set administratively. The proposal to include a price cap under which applicants would be invited to submit their price bids and the proposal to reduce the rates of pay set administratively for all other classes of work would have meant providers received less fee income from legal aid.

- 7.1.5 Providers with majority BAME and male managerial control are over represented among criminal legal aid providers in comparison to the population as a whole. The proposals therefore could have had a disproportionate impact on them. We considered any such impact to be justified for the reasons set out below.

Justification

- 7.1.6 We believe the proposed model was a proportionate means of achieving the legitimate aims set out. We considered that a competition with price as an award criterion was the best way to ensure the long-term sustainability of the criminal legal aid scheme. Moving away from the complex system of administratively set fees to one in which providers determine the best price at which they can offer their services would drive efficiencies in the provider market and ensure value for money from the significant expenditure it represents.
- 7.1.7 Any adverse impact on clients would have been mitigated by the fact that the future crime contract was likely to have similar, if not the same, provisions with regard obligations for providers to have a written equality and diversity policy that, as a minimum, must have included how the provider would meet the diverse needs of their clients (including making reasonable adjustments for clients with disabilities). In addition, as set out above, provision for exceptional circumstances in which a client could request a change in allocated provider would mitigate any disproportionate impact arising.
- 7.1.8 Any adverse impact on providers would have been mitigated by the proposed process by which smaller organisations may form consortia or use agents in order to develop the capacity and capability to deliver a greater volume of work under a simplified fee scheme. This was intended to promote fairness in the competitive tendering approach to criminal legal aid services and, to the extent BAME majority managed firms are more likely to be small, may have advanced equality of opportunity.

7.2 Key Issues and Response

Key issues raised

- 7.2.1 Across the responses there was a general view that the proposals would have the greatest impact on BAME and female providers, the junior bar and would impact on provision of specialist services for vulnerable groups of people with protected characteristics. The focus of such concern centred around four elements (individually and by way of a cumulative impact): the proposal to remove client choice; the proposal to reduce the number of contracts; the proposed procurement areas; and the overall scope of the services.
- 7.2.2 A number of respondents argued that a one size fits all approach combined with a possible reduction in quality may put at risk the possibility of an effective defence as required by article 6 ECHR. This they suggested would have the greatest impact on people with learning disabilities, mental health issues, deaf people, women and BAME groups as they are most likely to require specialist services. Some respondents argued further that the proposals would also discriminate on socio economic grounds (contrary to Article 14 ECHR) as only poorer people will be denied client choice.

- 7.2.3 There were particular concerns raised about the number of solicitors who are already no longer willing to provide services at legal aid rates and there was general concern that the proposals would only exacerbate the situation. A significant number of respondents argued that the proposals would risk the survival of smaller specialist practices in particular (which often provide services to vulnerable and marginalised groups) as they have a greater reliance on legal aid rather than privately funded work. Respondents claimed that these firms lack the resources to form a consortium to bid for contracts as would be required if the proposals were implemented. This was not only a concern with regard to BAME clients, providers and communities but also for deaf clients in having a deaf solicitor and for those that have particular language needs, i.e. the ability to communicate in sign language and understanding cultural issues that affect a case.
- 7.2.4 A number of respondents advanced this argument by suggesting that the demise of smaller specialist practices would reverse progress made recently in improving the diversity of the legal professions which in turn may have ramifications for the future diversity of the judiciary. This, they suggested, fails to promote equality of opportunity.
- 7.2.5 Some went further in arguing that evidence shows that BAME solicitors practise disproportionately in small firms, so any proposals that impact adversely on small firms will impact disproportionately on BAME solicitors. They stated that the visible and active presence of BAME solicitors and barristers in the CJS is essential to retaining public confidence among BAME communities.
- 7.2.6 Some respondents suggested that due to the proposed increase in geographical distances between provider's clients would have to travel greater distances at extra cost to solicitors offices. This, they submit would be problematic for older and disabled people, those on low incomes and with mental health issues. A few respondents suggested that telephone advice might be a solution for some but would not be suitable for clients with learning disabilities, language or mental health issues and for many BAME clients who lack English skills.
- 7.2.7 A number of barristers and chambers argued that the April 2013 Model would have a significant impact on them as there would be fewer providers to instruct them and those that remain in the market would be likely to keep more advocacy work in house. This they argued would have a disproportionate impact on the junior Bar, in particular women barristers and young BAME barristers.

Government response

- 7.2.8 As set out above, we anticipated that the April 2013 Model, in particular the proposal to remove client choice, could have an adverse impact on men and BAME Individuals as they are overrepresented among criminal legal aid clients generally, in comparison to the population as a whole. Despite removing client choice, Individuals would have had the opportunity to transfer to another provider in exceptional circumstances. Therefore, in our assessment of the equalities impact of that model we believed there would be no disproportionate impact on the groups identified by respondents as summarised in paragraph 7.2.2 above. We maintain that view but acknowledge that we could achieve our overall policy objectives by retaining client choice and addressing volume uncertainty in a different way, thereby further mitigating any potential for adverse impact.

- 7.2.9 The modified model in Chapter 3, on which we seek views, would retain the right for clients to choose their own provider from any organisation holding a new criminal legal aid contract.
- 7.2.10 In response to the issues raised by respondents with regard to sustainability, we acknowledge that under the April 2013 Model the proposed procurement areas and number of contracts offered in each of those areas may have led to some sustainability issues for providers. This could have had a detrimental impact on clients in terms of access to provision in those areas. We therefore intend to jointly commission with the Law Society a further piece of research to get more detailed information to help inform our analysis of sustainability and the final decision on the number of contracts for Duty Provider Work. Such work would take into account the proposed size of procurement area.
- 7.2.11 We have also explored options for setting smaller procurement areas in those areas highlighted by respondents as giving rise to a concern about adequate access by looking at combining police station duty scheme areas. In doing so, based on our analysis as set out in Chapter 3, a provider would not have to travel more than 1.5 hours between two places of service delivery (police stations, courts). It is important to highlight that in the majority of criminal cases, the provider attends the client at their location but in the event the client needs to travel to the provider's office, this suggests the travelling time and cost would be reduced.
- 7.2.12 With regard to the proposed scope of the new contract, we do not accept that the April 2013 Model would necessarily mean that providers would retain advocacy work and not choose to instruct a self-employed barrister. Nor do we accept therefore that the April 2013 Model would have had a disproportionate impact on female or young barristers. Some respondents argued that instructing a self-employed barrister is often more economically viable. We believe that providers would continue to instruct the self-employed Bar where it is appropriate to do so. The modified model therefore applies largely the same contract scope (with the proposed exception of prison law and appeals and reviews services). To the extent that the Bar were to be adversely impacted, however, we acknowledge that the impact might be greatest for the junior bar and therefore potentially disproportionately affect young barristers, women and BAME persons. However, were such impact to materialise, we consider any such impact would have been justified for the reasons set out in paragraphs 7.1.6 to 7.1.8.
- 7.2.13 Finally, with regard to the reduction in contract numbers proposed under the April 2013 model, such an approach was necessary to provide sufficient case volume for a fixed fee scheme to work financially for providers and not put them at a significant financial risk. However, with the alternative model presented in Chapter 3 we have explored modifications to the fixed fee scheme to minimise the reduction in contract numbers. We have also proposed to offer an unlimited number of Own Client Work contracts to those providers capable of delivering those services. This, we believe, would mitigate the impact on smaller organisations delivering criminal legal aid services while allowing those that wish to consolidate and expand to do so.

7.3 Initial Analysis of modified model

- 7.3.1 Under the modified model set out in Chapter 3 providers would have the opportunity to apply for one of an unlimited number of contracts to deliver criminal legal aid services to their own clients anywhere in England and Wales. For those seeking to also provide services to clients that do not have their own lawyer, we propose to run a

competitive tendering process for a limited number of contracts for access to this work. We believe this maintains an appropriate balance between providing opportunities for consolidation – thereby ensuring sustainable provision of the duty provider service which is fundamental to the effective delivery of criminal legal aid – without restricting access to the market unnecessarily.

- 7.3.2 Under the modified model, the rates of pay for both Own Client Work and Duty Provider Work would be set administratively. Under such an approach, contracts would be awarded based on an evaluation of an applicant against requirements of the tender process (including the required quality standards) of an applicant's quality and capacity alone.

Impact on Individuals

- 7.3.3 We do not anticipate that the modified model set out in Chapter 3 would have an adverse impact on Individuals. This is primarily due to the retention of client choice. Individuals would be able to select any provider with a contract to deliver criminal legal aid services.
- 7.3.4 Although there may be an indirect impact on Individuals if the changes have an impact on the sustainability of the legal aid market affecting service provision, we believe this is unlikely. The modified model has been designed to deliver a market of an appropriate size and structure that we believe will ensure a sustainable service and market in the longer term. The number of providers from which the client can choose to instruct may be fewer than current provision; however, the model would not restrict the number of contracts offered for Own Client Work. Some providers may however choose not to apply for such a contract. Overall, we consider that sufficient providers will remain such that Individuals will be able to choose a provider which best meets his or her needs, including those requiring specialist services. We therefore consider that retention of client choice addresses the contentions raised by consultees about the potential adverse impacts of removal of client choice. We also consider this proposal will help in advancing equality of opportunity through the removal of any disadvantages for clients with protected characteristics, particularly for race and disability.
- 7.3.5 The modifications to the number of contracts available including the proposal to offer an unlimited number of Own Client Work contracts should facilitate participation by smaller organisations, further mitigating any impact on Individuals. Moreover, the quality controls we propose to put in place in order to win a contract and the quality measures that will be adopted to ensure that quality is maintained throughout the life of the contract will help to ensure that there is no impact on the quality of advice received by Individuals.
- 7.3.6 Although in some areas, Individuals may, subject to the location of the various police stations and courts, have to travel to see their provider on those occasions in which the provider does not attend them, the modified proposals for procurement areas and the likelihood of retaining a significant number of providers delivering Own Client Work would, we believe, mitigate the travelling concerns for Individuals such that there should be no disproportionate impact on older or disabled persons.

Impact on providers

- 7.3.7 As with the April 2013 Model, the modified model is based on the premise that there are economies of scale and market inefficiencies to be exploited by those providers wishing to expand their businesses and deliver a greater share of work in their area. The new model would enable those providers who wish to grow their businesses to do so whilst allowing smaller organisations to retain a market share of Own Client Work and through doing so may explore opportunities to consolidate (i.e. merge with other small businesses) over the contract term. We accept that the ability for current providers to grow their business to the scale required to meet the demands of a larger case volume is likely to be more challenging for smaller providers in a procurement area compared with larger providers.
- 7.3.8 Whilst all providers would be treated equally when evaluated against any Requirements for the Tender Process (including the quality standards), the extent that BAME majority managed firms are more likely to be small, the proposal may have a disproportionate impact on them. However, the modified model presented in Chapter 3 minimises the reduction in contract numbers and offers the possibility of an unlimited number of providers delivering Own Client Work. This, we believe, would mitigate the potentially adverse impact on smaller organisations delivering criminal legal aid and therefore any disproportionate impact on BAME majority managed firms. We therefore consider that inclusion of Own Client Work contracts helps address the contentions raised by consultees about the potential adverse impacts of contract number reductions. We also consider this proposal will help in advancing equality of opportunity through the removal of any disadvantages for BAME majority managed firms.
- 7.3.9 As with the April 2013 Model, under the new model, all rates of pay would be subject to a reduction of 17.5%. We propose to make two successive reductions of 8.75% (the first in early 2014 and the second at the start of the new contract in May 2015 – as explained in Chapter 3) to all fees in scope of the 2010 Standard Crime Contract (except Associated Civil Work). The proposal will mean providers, no matter which services they choose to deliver, will receive less fee income from legal aid. However, we believe the proposed phased fee reductions would help providers to adapt through a more gradual reduction in fees, encouraging them to explore the opportunities for the level of market consolidation necessary to ensure sustainable services in the longer term. More time to adapt to the reducing fees and explore such opportunities for consolidation, as well as growing the amount of Own Client Work they deliver, is likely to reduce the impact on those smaller organisations currently delivering criminal legal aid services who choose to deliver Own Client Work only.
- 7.3.10 Providers with majority BAME and male managerial control are over represented among criminal legal aid providers in comparison to the population as a whole. Whilst all providers would be treated equally, the proposals therefore may have a disproportionate impact on them. To the extent that they do, we consider any such impact to be justified for the reasons set out below.
- 7.3.11 With regard to the impact on the Bar, we do not consider that the revised model would necessarily mean that providers would retain advocacy work and not choose to instruct a self-employed barrister. As noted above, some respondents argued that instructing a self-employed barrister is often more economically viable. We believe therefore that providers would continue to instruct the self-employed Bar where it is appropriate to do so. To the extent that the Bar were to be adversely impacted,

however, we acknowledge that the impact might be greatest for the junior bar and therefore potentially disproportionately effect young barristers, women and BAME persons. However, were such impact to materialise, we consider any such impact to be justified for the reasons set out below.

7.3.12 As discussed above, under the modified model, providers would still need to deliver services across a greater geographic area than they do currently. However, we maintain the view that the model offers greater flexibility for providers to deliver services through agents or by establishing a joint venture, mitigating the potential for adverse impact.

Justification

7.3.13 We believe the modified proposal remains a proportionate means of achieving the legitimate aims set out in paragraph 6.3. We consider that the best way to ensure the long-term sustainability of the criminal legal aid is through a procurement process that involves an element of competition. That said, we also acknowledge that for some providers, they may wish to continue delivering criminal legal aid services in the same volumes as now and have no desire to expand their business. Therefore, the proposed model delivers flexibility for both large and small providers by enabling them to apply to deliver just Own Client Work and apply to deliver Duty Provider Work. Ultimately, the model would deliver increased efficiency and a sustainable provider base.

7.3.14 With regard to the impact on clients and providers in terms of the travelling time between police stations and courts, we believe the modified proposed procurement areas and the retention of client choice mitigate these concerns. The travelling time between the two service delivery points which are the most extreme geographically in any procurement area would be limited to 1.5 hours. It is also important to highlight that for criminal legal aid, compared to civil legal aid, the majority of contact between client and provider is at the client's location (whether that is at the police station, court or prison). In addition, under the modified model we propose to retain separate payment for travel and subsistence disbursements.

7.3.15 Moreover, were any adverse impact on clients to result, it may be mitigated by the fact that the future crime contract is likely to have similar, if not the same, provisions with regard to obligations for providers to have a written equality and diversity policy that, as a minimum, must include how the provider would meet the diverse needs of their clients (including making reasonable adjustments for clients with disabilities).

8 Restructuring the Advocates Graduated Fee Scheme

8.1 Initial Analysis

Impact on barristers

8.1.1 We anticipated that advocates engaged on cases resulting in a guilty plea would have received an increase in income under the proposal and those engaged on cases resulting in a cracked trial would have been unaffected. However, advocates would have seen a reduction in legal aid income when undertaking trials under the Advocates' Graduated Fee Scheme (AGFS). "Barristers' Working Lives - A Biennial Survey of the Bar 2011" data on main area of practice (where barristers spend most of their working time) demonstrates that men and those of White ethnicity are over-

represented amongst those engaged in criminal work when compared to the general population. As a result, they may have been disproportionately impacted by the proposal. The same survey suggested that there is a greater proportion of female and BAME barristers among the more junior members of the Bar.

- 8.1.2 As the proposed fee reductions would have had a greater impact on longer trials and as longer trials are likely to be more complex, they may be more likely to be undertaken by more experienced barristers. As those of white ethnicity at 15 years' of call are overrepresented both when compared to the general population and barristers in general, they may have been disproportionately impacted by the proposal. Men with over 13 years of call are also overrepresented when compared to the general population and to barristers in general. Male barristers and those of White ethnicity may have been disproportionately impacted, therefore. In addition, as there may be a correlation between age and experience, older barristers may be over-represented among those undertaking longer trials and could have therefore been disproportionately impacted by the proposal. We considered any such impact to be justified for the reasons set out below.

Impact on Higher Court Advocates:

- 8.1.3 We had limited equality data available on individual Higher Courts Advocates (HCAs) impacted by these proposals, though acknowledge that in common with all those providing criminal legal aid, impacted firms are more likely to be managed by BAME, male, and non-disabled individuals than in the general population. We considered any such impact to be justified for the reasons set out below.

Impact on clients:

- 8.1.4 We did not anticipate any indirect impact on clients. We were unable to identify the protected characteristics of clients who would be affected if risks to sustainable supply were realised in order to identify the potential for any particular disadvantage. However, as men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole the proposals may have had a disproportionate impact on them. It was difficult to draw robust conclusions as to any particular disadvantage for disabled persons because of the high number of criminal legal aid clients in respect of which we do not hold relevant data and therefore we could not rule out a possible disproportionate impact relative to the population as a whole. We considered any such impact to be justified for the reasons set out below.

Justification:

- 8.1.5 We acknowledged that men and those of White ethnicity are over-represented amongst barristers engaged in criminal work and that men and those of White ethnicity as well as older advocates may be over-represented among those undertaking longer trials and therefore be disproportionately impacted by the proposals.
- 8.1.6 If this proposal had resulted in particular disadvantage to persons with protected characteristics, we believed the proposal was a proportionate means of achieving the legitimate aims as set out. The proposal would have applied irrespective of protected characteristics. The proposal targeted the highest earners, restructuring fees to promote efficient resolution of cases, supporting our wider efforts to transform the

justice system. Moreover, to the extent there is a greater proportion of female and BAME barristers among the more junior Bar, the increase in fees for guilty pleas may have resulted in the advancement of equal opportunities.

8.2 Key Issues and Response

Key Issues Raised

- 8.2.1 Consultees suggested that, contrary to our expectations, the combined impact of the competition and criminal advocacy fees proposals would most affect the junior Bar, as senior advocates would 'cherry pick' the more profitable cases and the proposal to introduce price competition would cause solicitors to make more use of employed advocates. Consultees also suggested that competition proposals for litigation would drive solicitors to do as much magistrates' courts advocacy and non-trial Crown Court work in-house as possible, squeezing the junior Bar. It was suggested this would drive people away from advocacy and adversely affect clients, victims and witnesses if there were insufficient quality advocates available.
- 8.2.2 It was also suggested that the proposals would drive people out of criminal advocacy and would, in turn, mean that the future judiciary would be less diverse as those from lower socio-economic backgrounds (who tend to be more diverse) would not seek to undertake criminal advocacy. It was suggested that these potential effects would impact disproportionately on female and BAME barristers, who are better represented among the junior Bar.

Government Response

- 8.2.3 Some respondents suggested that the response of higher earning advocates to our proposals may be to seek to undertake shorter, simpler cases that are perceived as more financially rewarding, which could have some impact on the generally lower earning advocates currently doing such work. If higher earning advocates did respond in this way, then lower earners who meet the minimum quality standards might have increased access to work currently undertaken by higher earners. But the behavioural response to the proposals are uncertain.
- 8.2.4 We do not accept that the combined impact of the proposals for criminal advocacy fees and competition would mean that it is inevitable that solicitors would seek to undertake more Crown Court advocacy, especially guilty pleas, than they might otherwise undertake. Data in the Otterburn report (submitted by the Law Society) suggests that only around 10% of current income for solicitors is from Crown Court advocacy. Therefore, the extent to which firms would absorb a significant amount of advocacy work that is currently undertaken by self-employed barristers is uncertain. However, the sample size is small so it is difficult to draw any firm conclusions from the report. For some solicitors it might be more attractive financially to call on the services of self-employed advocates as and when needed, rather than employing more advocates given the costs involved and the need to fully utilise an employee to achieve optimal efficiency. As set out in paragraph 6.9 above, we do not consider it likely that the proposals would have an adverse effect on service provision, thereby impacting on clients. We consider that there would remain sufficient quality advocates available to provide the necessary services.
- 8.2.5 Nor do we accept that the proposals would have had a disproportionate impact on female, BAME or young barristers. Moreover, the primary responsibility of MoJ in

administering the legal aid system must be to provide fair and effective legal aid to those clients most in need. The specific levels of representation within given practice areas at the Bar and solicitors' profession are primarily the responsibility of the Bar and Law Society, as is the need to ensure equality of opportunity to all areas of practice. Although MoJ is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity and foster good relations generally, MoJ does not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve judicial diversity.

8.3 Initial Analysis on Revised Proposals for Restructuring the Advocates Graduated Fee Scheme

Option 1: Harmonisation of Basic Fees, reduction and tapering of Daily Attendance Fee

Impact on barristers

- 8.3.1 Advocates engaged on cases resulting in a guilty plea will receive an increase in income and advocates will see a reduction in legal aid income when undertaking trials and cracked trials under the AGFS in the future.
- 8.3.2 As the proposed fee reductions have a greater impact on longer trials and as longer trials are likely to be more complex, they may be more likely to be undertaken by more experienced barristers. As those of white ethnicity at 15 years' of call are overrepresented both when compared to the general population and barristers in general, they may be disproportionately impacted by the proposal. Men with over 13 years of call are also overrepresented when compared to the general population and to barristers in general. Male barristers and those of White ethnicity may be disproportionately impacted, therefore. In addition, as there may be a correlation between age and experience, older barristers may be over-represented among those undertaking longer trials and may therefore be disproportionately impacted by the proposals. We have proposed a less steep taper than under the original proposal, however, and a floor for Daily Attendance Fees, which would lessen the impact on long trials and therefore mitigate the adverse impact on these groups. We consider any such impact to be justified for the reasons set out below. To the extent there is a greater proportion of female and BAME barristers among the more junior Bar, the increase in fees for guilty pleas under this option may further the advancement of equal opportunities.

Impact on Higher Court advocates

- 8.3.3 As with barristers, HCAs engaged on cases resulting in a guilty plea will receive an increase in income and HCAs will see a reduction in legal aid income when undertaking trials and cracked trials under the AGFS in the future. Although we have limited equality data available on individual HCAs impacted by these proposals, we have assessed the impact on the basis of the impacts which may be reasonably anticipated. In common with all those providing criminal legal aid, impacted firms are more likely to be managed by BAME, male, and non-disabled individuals than in the general population; these groups may be disproportionately impacted, therefore. We consider any such impact to be justified for the reasons set out below.

Impact on clients

8.3.4 We do not anticipate any indirect impact on clients for the reasons set out in paragraph 6.9 above. Although we are unable to identify the protected characteristics of clients who would be affected if risks to sustainable supply were realised, we have assessed the impact on the basis of the impacts which may be reasonably anticipated. As men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole, the proposals may have a disproportionate impact on them. It is difficult to draw robust conclusions as to any particular disadvantage for disabled persons because of the high number of criminal legal aid clients in respect of which we do not hold relevant data and therefore we could not rule out a possible disproportionate impact relative to the population as a whole. We consider any such impact to be justified for the reasons set out below.

Justification

8.3.5 We acknowledge that men and those of White ethnicity are over-represented amongst barristers engaged in criminal work and that men and those of White ethnicity as well as older advocates may be over-represented among those undertaking longer trials and therefore be disproportionately impacted by the proposals.

8.3.6 If the proposal results in particular disadvantage to persons with protected characteristics, we believed it to be a proportionate means of achieving the legitimate aims set out in paragraph 6.3 above. By restructuring fees to promote efficient resolution of cases while retaining appropriate remuneration for trial work, including very long cases, it supports our wider efforts to transform the justice system while addressing respondents' concerns. Moreover, to the extent there is a greater proportion of female and BAME barristers among the more junior Bar, the increase in fees for guilty pleas serves to advance equality of opportunity.

Option 2: Revised fee structure based on modified version of CPS scheme

Impact on barristers

8.3.7 Advocates will see a change in fee income from all types of cases. Basic fees (known as core fees in the CPS scheme) covering preparation and the pages of evidence uplift are now calculated according to a page threshold as either a standard or enhanced fee. Each case type, offence category and advocate type (eg juniors, leading juniors and QCs) has a page cut-off point which determines the appropriate fee. The standard fee is designed to capture 95% of the cases in any particular offence type. In addition, the proposal to harmonise fees across offence groups for QCs and leading/led juniors in two advocate cases will result in QCs seeing their fee income fall by 3% on average, compared to 11% for led juniors and 4% for leading juniors.

8.3.8 As the proposed scheme is less graduated than the current AGFS, the greater fee reductions will be within longer and more complex cases that fall within both the standard and enhanced fee ranges. Barristers taking on such cases may be adversely impacted, therefore. Shorter, simpler cases will be paid more than is currently the case under this option. To the extent that there is a greater proportion of female and BAME barristers among the more junior Bar, and to the extent that the

shorter, simpler cases are more likely to be undertaken by the junior Bar, some may see an increase in fees (depending on case mix).

- 8.3.9 Longer and more complex cases may be more likely to be undertaken by more experienced barristers. As those of white ethnicity at 15 years' of call are overrepresented both when compared to the general population and barristers in general, they may be disproportionately impacted by the proposal. Men with over 13 years of call are also overrepresented when compared to the general population and to barristers in general. Male barristers and those of White ethnicity may be disproportionately impacted, therefore. In addition, as there may be a correlation between age and experience, older barristers may be over-represented among those undertaking longer trials and may therefore be disproportionately impacted by this option. The proposal to harmonise fees across offence groups for QCs and leading/led juniors in two advocate cases has a slightly greater impact on led juniors (than on QCs, leading juniors and juniors acting alone). However, no junior is likely to be 'led' in every case they undertake as the proportion of single advocate cases is much greater than the proportion of two advocate cases, so they will also be impacted as lone juniors. To the extent that led juniors are more likely to be young, female or BAME barristers, they may be disproportionately impacted. We consider any such impacts to be justified, however, for the reasons set out below.

Impact on Higher Court Advocates:

- 8.3.10 As with barristers, HCAs engaged in longer and more complex cases falling within the standard fee range may be adversely impacted by this option. Although we have limited equality data available on individual Higher Courts Advocates impacted by this proposal. We have assessed the impact on the basis of the impacts which may be reasonably anticipated. To the extent that led juniors are more likely to be young, female or BAME barristers, these groups may be disproportionately impacted, therefore. We consider any such impact to be justified for the reasons set out below.

Impact on clients:

- 8.3.11 We do not anticipate any indirect impact on clients for the reasons set out in paragraph 6.9 above. Although we are unable to identify the protected characteristics of clients who would be affected if risks to sustainable supply were realised, we have assessed the impact on the basis of the impacts which may be reasonably anticipated. As men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole the proposal may have a disproportionate impact on them. It is difficult to draw robust conclusions as to any particular disadvantage for disabled persons because of the high number of criminal legal aid clients in respect of which we do not hold relevant data and therefore we cannot rule out a possible disproportionate impact relative to the population as a whole. We consider any such impact to be justified, however, for the reasons set out below.

Justification:

- 8.3.12 We acknowledge that men and those of White ethnicity are over-represented amongst barristers engaged in criminal work and that men and those of White ethnicity as well as older advocates may be over-represented among those undertaking longer, more complex trials (falling within both the standard and enhanced fee ranges) and therefore be disproportionately impacted by the proposals.

- 8.3.13 If this proposal does result in particular disadvantage to persons with protected characteristics, we believe the proposal is a proportionate means of achieving the legitimate aims set out in paragraph 6.3. Option 2 would further simplify the fee structure, making it easier to administer for both the LAA and advocates while retaining the efficiencies of the current approach (e.g. including various hearings in the fee). Moreover, to the extent there is a greater proportion of female and BME barristers among the more junior Bar, the increase in remuneration for shorter and less complex trials may further the advancement of equality of opportunity.
- 8.3.14 We welcome any relevant information to further inform our analysis of the impact of the proposals on which we are consulting further and have included an equalities question in Chapter 5 to better understand the potential impacts. We will be updating this Part of the Equality Statement once we have considered all the relevant responses.

Part Two: Government Response

9 Restricting the scope of legal aid for prison law

9.1 Initial Analysis

Impact on prisoners:

9.1.1 The impact of this proposal is that affected prisoners would no longer receive criminal legal aid for some claims. This may be adverse in some instances, however, we considered that many such claims are capable of efficient and effective resolution through the internal prisoner complaints system and prisoner discipline procedures. To identify the potential for prisoners to be subject to a particular disadvantage (assuming for that purpose the proposal amounts to a provision, criterion or practice), LAA data on the protected characteristics of approximately 11,000 prisoners likely to be affected by the proposed change in the scope of criminal legal aid for prison law are presented below. They demonstrated that:

- 97% were male and 3% female;
- 53% were White, 25% from a BAME group with ethnicity unknown in 22% of cases; and
- 6% had a declared disability, 66% no declared disability, with disability status unknown in 29% of cases.

9.1.2 The data demonstrated that the majority of those impacted would be men (97%), who are over-represented amongst the affected client group when compared to the general population (where 51% are male). Those from a Black, Asian or Minority Ethnic (BAME) group are also over-represented. There were limitations on the availability of data on other protected characteristics of prison law users.

9.1.3 The LAA indicated that of the 11 treatment cases to receive prior approval since July 2010 a significant proportion have involved prisoners with learning difficulties and/or mental health issues. We concluded that the proposal could therefore potentially have an impact on this group of prisoners.

Impact on providers:

9.1.4 We anticipated the impact of this policy proposal would be adverse, as affected providers would see a reduction in legal aid income. To identify the potential for providers to be subject to a particular disadvantage (assuming for that purpose the proposal amounted to a provision, criterion or practice), data on the protected characteristics of providers likely to be affected by the proposal are presented below. We matched LSRC survey data to 187 of the 351 solicitor firms (a match rate of 53%) who, having engaged in such work in 2011/12, were potentially impacted by the proposal. The proposal would be applied to all affected providers in the same way, however we acknowledged that the extent of impact on a given provider firm may have been dependent upon how much they rely on income from impacted prison law work. Based on these data, the managerial make-up of these firms was as follows:

- 65% White-British, 30% BAME and 6% split-majority owned/controlled;
- 70% male, 13% female and 17% split-majority owned/controlled; and

- 4% of firms employed an ill or disabled manager.

9.1.5 There were limitations on the availability of data on other protected characteristics of providers.

9.1.6 There was evidence of an over-representation of BAME, male and non-ill or non-disabled majority managed providers as compared to the general population. We concluded that the proposals may have a disproportionate impact on them. We considered any such impact to be justified for the reasons below.

Justification:

9.1.7 We acknowledged there may be adverse impacts on certain clients, in particular those with learning difficulties, and providers, in particular male and BAME managed firms. If the proposal resulted in particular disadvantage to persons with protected characteristics, we believed the impact to be a proportionate means of achieving the legitimate aim. The prison law cases taken outside of scope of criminal law advice and assistance are not of sufficient priority to justify the use of limited public funds and would be dealt with more efficiently and effectively through non-legal channels, such as the prison complaints system.

9.1.8 As noted above, the proposal could potentially impact prisoners with learning difficulties and/or mental health issues. To mitigate any potential impacts on offenders with learning difficulties, The National Offender Management Service committed to the provision of comprehensive screening to ensure that reasonable adjustments be made for all prisoners with learning disabilities – to ensure all prisoners are able to use the prisoner complaints system.

9.2 Final Analysis

Key issues raised

Under 18s

9.2.1 Concerns were raised by a number of respondents on the potential impact of the proposals on those under 18, their ability to engage with the complaints system and the effect of resettlement issues. Respondents also questioned whether the proposals were in line with the UN Convention on the Rights of the Child (Article 37(d)).

Prisoners with mental health issues and/or learning disabilities

9.2.2 Respondents were concerned that the data used (disability data on prisoners using legal aid) significantly underestimated the number of prisoners with these issues in the prison population. Concerns were also raised about the efficacy of screening processes in prisons and the lack of reasonable adjustments made for these prisoners, particularly in relation to the complaints system.

9.2.3 Respondents also commented that there is a lack of confidence among prisoners in general, and those with mental health issues and/or learning disabilities in particular, in the complaints system and that it lacks independence.

Female prisoners

9.2.4 The issue of criminal legal aid for prison law no longer being available for cases involving female prisoners' access to mother and baby units was noted by a number of respondents. In particular, criticisms were made that no attempt had been made to assess the nature and severity of the proposals in relation to female prisoners.

BAME prisoners

9.2.5 The potential impact of the proposals on BAME prisoners was highlighted by a number of respondents. The high prevalence of these prisoners in the prison population was noted, as was the potential impact on prisoners whose first language is not English.

Government response*Under 18s*

9.2.6 As outlined in paragraph 13 of Annex B young offenders are detained in three different types of establishment – Secure Children's Homes (SCHs), Secure Training Centres (STCs) and Young Offender Institutions (YOIs). Each is subject to rigorous independent inspection by either Ofsted (for SCHs and STCs) or HMIP in conjunction with Ofsted (for YOIs).

9.2.7 All youth secure establishments have comprehensive internal complaints systems or grievance processes which provide an alternative means of redress for matters removed from the scope of criminal legal aid for prison law (see below for requirements on establishments). Advocacy support is provided to young people (see below) in order to assist them with any issues that they may experience whilst in custody, either within or outside the youth secure estate, including making effective use of complaints systems, grievance or disciplinary procedures. Civil legal aid for judicial review may be available for cases involving under 18s, subject to means and merits, such as those related to resettlement.

9.2.8 The requirements on SCHs in terms of a complaints procedure are set out in the National Minimum Standards for Children's Homes⁷⁷:

9.2.9 Standard 21.1: There are clear and effective procedures for monitoring and controlling the activities of the home. This includes the financial viability of the home, any serious incidents, allegations, complaints about the provision, and quality of the provision. Children in the home are regularly involved in contributing to the operation of the home, and their views and any concerns are seriously taken into account.

9.2.10 The requirements on STCs can be found in the Secure Training Centre Rules 1998⁷⁸, which cover a range of issues including privileges, correspondence with legal advisers and courts, maintenance of order and discipline as well as the requirements placed on contracted out secure training centres. The regulations also outline requirements in terms of the grievance procedure:

⁷⁷ www.minimumstandards.org/nms_childrens_home.pdf

⁷⁸ <http://www.legislation.gov.uk/ukSI/1998/472/contents/made>

Regulation 8

8.—(1) There shall be established and administered at each centre a comprehensive grievance procedure, approved by the Secretary of State, to which each trainee and his parent shall have access.

(2) Every request by a trainee to see the governor or an independent person shall be recorded by the officer to whom it is made and promptly passed on to the governor.

(3) On every day, the governor shall hear any requests to see him that are made under paragraph (2) above.

(4) Where a trainee has asked to see an independent person, the governor shall ensure that that person is told of the request as soon as possible.

(5) A written request or complaint under the grievance procedure established under this rule may be made in confidence.

9.2.11 Young people would be assisted in making use of the grievance procedure in STCs or the complaints process in SCHs and YOIs by either their personal officer, caseworker or through advocacy support if they are unable to do so on their own. This will ensure that matters removed from the scope of criminal legal aid for prison law can be satisfactorily resolved without the need for legal advice and assistance. For more information on advocacy support see below.

9.2.12 We recognise that young people may find it more challenging to navigate the complaints process, grievance or disciplinary procedures (depending on the type of establishment), which is why young people are supported by advocacy services within the secure estate. All advocacy providers must adhere to the National Standards for the Provision of Children's Advocacy Services⁷⁹. Advocates will help to ensure that appropriate support is provided by statutory agencies such as Local Authorities, and as such will help to resolve issues that might currently be dealt with by way of legal advice and assistance.

9.2.13 A new contract for advocacy services provided by Barnardos commenced on 1 July 2013 across all STCs and YOIs in the youth secure estate. This service is designed for use by young people. Under the contract independent advocacy support is provided to young people in order to assist them with any issues that they may experience whilst in custody, either within or outside the youth secure estate. Although not an exhaustive list, the role of the advocate is to provide a broad range of non-legal support services to young people to resolve issues at the right level including:

- support to young people to identify and access the services they want to use;
- listening to the young person to understand what they want the advocate to do;
- explaining possible options to young people so that they may make their own choices;

⁷⁹ http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_4017049

- supplying young people with relevant information;
- representing young people who do not have the confidence to do so themselves; and
- referring young people where appropriate to other agencies that can assist young people in resolving their issues. This requires advocacy services to develop relationships with agencies outside of the youth secure estate such as local authorities.

9.2.14 The advocacy service provider will accompany a young person to meetings on request either to support the individual or represent their wishes. Such meetings include but are not limited to:

- adjudications;
- sentence planning meetings;
- debriefs following restraint;
- meetings with external agencies e.g. youth offending teams and local authorities; behaviour management meetings; and
- additional secure establishment meetings as required by the young person.

9.2.15 Advocacy services are provided under local arrangements between service providers and providers of SCHs/Local Authorities. These must be in accordance with the relevant "National Standards for the Provision of Children's Advocacy Services" discrete to England and Wales.

9.2.16 PSI 08/2012⁸⁰ (Care and management of young people) covers a wide range of issues and sets out the requirements on YOIs. The following provides additional information on some of the areas covered in the PSI and the provisions that should be made for young offenders, although is by no means comprehensive. For more information please see the PSI.

9.2.17 Dealing with complaints and investigations

- Governors must ensure that the complaints system takes account of the age, maturity and individual circumstances of young people when prescribing how complaints may be made, and that all young people are able to make complaints if they wish. When prescribing how complaints can be made, Governors must recognise that young people often have lower levels of literacy than older prisoners. Governors should develop protocols that encourage staff, when giving a written response to a complaint, to also provide constructive verbal feedback to young people, which should include advice on appeal options (paragraph 2.30).
- Governors must ensure that each young person is aware of how to contact advocacy services, the IMB and/or other support, and of the assistance that they may be able to provide when making a complaint (paragraph 2.33).
- Governors must ensure that completed complaints are routinely scrutinised by the safeguarding children manager so that all complaints relevant to allegations against staff are dealt with through Child Protection procedures. Governors

⁸⁰ <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-08-2012-care-management-young-people.doc>

should take steps to ensure that young people do not feel prejudiced by making complaints (paragraph 2.34).

9.2.18 Annex B (at paragraph 26) of the PSI also provides further information on how the complaints procedure should be operated so that it is appropriate for under-18s.

9.2.19 PSI 08/2012 also contains requirements in relation to personal officers and caseworkers to provide every young person with an adviser with whom they have frequent, purposeful contact:

- Every young person must have assigned to them an appropriate personal officer or caseworker during the induction programme. Personal officers or caseworkers should, as far as possible, be suitably matched to the young person, taking account of their individual needs and identities. Each young person must know who the assigned officer is, and the personal officer or caseworker system must be fully and clearly explained to them. Arrangements must be made so that the young person knows who they can contact when the personal officer or caseworker is absent. Every effort should be made to ensure that the young person does not have unnecessary changes of personal officer or caseworker (paragraph 4.52).
- Personal officer or caseworker arrangements must be put in place, which ensure the following are achieved:
 - each young person understands to whom they can turn to, to discuss all issues of concern, including resettlement
 - the personal officer or caseworker attends each training plan review during the custodial period
 - there is appropriate contact with, and involvement of, each young person's family and supervising officer and that links between all parties are strengthened (paragraph 4.54).

9.2.20 As a result of the procedures outlined above, in particular the provision of advocacy services and the ability to refer cases to Local Authorities, the statutory Monitor or PPO, we consider that adequate support is prescribed and available to ensure that under 18 prisoners are supported and provided for and can resolve claims through alternative channels such that criminal legal aid for prison law is not required apart from in the circumstances set out in the scope criteria the removal of criminal legal aid for prison law as proposed should not detrimentally impact on them.

Prisoners with mental health issues and/or learning disabilities

9.2.21 We acknowledge the concerns raised by respondents that the data used in the consultation underestimated the prevalence of mental health issues and learning disabilities in the prison population. The data used related to prison law clients and not to the general prison population; the figures presented were 6% of clients having mental health and/or learning disabilities, with 29% unknown. Respondents supplied data indicating the prevalence of prisoners with these issues was much higher than that stated in the consultation, with estimates commonly around 20-30%. We acknowledge that the data relied upon for our initial analysis reflected inconsistencies with regard to the reporting of client disability, with "unknown" being used where data is missing for the client or where a client has identified as having a disability, but it is

of an unknown (non-specific) nature. We believe this inconsistency led to the lower rate reported.

9.2.22 Having considered the data provided by Respondents, we do not consider that the prevalence of prisoners with mental health issues and/or learning disabilities substantively affects the proportionality of our approach. We consider that current processes are sufficient to ensure these prisoners are able to make effective use of the alternative means of redress such as the complaints system and that reasonable adjustments are made where appropriate.

9.2.23 Prison Service Instruction (PSI) 32/2011⁸¹ (Ensuring Equality) states that prisoners are encouraged to disclose disabilities and that reasonable adjustments must be made and recorded. Disabled prisoners must also be located appropriately and courts and escort contractors informed of disabled prisoners' needs as appropriate. In particular:

- 'Governors must ensure that efforts are made to identify whether a prisoner has a mental or physical impairment of any form. Governors must ensure that prisoners are encouraged to disclose their disability status and that procedures are in place to record this information (both on reception and subsequently) and to treat it confidentially. Not all prisoners will be aware of their disabled status and staff must be proactive in identifying the specific needs of all prisoners' (paragraph 8.1).
- 'Governors must consider on an ongoing basis what prisoners and visitors with a range of disabilities might reasonably need and ensure that reasonable adjustments (further information is provided for staff at Annex G of the PSI) are made for disabled prisoners and visitors. Governors must consider whether prison policies and practices, the built environment, or a lack of auxiliary aids and services could put a disabled prisoner or visitor at a substantial disadvantage and if so must make reasonable adjustments to avoid the disadvantage. If a request for reasonable adjustments is made by a prisoner or visitor it must be considered and the outcome documented' (paragraph 8.2).

9.2.24 In terms of the complaints system PSI 02/2012⁸² (Prisoner complaints) sets out a number of actions prisons should take to ensure reasonable adjustments are made for prisoners with mental health issues and/or learning disabilities:

- 'Establishments must have arrangements in place that will allow a prisoner to make a formal complaint orally to a member of staff where the prisoner has difficulty doing so in writing. In such circumstances the complaint must be recorded and the written answer must be explained to the prisoner in due course' (paragraph 2.1.3).
- 'The complaints system must ensure that any equality aspect of any complaint is recognised, recorded and investigated' (paragraph 2.1.6).
- 'If a prisoner submits a complaint which is illegible or lacks clarity, it is recommended that staff seek clarification, possibly by talking to the prisoner,

⁸¹ http://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi_2011_32_ensuring_equality.doc

⁸² <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-02-2012-prisoner-complaints.doc?type=Finjan-Download&slot=000002FD&id=00000AFC&location=0A64420D>

rather than giving a general reply that may not address the specific issue' (paragraph 2.2.5).

- 'Responses must use language which is easy to understand and takes account of any individual needs. Jargon must be avoided' (paragraph 2.3.6).
- An easy read leaflet is included in the PSI at Annex K of the PSI.

9.2.25 More generally PSI 75/2011⁸³ (Residential services) sets out the operational framework for prison establishments in delivering residential services, which includes a number of specific provisions for prisoners with protected characteristics:

- 'In delivering all the outputs set out in this specification/instruction, staff must have regard to equality considerations and ensure that all services are delivered fairly and appropriately, having regard to the protected characteristics defined in the Equality Act 2010' (paragraph 1.14).
- 'Residential staff must assist prisoners who wish to access legal advice by providing lists of legal advisers, supplying appropriate forms and assisting prisoners to complete them where requested due to language or literacy difficulties' (paragraph 2.3).
- 'Through their engagement with individual prisoners, residential staff are expected to identify prisoners with any particular needs and make reasonable adjustments to their daily routine. This would include prisoners with disabilities, mobility, hearing eyesight or communication difficulties, language or literacy difficulties. Relevant specialist colleagues must be consulted as part of this process' (paragraph 2.3).

9.2.26 In addition, NOMS will develop a communications strategy to reinforce compliance with the relevant PSIs in relation to the complaints system, including the need to make reasonable adjustments. This will include a letter to be sent from the Chief Executive of NOMS to all prisons and YOIs outlining the need to adhere to PSIs and make reasonable adjustments when necessary. The same message will be relayed to STCs via the YJB; MoJ will liaise with DfE to ensure this message is disseminated to SCHs. NOMS will also approach HMIP with a view to a 'complaints' thematic inspection in 2014/15 or 2015/16 to assess the impact of the changes to prison law. NOMS will continue to assess the effectiveness of the complaints system on an on-going basis in the future.

9.2.27 We consider that these requirements are sufficient to ensure that prisoners with mental health issues and/or learning disabilities (as well as other protected characteristics, where relevant) are able to use the complaints system effectively and that the restriction of the scope of criminal legal aid for prison law will not impact on these prisoner disproportionately. We consider the actions outlined at paragraph 9.2.27 will ensure compliance with the requirements set out in PSIs and that reasonable adjustments are made when necessary, such that there should not be any particular disadvantage.

⁸³ <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-75-2011-residential-services.doc>

BAME prisoners

9.2.28 In addition to the requirements outlined in relation to prisoners with mental health issues and/or learning disabilities (see above) PSI 32/2011 outlines a number of equality-related requirements which would pertain to BAME prisoners.

- Governors must ensure that management information (further information at annex B of the PSI) on equalities issues in service delivery is analysed, and that an annual local equality action plan is produced and published. Responsibility for actions on the plan must be clear and managers and staff must be held to account for progress through relevant management checks. Progress must be tracked and an update report must be submitted regularly (at a frequency to be determined by the Governor based on an assessment of risk) for discussion by the Senior Management Team, copied to the Deputy Director of Custody, and published (paragraph 3.4).
- 'NOMS collects monitoring data (further information at Annex D of the PSI) on all equalities issues and uses it for analysis that drives action to ensure fairness for all' (paragraph 4.1).
- 'Governors must ensure that:
 - Equality monitoring information on all prisoners is collected and recorded;
 - Service provision is monitored; and
 - Monitoring data is published.' (paragraph 4.2)

9.2.29 PSI 02/2012 (Prisoner complaints) sets out a requirement in relation to prisoners whose first language may not be English to enable them to make effective use of the complaints system:

- 'Prisoners who do not have a good grasp of the English language may be allowed to submit a complaint in their own language if they wish' (paragraph 2.1.5)
- 'Complaint forms and the short and long version text leaflets for prisoners are available on the Intranet in 19 languages' (paragraph 2.1.5).

9.2.30 The audit report on the complaints system referred to at paragraph 32 of Annex B included a recommendation to ensure that all complaint forms are freely available, including in foreign languages, which will be taken forward by NOMS. This will further strengthen the effectiveness of the complaints system for prisoners whose first language is not English. The actions NOMS has committed to undertake will also strengthen the complaints system for all prisoners.

9.2.31 The Government therefore considers that current processes are sufficient to ensure that BAME prisoners will be adequately catered for and are able to use the complaints system such that they should not experience any particular disadvantage.

Female prisoners

9.2.32 Prisoners will be able to use the prisoner complaints system to resolve any issues that arise (see PSI 02/2012) and the Government considers that this is robust enough to deal with such issues (see paragraphs 28–35 of Annex B). Should issues not be resolved satisfactorily using the complaints system prisoners would still have recourse to the Prisons and Probation Ombudsman (or Local Authorities/statutory

Monitor in the case of young people detained in SCHs/STCs) or ultimately judicial review, subject to means and merits.

9.2.33 The actions NOMS has committed to undertake (see paragraphs 34 and 35 of Annex B) will further strength the complaints system, including for female prisoners.

9.2.34 The provisions in PSI 32/2011 (Ensuring Equality) and PSI 75/2011 (Residential services) outlined above in relation to prisoners with protected characteristics are applicable to female prisoners.

Conclusion

9.2.35 We consider that adequate processes are in place to ensure that prisoners/young offenders will be able to make use of the alternative means of redress proposed, such as complaints systems, and that referral mechanisms exist if complaints cannot be satisfactorily resolved within establishments (see paragraphs 18 and 36 of Annex B). However, as set out at paragraphs 2.5–2.7 of Chapter 2 we have modified the initial proposal so that all proceedings before the Parole Board where the Parole Board has the power to direct release and sentence calculation matters are funded, further mitigating the potential for adverse impact.

9.2.36 As a result, we do not consider it likely that there will be adverse impacts on young persons, women, disabled persons or BAME persons, the potential for which we set out in the initial analysis. We consider that the alternative means of redress can be used by those individuals, are robust and that compliance with published policies, including the need to make reasonable adjustments, will be reinforced through the actions outlined in paragraphs 34 and 35 of Annex B. As set out in the initial analysis we consider that to the extent there are any adverse impacts on those with protected characteristics, any such impacts would be justified because the modified proposal represents a proportionate means of achieving the legitimate aims set out in paragraph 6.3 above. Alternative means of redress should be the first port of call for the issues removed from scope, ensuring public resources are targeted at the cases that justify it.

10 Imposing a financial threshold in the Crown Court

10.1 Initial Analysis

Impact on clients:

10.1.1 We anticipated the impact of this proposal would be adverse on those who exceed the disposable income threshold, as affected persons would no longer be eligible to receive criminal legal aid. To identify the potential for clients to be subject to a particular disadvantage (assuming for that purpose the proposal amounted to a provision, criterion or practice), LAA data on the protected characteristics of clients affected by the proposal were presented. They demonstrated that fewer than 200 Crown Court legal aid applicants had an annual disposable household income of £37,500 in 2011/12. We compared the data we had on the protected characteristics of the affected group against that which we have for the characteristics of all Crown Court legal aid clients and against the general population. The data demonstrated that among the Crown court defendants in the affected pool:

- 82% were male and 7% female (gender was not recorded in 12% of cases). 78% of all Crown Court legal aid clients were male, 10% female and 12% unknown;

- 51% were White, 28% were from a BAME background with ethnicity unknown in 21% of cases. 18% of all Crown Court legal aid clients were BAME, 58% white and 25% unknown;
- 4% had a declared disability, 42% no declared disability with disability status unknown in 53% of cases. 15% of Crown Court clients declared a disability, 56% not ill or disabled and 28% unknown; and
- 4% were aged between 18–24 yrs, 85% aged between 25–64 years and 11% aged 65 years and older. 36% of Crown Court legal aid were aged between 18–24 yrs, 63% aged between 25–64 years and 1% aged 65 years and older.

10.1.2 Data indicated that there is a slightly greater proportion of males in the affected group when compared to all Crown Court legal aid clients. Data indicated there were a higher proportion of BAME people in the affected group when compared to all Crown Court legal aid clients. There was a smaller proportion of people in the affected group that declared a disability when compared to all Crown Court legal aid clients. The data also showed that a greater proportion of the affected group are in the 25–64 years age group when compared to all Crown Court legal aid clients. We treated each of these assessments with caution due to the high proportion of individuals in the affected group for which there were no data.

10.1.3 In common with all Crown Court legal aid applicants, men, those of BAME ethnicity and those aged 25–64 years were over-represented when compared to the general population (where 49% are male, 14% were of BAME ethnicity and 52% were aged between 25 and 64 years old).

Impact on providers

10.1.4 As the proposed change concerned eligibility for defendants, we did not consider it likely to have a direct impact on providers (assuming for this purpose the proposal amounted to a provision, criterion or practice). As we discussed in the Impact Assessments, providers could be affected if the changes had an impact on their income from legal aid work. However, this may have been offset by a rise in demand for privately funded defence work. Were any disadvantage to materialise, given that providers with majority BAME and male managerial control were over represented among criminal legal aid providers in comparison with the population as a whole, they may be disproportionately impacted. We considered any such impact to be justified for the reasons set out below.

Justification

10.1.5 When compared against the Crown Court legal aid client population, we acknowledged that there may be adverse impacts particularly on men, the BAME group, and those aged 25–64. However, we believed the proposal to be a proportionate means of achieving legitimate aims. By setting the threshold at a reasonable level, at which people should generally be able to pay for their own defence, it targets limited public resources at those people who need it most. There would also be a hardship review mechanism in place available to all affected individuals, regardless of their protected characteristics.

10.2 Final Analysis

Key issues raised

10.2.1 Equalities concerns were not a significant feature of responses in relation to this proposal, although the issue of disposable household income being used in the calculation of financial eligibility was raised. The concern is that as the majority of offenders are male, and their partners female, the use of disposable household income would impact on partners' income even though they may not be directly party to the criminal proceedings and therefore disproportionately impact on women.

Government Response

10.2.2 Although we recognise this concern household income is the standard measure of income used in all calculations around financial eligibility for criminal legal aid currently⁸⁴. Aggregating the means of the applicant and their partner is the norm in means tested benefits in this country (see paragraphs 66 and 67 of Annex B), and also we consider it is administratively less complex to take account of both individuals' income as household expenses and bank accounts are often shared. We must also guard against a situation arising whereby a defendant with a partner with considerable means is provided with criminal legal aid. We recognise there may be an effect on defendants' partners but consider this to be justifiable in light of the reasons above.

10.2.3 We acknowledge there may be some potential for adverse impact on the basis raised by respondents but as set out at paragraphs 60-63 of Annex B we consider the threshold to be affordable for the majority of cases and offence groups and we do not consider it right or necessary in relation to this policy or the wider legal aid system to amend our approach to including a partner's income in the calculation of financial eligibility. The threshold is also set at approximately twice the average national household disposable income. Hardship review will exist to ensure that representation is provided where individuals are not able to afford to fund their case privately.

Conclusion

10.2.4 We acknowledge the potential for adverse impact on women raised by respondents. However it cannot be assumed that all male crown court defendants have a female partner whose disposable income would be included in the calculation and we do not consider it proportionate or practicable to amend the general approach to calculating financial eligibility. Our final conclusions therefore are as set out in the initial analysis above. We consider the proposal to be a proportionate means of achieving the legitimate aims set out in paragraph 6.3. By setting the threshold at a reasonable level, at which people should generally be able to pay for their own defence, it targets limited public resources at those people who need it most.

⁸⁴ See the Criminal Legal Aid Manual: <http://www.justice.gov.uk/downloads/legal-aid/eligibility/criminal-legal-aid-manual.pdf>

11 Introducing a residence test

11.1 Initial Analysis

Impact on clients

11.1.1 We anticipated that this proposal would have an adverse impact on those who did not satisfy the residence test (assuming for this purpose the proposal amounted to a provision, criterion or practice) as, subject to the exceptions set out in the consultation paper, those affected would no longer receive civil legal aid. We recognised that this proposal may have the potential to put non-British nationals at a particular disadvantage compared with British nationals, as British nationals would be able to more easily satisfy the test than other nationals. However, we believed this to be justified for the reasons set out below.

Impact on providers

11.1.2 We had no data upon which to base an assessment of the likely impact on providers although we believed the proposals were unlikely to result in negative equality impacts on this group (assuming for this purpose the proposal amounted to a provision, criterion or practice). However, we acknowledged that the extent of impact on a given provider firm may be dependent upon the extent to which they rely on income from impacted civil legal aid work. Were any disadvantage to materialise, given that those managing firms engaged in work impacted by this proposal are more likely to be male and non-disabled when compared to the population as a whole, they may be disproportionately affected. We considered any such impact to be justified for the reasons set out below.

Justification

11.1.3 We believed this proposal to be a proportionate means of achieving legitimate aims. The requirement for 12 months of previous lawful residence at the time of the application for civil legal aid would apply irrespective of nationality and targeted limited public funds available for civil legal aid at those who have a strong connection to the UK, improving the credibility of the scheme.

11.1.4 We would have ensured that legal aid continued to be available where necessary to comply with obligations under EU or international law, and exceptional funding (where the failure to provide legal aid would breach the applicant's rights under the European Convention on Human Rights or EU law) would still be available in respect of persons who do not meet the residence test. Furthermore, the proposed exception for asylum seekers would minimise any impacts on those with protected characteristics.

11.2 Final Analysis

Key issues raised

11.2.1 There was widespread concern among respondents that the proposals did not properly consider the impact on vulnerable groups of people, including asylum seekers, refugees and victims of human trafficking, forced marriage and domestic and honour-based violence. Respondents argued that, as there are a higher concentration of BAME, women and children among these groups the equality statement gave insufficient consideration to the impact of the proposals on the protected characteristics of age, sex and race.

- 11.2.2 Respondents raised particular concerns about the lack of assessment of the impact on children and specifically child victims of human trafficking. Many responses highlighted the protections afforded to children by the United Nations Convention on the Rights of the Child (UNCRC). Respondents raised concerns that the proposal would automatically exclude from legal aid children under the age of one. Respondents argued that this would amount to unlawful indirect discrimination.
- 11.2.3 Many responses argued that vulnerable groups with protected characteristics (including asylum seekers, refugees and victims of human trafficking, forced marriage and domestic and honour-based violence) had been specifically retained within the scope of the legal aid scheme under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), but that these groups would often struggle to provide evidence to satisfy the residence test requirements.
- 11.2.4 A number of responses argued that the test would be unlawful as it does not take into account the added protection offered to vulnerable groups of people by wider Convention rights and specific articles of the ECHR (including Article 6 – the right to a fair trial). Respondents argued that the availability of exceptional funding would not mitigate this point, as exceptional funding could only be provided on matters which are outside the scope of the civil legal aid scheme as set out in LASPO Schedule 1.
- 11.2.5 Many responses raised specific concerns that the proposals failed to consider the severity of impacts on groups with or likely to have protected characteristics and could unlawfully discriminate, including:
- Women (and particularly women who are victims of domestic violence) (in contravention of the Equality Act 2010 and article 14 ECHR, as well as Articles 1 and 15 of the Convention on the Elimination of all forms of Discrimination against Women);
 - Children (in contravention of Articles 3, 9, 10, 12 and 13 of the UNCRC);
 - Child victims of trafficking (in contravention of Article 8 of the UNCRC);
 - Victims of trafficking generally (in contravention of the EU Directive on combating human trafficking (2011/36/EU) and the Council of Europe Convention on Action against Trafficking in Human Beings);
 - Migrants (therefore indirectly discriminating on the basis of nationality in contravention of the Equality Act 2010 and Article 14 ECHR);
 - Refugees and asylum seekers (in contravention of the Refugee Convention 1951).

Government response

- 11.2.6 We continue to believe that individuals should in principle have a strong connection to the UK in order to benefit from the civil legal aid scheme, and that those who do not have a strong connection should not be prioritised for public funding in the same way as those who do have a strong connection. We must ensure that limited resource is targeted appropriately. This is always an important responsibility of Government but even more so at a time of financial constraint.
- 11.2.7 We do not accept that the proposed residence test would result in contravention of our domestic and international legal obligations. As previously set out, we would ensure that legal aid will continue to be available where necessary to comply with our

obligations under EU or international law set out in Schedule 1 to LASPO. Nor do we accept arguments that the proposal would amount to unlawful indirect discrimination; to the extent it results in particular disadvantage, we believe that the test, modified as described in Annex B and below, is justified and proportionate. The availability of exceptional funding for those excluded from the test will ensure that, for any individual case, legal aid would continue to be available where failure to do so would result in a breach of an individual's rights to legal aid under the ECHR or where there is an enforceable right to legal aid under EU law.

11.2.8 We do not agree that the proposal would necessarily have a disproportionate impact on people with protected characteristics. In the absence of data on which to estimate the volume of cases or types of clients which would be affected by the residence test proposal, we have assessed the impact on the basis of the impacts which may be reasonably anticipated.

11.2.9 We acknowledge that the test as proposed may disproportionately impact on groups with protected characteristics namely non-British nationals, women and children. However, as set out in the government response, we have revised our original proposal so that applicants for civil legal aid on certain matters of law (as set out in Part 1 of Schedule 1 to LASPO) would not be required to meet the residence test (in addition to exceptions for asylum seekers and armed forces personnel and their immediate families). We have carefully considered the potential impacts on vulnerable groups and protection of children cases as part of this assessment. Applications for civil legal aid on the following categories of case (as set out in Part 1 of Schedule 1 of LASPO) would therefore not be required to meet the residence test:

- Detention cases (paragraph 5, 20, 25, 26 and 27 (and challenges to the lawfulness of detention by way of judicial review under paragraph 19) of Part 1 of Schedule 1 to LASPO)
- Victims of trafficking (paragraph 32 of Part 1 of Schedule 1 to LASPO), victims of domestic violence and forced marriage (paragraphs 11, 12, 13, 16, 28 and 29 of Part 1 of Schedule 1 to LASPO);
- Protection of children cases (paragraphs 1, 3⁸⁵, 9⁸⁶, 10, 15 and 23 of Part 1 of Schedule 1 to LASPO); and
- Special Immigration Appeals Commission (paragraph 24 of Part 1 of Schedule 1 to LASPO).

11.2.10 We will also make limited exceptions for certain judicial review cases for individuals to continue to access legal aid to judicially review certifications by the Home Office under sections 94 and 96 of the Nationality, Immigration and Asylum Act 2002.

11.2.11 We also intend that children under the age of 12 months will not be required to have at least 12 months of previous lawful residence.

11.2.12 We continue to believe that the proposals are unlikely to result in negative equality impacts for providers. In any event, the additional exceptions that we have set out

⁸⁵ Exceptions to the residence test for cases under paragraph 3 of Part 1 of Schedule 1 to LASPO would only apply for cases where the abuse took place at a time when the individual was a child.

⁸⁶ Exceptions to the residence test for cases under paragraph 9 of Part 1 of Schedule 1 to LASPO would only apply to cases under the inherent jurisdiction of the High Court in relation to children.

would further limit the extent to which the residence test would reduce the income available to civil legal aid providers and the impact of carrying out the test. The evidence required for the purposes of the test will be described in secondary legislation and guidance as appropriate so that the requirements are clear and providers will be clear on what is required of them. We continue to believe it is reasonable to expect providers to carry out the test. It is our intention that the test will be objective and not overly onerous to administer.

Conclusion

11.2.13 We consider that the further modifications to the test outlined above directly address a large number of the concerns raised in responses on the equality impact of the proposal and mitigate the potential for adverse impact on the groups identified. To the extent there is a disproportionate impact (such as on non-British nationals), we believe that the residence test is a proportionate means of achieving the legitimate aims set out in paragraph 6.3. By targeting funding at those with a strong connection to the UK, the residence test ensures that limited public resources are spent appropriately.

12 Paying for permission work in judicial review cases

12.1 Initial Analysis

Impact on clients

12.1.1 We noted that any impact on clients would be dependent on provider response to the reforms, and the extent to which the proposal resulted in a reduction of availability of representation for (i) cases which the court does not allow to proceed; and (ii) judicial review cases more generally. As the impact on provider behaviour is inherently uncertain, we considered that the likely equality impacts on clients were unquantifiable. The limited data available suggested that those aged 18-24 are over-represented among clients in those who might bring cases which are refused permission by the court.

Impact on providers

12.1.2 We anticipated that the proposal would have an adverse impact on providers due to the anticipated reduction in legal aid income. We noted that those managing civil and family legal aid firms impacted by the proposal were more likely to be male, non-disabled and BAME when compared to the population as a whole. We therefore acknowledged that the proposal may have a disproportionate impact on these groups.

Justification

12.1.3 We considered that, to the extent that the proposal did result in any particular disadvantage to persons with protected characteristics, this was justified as a proportionate means of achieving the legitimate aims of bearing down on the costs of the legal aid scheme and ensuring that the system commands the confidence of the public.

12.2 Analysis

Key issues raised

- 12.2.1 There was widespread concern among respondents that this proposal (when considered alongside the proposed residence test and proposed removal of funding from cases with borderline prospects of success) would make it extremely difficult for most people (including those with protected characteristics) to qualify for legal aid to challenge decisions made by the state, as respondents considered that providers would be unwilling to take cases at risk. Respondents argued that insufficient consideration was given to the nature and severity of likely impacts on people with protected characteristics.
- 12.2.2 Responses argued that the proposal would result in providers refusing to provide legal aid services for work for which there was no guarantee of payment and that, as a result, vulnerable groups with protected characteristics would be unable to challenge state decisions or would face an inequality of arms if acting as a litigant in person.
- 12.2.3 Many responses raised concerns about the impact on disabled people in particular, arguing that judicial review is often the only means available to people in this group to challenge the decisions or failures of public bodies, that people in this group may be less well-placed to communicate effectively with providers, and that therefore providers may be less willing to take such cases at risk. Responses noted that disabled people were less likely to have the capacity to act as a litigant in person and that therefore this proposal would have a particular impact.
- 12.2.4 Some responses raised concerns about the impact on the Junior Bar who are often instructed to draft summary grounds and therefore would either be required to undertake at risk work, or providers would no longer instruct barristers on permission applications. Responses argued that the proposal would therefore impact disproportionately on BAME and women.

Government response

- 12.2.5 The Government continues to believe that taxpayers should not be expected to pay the legal bills for a significant number of weak judicial review cases which are not permitted by the court to proceed as they fail the test for permission in judicial review.
- 12.2.6 We acknowledge that respondents have raised concerns about the equality impacts of this proposal. As set out in the consultation response, we propose to introduce a discretion to permit the Legal Aid Agency to pay providers in certain cases which conclude prior to a permission decision. We intend to consult further on this further proposal and the criteria which would be used to determine whether or not a discretionary payment is made. We will set out further details of this proposal shortly.

13 Civil merits test – removing legal aid for borderline cases

13.1 Initial Analysis

Impact on clients

13.1.1 We anticipated the proposal would have an adverse impact on civil legal aid clients in certain cases, in particular housing, family, immigration, claims against public authorities and public law where the case has a less than 50% chance of success. The limited LAA data concerning the 100 (rounded) cases per annum that would be affected by the proposal suggested that disabled clients and those aged 25–64 are overrepresented as compared to the general population and so may have been disproportionately affected by the proposal (assuming for this purpose the proposal amounted to a provision, criterion or practice). We considered any such impact to be justified for the reasons set out below.

Impact on providers

13.1.2 We anticipated the proposal would have an adverse impact on providers as they would see a reduction in legal aid income in respect of the cases referred to above (assuming for this purpose the proposal amounted to a provision, criterion or practice). Those managing firms identified as being affected from LAA data collected (where equalities data is held) were more likely to be male and non-disabled than in the general population and so may have been disproportionately affected by the proposal. We considered any such impact to be justified for the reasons set out below.

Justification

13.1.3 We believed the proposal to be a proportionate means of achieving legitimate aims. As a matter of principle limited public funding should be directed to cases with at least a 50% or more prospects of success. The proposal would ensure that limited public funding is focused on those cases in which it is possible to say that the prospects of success are 50% or better.

13.2 Final Analysis

Key issues raised

13.2.1 There was widespread concern among respondents that the cumulative impacts of this proposal when considered alongside the proposed residence test would make it much more difficult for people with protected characteristics to qualify for legal aid to challenge decisions made by the state. Respondents argued that insufficient consideration was given to the nature and severity of likely impacts on people with protected characteristics.

13.2.2 Responses argued that the proposal would likely have the greatest impact on people with protected characteristics since they were considered more likely to need to challenge decisions made by the state. Disabled people were cited as a protected group that may be particularly adversely affected by the proposals as they may lack the capacity to act as litigants in person and may be less likely to have sufficient resources to pay for privately funded legal representation.

- 13.2.3 Some responses argued that significant wider public interest cases are more likely to involve disabled people, children, BAME and female clients and therefore the proposal would have a more pronounced impact than stated in the equality statement on the protected characteristics of age, sex, race and disability.
- 13.2.4 Other respondents have suggested that clients who lead chaotic lives, including those with learning disabilities, mental health problems and homeless people, would be unable to provide the evidence needed to enable a fair assessment of their prospects of success to be made. They consider that the proposal therefore has the potential to impact particularly on disabled and vulnerable people.
- 13.2.5 One response considered that the full range of evidence required in cerebral palsy cases would not be available at the stage legal aid is applied for – it's often only available when detailed medical evidence is supplied. Therefore the application for legal aid would fail if borderline cases would no longer qualify for funding and this would have impacts for vulnerable disabled children.

Government response

- 13.2.6 We do not accept that this proposal would make it much more difficult for most people with protected characteristics to qualify for legal aid to challenge decisions made by the state. No evidence has been provided to support this assertion. Nor do we accept that that the proposal would have the greatest impact on people with particular protected characteristics because they are considered more likely to need to challenge decisions made by the state.
- 13.2.7 We do not accept the view that those who lead chaotic lives will be disproportionately affected by the proposal. Solicitors are well practiced in adducing the necessary information from the most vulnerable clients – and we do not consider that this proposal has relevance to their ability to continue doing so. Further, difficulties gathering evidence from certain clients are not unique to borderline cases; they apply no matter the strength and type of case.
- 13.2.8 We recognise that respondents have raised concerns about potential wider equality impacts of this proposal upon disabled people, children, BAME and female clients. From the available data we cannot be certain whether BAME individuals will be disproportionately impacted and therefore acknowledge this risk. We remain of the view that it would not be proportionate or practicable to make changes to seek to address any such impact and that the proposal is justified for the reasons set out below. We do not accept, however, based on the evidence, that the proposal is more likely to affect children and female clients and therefore have a more pronounced impact on the protected characteristics of age and sex.
- 13.2.9 We acknowledge, having analysed 2011–12 closed case data, that disabled clients and those aged 25–64 are overrepresented as compared to the general population and so may be disproportionately affected. However, to the extent that the proposal does result in any particular disadvantage to persons with these protected characteristics we have concluded that it would not be proportionate or practicable to make changes to seek to deal with any such impact. We remain of the view that the proposal is justified as a proportionate means of achieving the legitimate aims set out in paragraph 6.3. By requiring cases to have at least a 50% chance of success, it targets limited resources on the cases which most justify it.

We address the potential for cumulative impacts in section 20 below.

14 Reducing fees in Very High Cost Cases Crime (VHCCs)

14.1 Initial Analysis

Impact on litigators

14.1.1 We anticipated the impact of this proposal would be adverse, as VHCC (Crime) litigators would see a reduction in legal aid income. To identify the potential for providers to be subject to a particular disadvantage (assuming for that purpose the proposal amounted to a provision, criterion or practice), we matched LSRC survey data to 150 of the 224 solicitor firms (a match rate of 68%) who, having undertaken VHCC (Crime) work in 2011/12 would potentially have been impacted by the proposals. Based on the data available, the managerial make-up of these firms was as follows:

- 65% White-British, 27% BAME and 7% split-majority managed;
- 77% male, 11% female and 12% split-majority managed; and
- 7% of firms employed an ill or disabled manager.

14.1.2 The data demonstrated that BAME and male majority managed providers are more likely to provide VHCC (Crime) work (when compared to the population as a whole) and so may be disproportionately impacted. There was no published data on the age of litigators undertaking VHCCs, however there is likely to be a correlation between age and experience. To the extent that VHCCs are more likely to be conducted by more experienced litigators, the proposal may have been more likely to impact upon older litigators. We considered any such impact to be justified for the reasons set out below.

Impact on barristers

14.1.3 We anticipated the impact of this policy proposal would be adverse, as barristers would see a reduction in legal aid income when undertaking VHCCs (Crime). “Barristers’ Working Lives – A Biennial Survey of the Bar 2011” data on main area of practice (where barristers spend most of their working time) showed that men and those of White ethnicity are over-represented amongst those engaged in criminal work when compared to the general population. In addition, an Equality Impact Assessment undertaken as part of the ‘Very High Cost Case (Crime) – 2009 Consultation’ identified that, where specified, the majority of advocates conducting VHCCs were white, male, aged 36–55 or non-disabled. This suggested there may be a disproportionate impact on such persons. There was no published data on years of call split by age, however there is likely to be a correlation between age and experience. To the extent that VHCCs are more likely to be conducted by more experienced barristers, we concluded that the proposal may be more likely to impact upon older barristers. We considered any such impact to be justified for the reasons set out below.

Impact on clients

14.1.4 We did not anticipate any indirect impact on clients. We were unable to identify the protected characteristics of VHCC (Crime) clients who would be affected if risks to

sustainable supply were realised in order to identify the potential for any particular disadvantage. However, as men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole the proposals may have a disproportionate impact on them. It was difficult to draw robust conclusions as to any particular disadvantage for disabled persons because of the high number of criminal legal aid clients in respect of which we do not hold relevant data and therefore we could not rule out a possible disproportionate impact relative to the population as a whole. We considered any such impact to be justified for the reasons set out below.

Justification

14.1.5 We acknowledged that BAME and male majority managed providers and white and male barristers may have been disproportionately impacted, as well as older litigators and barristers. However, we believed the proposal is a proportionate means of achieving the legitimate aims. By addressing the cost of the longest running and most expensive cases we concluded the reductions would improve public confidence in the scheme and deliver value for money for the taxpayer.

14.2 Final Analysis

Key issues raised

14.2.1 Equalities concerns were not a significant feature of responses in relation to this proposal, although a number raised concerns about the impact on the junior Bar of the overall package of criminal fee proposals. Consultees suggested that, contrary to our expectations, the combined impact of our criminal fee proposals and competition proposals would most affect the junior Bar. It was suggested that these potential effects would impact disproportionately on female and BAME barristers, who are better represented among the junior Bar.

Government Response

14.2.2 We will address the cumulative impact of the criminal fee reforms when responding to the further consultation on the revised proposals for competition and criminal advocacy fees. However, we do not accept that the combined impact of the proposals would necessarily have a disproportionate impact on female, BAME or young barristers.

14.2.3 Moreover, the primary responsibility of MoJ in administering the legal aid system must be to provide fair and effective legal aid to those clients most in need. The specific levels of representation within given practice areas at the Bar and solicitors' profession are primarily the responsibility of the Bar and Law Society, as is the need to ensure equality of opportunity to all areas of practice. Although MoJ is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity and foster good relations generally, MoJ does not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve diversity within the professions or the judiciary.

Conclusion

14.2.4 Our assessment of the impact of this proposal remains as set out in our initial analysis. We acknowledge the potential for BAME and male majority managed

providers, white and male barristers and older litigators and barristers to be disproportionately impacted. Should the proposal result in particular disadvantage, we consider that it is not proportionate or practicable to change the proposal to mitigate the impact and that the reduction in fees is justified by the legitimate aims set out in paragraph 6.3. By addressing the cost of the longest running and most expensive cases, the reductions ensure the legal aid scheme delivers value for money and promotes public confidence in it.

15 Multiple Advocates

15.1 Initial Analysis

Impact on barristers

15.1.1 We expected that a number of the cases in which two counsel are instructed currently would instead have a single junior or QC instructed as a consequence of our policy. The decision to appoint additional advocates is taken by individual courts, and equality information is not collected for advocates. We did not therefore hold information which would have allowed us to identify the protected characteristics of barristers working on these cases. Survey data on main area of practice (where barristers spend most of their working time) showed that men and those of White ethnicity are over-represented amongst those engaged in criminal work when compared to the general population. There is some evidence that there is a greater proportion of female and BAME barristers among the more junior members of the Bar.

15.1.2 As QCs have to demonstrate particular skills in order to be appointed to that rank, and as there may be a correlation between age and experience, we concluded that the policy may indirectly benefit older barristers. There is likely to be less work available for junior counsel, however, if two junior counsel, or a QC assisted by junior counsel, are instructed in fewer cases. To the extent that there is a greater proportion of female and BAME barristers among the more junior members of the Bar, they could be disproportionately affected. In addition, as junior counsel may be less experienced and as there may be a correlation between age and experience, younger barristers may be disproportionately affected. We considered any such impact to be justified for the reasons set out below.

Impact on Higher Court Advocates

15.1.3 We had limited equality data available on individual Higher Courts Advocates impacted by these proposals, but acknowledged that in common with all those providing criminal legal aid, impacted firms are more likely to be managed by BAME, Male, and non-disabled individuals than in the general population. We considered any such impact to be justified for the reasons set out below.

Impact on clients

15.1.4 The aim of this proposal is to ensure that multiple advocates are only instructed in cases where necessary. Cases which do not require such services should be undertaken by an appropriately qualified and experienced advocate. Accordingly, though we expected this policy to result in fewer cases with more than one advocate instructed, we did not anticipate that there would be any direct, negative impact on clients. Clients could be affected if the changes have an impact on the sustainability

of the legal aid market resulting in an adverse effect on service provision in the market. Were these risks to materialise, we concluded that clients would not be treated less favourably because of any protected characteristics.

- 15.1.5 We were unable to identify the protected characteristics of clients who would be affected if risks to sustainable supply were realised in order to identify the potential for any particular disadvantage. However, as men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole, we concluded that the proposals could have had a disproportionate impact on them. It was difficult to draw robust conclusions as to any particular disadvantage for disabled persons because of the high number of criminal legal aid clients in respect of which we do not hold relevant data and therefore we could not rule out a possible disproportionate impact relative to the population as a whole. We believed any disproportionate impact to be justified for the reasons given below.

Justification

- 15.1.6 We acknowledged that junior advocates are more likely to be disadvantaged by the proposals, and as a consequence younger, female and BAME barristers may be more likely to be disproportionately impacted by the proposals. If the proposal did result in particular disadvantage to persons with protected characteristics, we believed the proposal to be a proportionate means of achieving legitimate aims. By achieving a more proportionate approach to the use of multiple counsel, the proposal supported our aim of targeting limited public funds on the cases where it is really required.

15.2 Final Analysis

Key issues raised

- 15.2.1 Equalities concerns were not a significant feature of responses in relation to this proposal, although, as set out with respect to the VHCC proposal above, a number raised concerns about the impact on the junior Bar of the overall package of criminal fee proposals, suggesting that the combined impact of our criminal fee proposals and competition proposals would most affect the junior Bar, disproportionately impacting on female and BAME barristers.

Government Response

- 15.2.2 We will address the cumulative impact of the criminal fee reforms when responding to the further consultation on the revised proposals for competition and criminal advocacy fees. However, we do not accept that the combined impact of the proposals would necessarily have a disproportionate impact on female, BAME or young barristers.
- 15.2.3 As set out above, the primary responsibility of MoJ in administering the legal aid system must be to provide fair and effective legal aid to those clients most in need. Although mindful of the need to advance equality of opportunity and foster good relations, MoJ does not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve diversity within the professions or the judiciary. The specific levels of representation within given practice areas at the Bar and

solicitors' profession are primarily the responsibility of the Bar and Law Society, as is the need to ensure equality of opportunity to all areas of practice.

Conclusion

15.2.4 Our assessment of the impact of this proposal remains as set out in our initial analysis. We acknowledge that junior advocates are more likely to be disadvantaged by the proposals, and as a consequence younger, female and BAME barristers may be more likely to be disproportionately impacted. Were the proposal to result in particular disadvantage to such persons, we do not believe it would be proportionate or practicable to make changes to minimise such impact and consider the proposal to be a proportionate means of achieving the legitimate aims set out in paragraph 6.3. By achieving a more proportionate approach to the use of multiple counsel, the proposal supports our aim of targeting limited public funds on the cases which most justify it.

16. Reducing the fixed representation fees paid to solicitors in cases covered by the Care Proceedings Graduated Fee Scheme

16.1 Initial Analysis

Impact on providers

16.1.1 We anticipated that the impact of this proposal would be adverse, as solicitors will see a reduction in legal aid income from these cases. To identify the potential for providers to be subject to a particular disadvantage (assuming the proposal amounted to a provision, criterion or practice), we matched LSRC survey data to 1,403 of the 2,103 solicitor firms (a match rate of 67%) that provided representation in public family law cases in 2011/12. These firms would potentially be impacted by the proposal. Based on the data available, the managerial make-up of these firms was as follows:

- 90% White-British, 7% BAME and 3% split-majority owned/controlled;
- 65% male, 17% female and 18% split-majority owned/controlled;
- 5% of firms employed an ill or disabled manager.

In common with all civil & family legal aid providers for whom data is available, those managing firms engaged in public family law work (where equalities data is held) were more likely to be male, and non-disabled than in the general population. We concluded that these providers may be disproportionately impacted but that any such impact was justified for the reasons set out below.

Impact on clients

16.1.2 We did not anticipate any indirect impact on clients for the reasons set out above. However, were any detriment to materialise, as women, BAME persons and those who are ill or disabled are over-represented as users of civil legal aid services in comparison to the general population, we concluded that they may be disproportionately impacted by the proposal. However, that assessment must be treated with caution due to the high proportion of individuals in the affected group for which there is no data, especially for race and disability. We considered any such impact to be justified for the reasons set out below.

Conclusion

16.1.3 We acknowledged that firms managed by a majority of persons who are male or non-disabled may be disproportionately impacted by the proposal. However, we believe the proposal to be a proportionate means of achieving legitimate aims. By capitalising on efficiencies in the system, the proposal better ensures that public expenditure on legal aid represents value for money.

16.2 Final AnalysisKey issues raised

16.2.1 The overall concern among respondents was that this proposal would impact on vulnerable groups of people, particularly children. Respondents argued that if providers left the market as a result of a fee cut, this would directly impact on the availability of publicly funded advice and the timely resolution of family cases. Some respondents suggested that public family law should be recognised as a specialist area of family law as previous fee cuts had resulted in highly skilled professionals withdrawing from legal aid work. A further fee cut would exacerbate this problem which could have the greatest impact on women, BAME and disabled legal aid clients.

Government response

16.2.2 The Government disagrees with the view that a reduction in the fixed legal representation fee to solicitors in public law family proceedings will have an adverse impact on clients, including children, women, BAME and disabled persons. As set out in paragraph 6.9 above, we do not consider that it will have an adverse impact on the sustainability of the legal aid market resulting in an adverse effect on service provision. Were such a result to materialise, we do not believe it would be proportionate or practicable to change the proposal to lessen the impact and consider it to be justified for the reasons set out below

Conclusion

16.2.3 For the most part, our assessment of the impact of this proposal remains as set out in our initial analysis. We acknowledge that firms managed by a majority of persons who are male or non-disabled may be disproportionately impacted by the proposal. We further recognise that as a high proportion of contract holders in public family are women, they may be disproportionately impacted (in comparison to public family contract holders generally). Were the proposal to result in particular disadvantage to such persons, we do not believe it would be proportionate or practicable to make changes to minimise such impact and consider the proposal to be a proportionate means of achieving the legitimate aims set out in paragraph 6.3. By capitalising on efficiencies in the system, the proposal better ensures that public expenditure on legal aid represents value for money.

17 Harmonising fees paid to self-employed barristers and other advocates appearing in civil (non-family) proceedings

17.1 Initial Analysis

Impact on barristers

17.1.1 Barristers undertaking civil legal aid work would see a reduction in the minimum guaranteed level of fees received for the same caseload but may receive enhancement of that fee if the specified criteria are satisfied. Affected barristers could experience different impacts depending on their location, the level of court in which a case is being heard, the level of fees they currently receive and whether or not the work they typically undertake would attract an enhancement and, if so, the level of that enhancement.

17.1.2 “Barristers’ Working Lives – A Biennial Survey of the Bar 2011” data showed that men and those of white ethnicity are over-represented amongst the population of barristers when compared to the general population⁸⁷ and so, generally, may have been disproportionately impacted by the proposal. However, this proposal was likely to impact most significantly on barristers appearing in the county courts. While there was no data on the protected characteristics of barristers appearing specifically in those courts, we considered that they are likely to be junior members of the Bar and that therefore those who are female or BAME and younger barristers were likely to be over-represented amongst the population of barristers at that level when compared to the civil Bar as a whole and may be disproportionately impacted, therefore. The extent of the impact on barristers would be dependant on their reliance on income from civil legal aid work. We considered any such impact to be justified for the reasons set out below.

Impact on clients

17.1.3 We did not anticipate any indirect impact on clients for the reasons set out above. We considered this unlikely due to the quality assurance arrangements in place, including the role of the instructing solicitor, the court in the effective administration of justice and the availability of solicitor advocates. However, were any detriment to materialise, as women, BAME persons and those who are ill or disabled are over-represented as users of civil legal aid services in comparison to the general population, we concluded that they may be disproportionately impacted by the proposal. However, that assessment must be treated with caution due to the high proportion of individuals in the affected group for which there are no data, especially for race and disability. We considered any such impact to be justified for the reasons set out below.

Justification

17.1.4 We acknowledged that men and persons of White ethnicity are overrepresented in the affected population generally and that female or BAME and younger barristers may be disproportionately impacted by the proposal. However, we believed the proposal to be a proportionate means of achieving legitimate aims. By ensuring that similar rates are paid for similar services, the proposal would better ensure that public

⁸⁷ https://www.barstandardsboard.org.uk/media/1385164/barristers__working_lives_30.01.12_web.pdf

expenditure on legal aid represents value for money and promotes public confidence in the scheme. Moreover it would advance equality of opportunity.

17.2 Final Analysis

Key issues raised

17.2.1 A number of respondents to the consultation cited that the Government had failed to take into account that this proposal would be damaging to the make up of the Bar. Lower fees were likely to restrict the ability of people from poor socio economic backgrounds from entering the Bar which therefore failed to promote equality of opportunity. In addition, some respondents also suggested that further reductions in fees would lead to Chambers withdrawing pupillages, something which was already happening, particularly outside London. This would therefore have a disproportionate impact on women and BAME groups.

Government's response

17.2.2 The Government remains of the view that this proposed reform is sustainable, and draws an appropriate balance between the need to reduce spending to the public purse whilst ensuring that clients have access to legally aided services. The Government agrees that affected barristers could potentially experience different impacts depending on their location, the level of fees that they currently receive and whether or not the work that they typically undertake would attract an enhancement and, if so, the level of that enhancement

17.2.3 An analysis of the profile of the self employed Bar profession⁸⁸ indicates that the majority of barristers tend to be located in the South East of England, with a gender profile predominately male (approximately 68% of all self-employed barristers) in comparison to women (which equates to around 32%). In terms of ethnicity, the profession tends to be predominately white (80%) compared to 10% categorised as BAME and 10% where no data has been recorded.

17.2.4 It is estimated that the proportion of barristers undertaking public funded work in the civil area is approximately 19%⁸⁹. In the absence of data on the particular protected characteristics of the barristers potentially impacted by the proposal, we have assessed the impact on the basis of what is reasonably anticipated. It is therefore likely that men and those of white ethnicity may be disproportionately impacted, as these groups are overrepresented compared to the general population. However, we acknowledge, as before, that the proposal is likely to impact more significantly on junior members of the Bar (who are more likely to appear in the county courts) and therefore may disproportionately impact on young people, women, and BAME persons as a result.

17.2.5 In response to the issues raised by respondents to the consultation, Government has noted that research conducted by the Bar Standards Board on "*A comparison between the backgrounds of Pupillage Portal applicants in 2009 and registered pupils*

⁸⁸ Information extracted from the Bar Barometer Trends in the profile of the Bar (November 2012) and Barristers' working lives – A biennial survey of the Bar 2011

⁸⁹ Pike, G & Robinson, D(2012) *Barristers' working lives – A biennial survey of the Bar 2011*, the General Council of the Bar of England and Wales

in 2011” showed that a quarter of 2010/11 pupils were expected to have no debt at the end of their pupillage, whereas 12% were expected to have £30,000 of debt, which was lower than that of pupils in 2009. Other indicators used by the Bar in determining socio-economic factors were the type of school attended and parental education. In terms of the school attended by pupils in 2011, 58.4% were from state schools which seems to suggest that pupils from state schools are not under represented. It should be noted, however, that the number of pupils has been decreasing since 2007/8. The Government considers therefore that any further decrease in the number of pupils from lower socio economic backgrounds is more dependant on the demographics of the Bar, which remain (even through pupillages) mostly white and male.

- 17.2.6 In addition, the Bar Barometer Survey shows that 86% of respondents believed that too many students were being recruited to the Bar Professional Training Course for the number of available pupillages and 49% believed there were insufficient pupillages to support the future demand for work. This seems contradictory particularly as the same survey indicates that 90% of Chambers offer pupillages. Those that did not are in the main sole practitioners. Where pupillages are offered, the average number is 2.4 per Chambers, with some correlation by size of chambers, as would be expected (chambers with fewer than 50 members typically have 1.8 pupillages and those with more than 50 members have 2.8 pupillages).
- 17.2.7 If the number of pupillages continues to decrease, as predicted in the Bar Barometer survey but 90% of Chambers continue to offer pupillages, we do not consider that restructuring fees lessens the opportunity for those wishing to enter the profession. The number of barristers currently carrying out publicly funded work in the civil (non-family) area is lower (19%) than that of family and criminal barristers as civil (non-family) work offers more opportunity for privately funded work. There is therefore less reliance on public funded work by Barristers in the civil (non-family) area. In addition, the number of female pupils called to the Bar has been steadily decreasing since 2005/6 as has the number of BAME pupils. Again this would suggest that this reflects the demographics of the Bar.
- 17.2.8 The specific levels of representation within given practice areas at the Bar and solicitors’ profession are primarily the responsibility of the Bar and Law Society, as is the need to ensure equality of opportunity to all areas of practice. Although MoJ is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity generally, MoJ does not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve diversity of the professions or the judiciary.

Conclusion

- 17.2.9 Our assessment of the impact of this proposal remains as set out in our initial analysis. We acknowledged that men and persons of White ethnicity are overrepresented in the affected population generally and that female or BAME and younger barristers may be disproportionately impacted by the proposal. Were the proposal to result in particular disadvantage to such persons, we do not believe it would be proportionate or practicable to make changes to minimise such impact and consider the proposal to be a proportionate means of achieving the legitimate aims set out in paragraph 6.3. By ensuring that similar rates are paid for similar services, the proposal better ensures that public expenditure on legal aid represents value for money and promotes public confidence in the scheme.

18 Removing the uplift in immigration and asylum Upper Tribunal appeals

18.1 Initial Analysis

Impact on clients

18.1.1 We did not anticipate any indirect impact on clients. However, were any detriment to materialise, as women, BAME persons and those who are ill or disabled are over-represented as users of civil legal aid services in comparison to the general population, we concluded that they may be disproportionately impacted by the proposal. However, that assessment must be treated with caution due to the high proportion of individuals in the affected group for which there are no data, especially for race and disability. We considered any such impact to be justified for the reasons set out below.

Impact on providers

18.1.2 We anticipated the impact of this proposal would be adverse, as providers would see a reduction in legal aid income. In common with all civil & family legal aid providers for whom data was available, those managing firms engaged in work impacted by this proposal are more likely to be male, and non-disabled when compared to the population as a whole, but unlike the majority of civil and family providers, they are more likely to be BAME when compared to the population as a whole (48% amongst affected providers compared to 14% in the general population). We concluded that the proposal may therefore have had a disproportionate impact on those groups. However, we acknowledged that the extent of impact on a given provider firm may be dependent upon how much they rely on income from the areas of work affected by the proposal. We considered any such impact to be justified for the reasons set out below.

Justification

18.1.3 We acknowledged that the proposal may have a disproportionate impact on providers who are male, non-disabled or BAME. However, we believed the proposal to be a proportionate means of achieving legitimate aims. We considered it to be unjustified to continue to pay a higher rate (incorporating an uplift) in the current economic climate. The higher rate was put in place under an old scheme of retrospective funding where work on the whole appeal was 'at risk'. Under existing arrangements only work on the permission application is 'at risk' and payment is made after a successful application. However the higher rate of payment still applies. Given the different arrangements put in place since the higher rate was introduced, we did not consider continued payment of the higher rate to be justified.

18.2 Final Analysis

Key issues raised

18.2.1 Equalities concerns were not a significant feature of responses in relation to this proposal. However, respondents raised concerns about the possible impact on sustainability of the legal aid market if this proposal were implemented, resulting in a potential disproportionate impact on women, BAME and ill or disabled clients. Some respondents also argued that the proposal would make it unworkable for specialist

advocates to focus on immigration work and would violate the principle of equality of arms, also potentially resulting in a disproportionate impact on providers and clients.

Government response

18.2.3 We continue to believe that the proposal is a proportionate means of achieving the legitimate aims set out in paragraph 6.3. Our view remains that it would be unjustified to continue paying a higher rate in the current economic climate.

18.2.4 We do not accept that the proposal would impact on market sustainability or result in an adverse effect upon service provision, as set out in paragraph 6.9 above. We consider that more junior legal professionals are sufficiently able to provide a high quality service to enable individuals to be adequately represented. Providers would continue to be required to meet the Legal Aid Agency minimum quality standards. Nor do we accept that a difference in rates as between claimants and defendants alone undermines equality of arms. We are confident that legal aid recipients will continue to receive effective representation under the revised rates for the reasons set out in Annex B.

Conclusion

18.2.5 Our assessment of the impact of this proposal remains as set out in our initial analysis. We continue to acknowledge that the proposal may result in a disadvantage to providers who are male, non-disabled or BAME. Were the proposal to result in particular disadvantage to such persons, we do not believe it would be proportionate or practicable to make changes to minimise such impact and consider the proposal to be a proportionate means of achieving the legitimate aims set out in paragraph 6.3. Given the different arrangements put in place since the higher rate was introduced, we do not consider continued payment of the higher rate to be justified.

19 Expert Fees in Civil, Family and Criminal proceedings

19.1 Initial Analysis

Impact on providers

19.1.1 We anticipated the impact of this proposal would be adverse, as experts would see a reduction in legal aid income. Experts are a disparate group and the impact of any reduction in fees paid was difficult to predict. As the LAA does not contract directly with experts, no data is held from which we could determine the average reduction or the protected characteristics of experts. Our view was that the nature of the changes was such that they would be unlikely to put people with protected characteristics at a particular disadvantage. Were any such impact to materialise, we considered it would be justified for the reasons set out below.

Impact on clients

19.1.2 A reduction in the fee paid to experts was considered unlikely to have any negative equality impact on legal aid clients. The resultant effect of the proposed reduction in expert fees would have meant that clients would receive the same level of expert service but this would be at a reduced cost to the legal aid fund.

Justification

19.1.3 Were any disproportionate impact to result, we believed the proposal to be a proportionate means of achieving legitimate aims. By ensuring that broadly similar rates are paid for similar services, the proposal would better ensure that public expenditure on legal aid represents value for money and promotes public confidence in the scheme.

19.2 Final AnalysisKey issues raised

19.2.1 A significant number of respondents stated that there was already a shortage of experts willing to work for legal aid rates particularly in Court of Protection cases (involving disabled adults at risk of abuse or neglect) and in the area of mental health. Recent legislative changes had already reduced the number of experts willing to work in this field of legally aided work and further reductions could exacerbate the problem. This would have significant implications for disabled clients. Other respondents cited that a reduction in the fees paid to experts would lead to the most experienced leaving the market, impacting on quality. A reduction in the quality of experts remaining in the market was likely to undermine other justice reforms, particularly those relating to family law, which would have a severe impact on vulnerable families and children.

19.2.2 In addition, some respondents stated that the complexity of work completed by experts in public law and other specialist areas of family work could not be compared to work done by criminal experts. As a result they argued that the case for civil/family experts should attract different/higher rates undertaken by experts in criminal legal aid cases as the work involved in civil/family cases was often more complex and time consuming than crime.

Government response

19.2.3 The Government disagrees with the views raised in relation to impacts on equality. As set out in paragraph 6.9, we believe the reforms are sustainable and therefore are unlikely to detrimentally impact on clients. Where there is a need for a particular expert, and where there are shortages of a particular expert type for example, the LAA has the authority to increase the rates payable in exceptional specified circumstances to obtain the services needed. Moreover, as a result of the response to the consultation exercise, the Government agrees that the recently increased rates for particular specialists in clinical negligence (cerebral palsy) and housing disrepair cases should not be subject to the proposed 20% reduction in fee rates. The recently revised rates will therefore continue to apply. This should ensure the continued supply of experts in these specialised areas which in turn mitigates any impact on legal aid clients in these cases. As to the quality of experts and duration of cases, the Department has consulted on standards for experts which, along with other reforms coming out of the FJR, aim to improve the quality and use of expert witnesses which further mitigates any impact in terms of the quality of services or duration of care proceedings.

19.2.4 The Government agrees that in public law and other specialist areas of family work the task to be undertaken by an expert in such cases may be more complex than that of an expert involved in a criminal case. However, the complexity of the work is

reflected in the number of hours paid. Remuneration of experts should be based on the type of professionalism needed rather than the type of case. Indeed, it is more likely for an expert in family to be paid more than an expert involved in a criminal case because he or she will often be required to consider more evidence/carry out more assessments (therefore attracting a greater number of hours) in comparison to an expert involved in a criminal case (who may only, for example, be considering evidence in support of plea). Although differences exist between the rates paid for London and outside London, this is based on market drivers, with greater competition in the London area enabling services to be procured at lower rates than those outside London.

- 19.2.5 In the absence of data on particular protected characteristics of the providers affected, we have assessed the impact on the basis of what may be reasonable anticipated. Although experts will be adversely impacted by a reduction in fees, our view remains that the nature of the changes are such that they are unlikely to put people with protected characteristics at a particular disadvantage. Were particular disadvantage to result, we believe the proposal, modified as described in Annex B and above, is a proportionate means of achieving the legitimate aims set out in paragraph 6.3.
- 19.2.6 As set out above, we do not think it likely that the modified proposal will adversely impact on clients. However, were any adverse impact to materialise, we acknowledge that because women and BAME persons are over-represented as users of civil legal aid services, compared to the general population, they may be disproportionately impacted. Because of the significant non-response rates for disability, we assume there is a risk of disproportionate impact on disabled persons as well. Were any such particular disadvantage to result, we consider the proposal, modified as set out, constitutes a proportionate means of achieving the legitimate aims described in paragraph 6.3.

Conclusion

- 19.2.7 Our assessment of the impact of this proposal remains as set out in our initial analysis. Were any disproportionate impact to result, we believe the reforms, adjusted to retain higher rates where necessary to ensure market supply, are a proportionate means of achieving the legitimate aims set out in paragraph 6.3. By ensuring that broadly similar rates are paid for similar services, the proposal better ensures that public expenditure on legal aid represents value for money and promotes public confidence in the scheme.

20 Cumulative impact of the reforms to be implemented

- 20.1 We have considered the cumulative impact of the reforms to be implemented as described in the individual sections in Part Two above. We will consider the potential for cumulative impacts from these reforms in combination with the proposals for further consultation (our initial analysis of which is set out in Part One above) before taking decisions on those proposals.

For providers:

- 20.2 As identified with respect to the individual reforms discussed above, providers may see a reduction in income from those being implemented. A cumulative impact assessment does not materially contribute to understanding the equality impacts of

the reforms, however. Because of the difference in magnitude of the changes, for example the reduction in representation fees in public family law cases compared to other civil proposals, impacts of the smaller proposals are likely to be obscured. Moreover, it should be noted that proposals are very distinct; this distinction is also reflected in the demographic profile of the organisations affected.

- 20.3 However, we have identified that overall 1,803 suppliers providing work in four key areas addressed by the reforms may be negatively impacted by more than one of the proposals (these areas are family public law family cases, immigration and asylum, prison law and firms involved in VHCC work). Data were merged with the LSRC Supplier diversity surveys, and showed that managerial make-up of these firms was as follows:
- 78% White-British, 17% BAME and 5% split-majority owned/controlled;
 - 63% male, 18% female and 19% split-majority owned/controlled; and
 - 6% of firms employed an ill or disabled manager.
- 20.4 Of the 1,803 suppliers likely to be effected by the proposals, 235 may experience disadvantage as a result of two of the proposals, 55 as a result of three proposals and 2 as a result of the impact of all four proposals. Of the organisations impacted by only one proposal, 15% have majority BAME managerial control. Compared to this, of the organisations impacted by two of the proposals, 22% have majority BAME managerial control and of those impacted by three or more proposals, 49% have majority BAME managerial control, indicating that such firms are more likely to be disadvantaged by multiple proposals. There were no noticeable differences on the cumulative impact of proposals on other protected characteristics captured within the data.
- 20.5 The reforms may have a disproportionate impact on BAME majority managed/owned firms therefore, who will be disadvantaged by the loss of income from more than one of the reforms. Were there to be a disproportionate effect on particular groups, we believe that it would not be proportionate or practicable to make changes to address the impact and consider the reforms are justified in pursuit of the objectives set out in paragraph 6.3 above. The reforms ensure limited public resources achieve value for money by ensuring that public family law representation fees better reflect the amount of work involved; removing the unjustified uplift in immigration and asylum Upper Tribunal appeals; ensuring criminal legal aid for prison law advice and assistance is targeted at the cases that justify it; and reducing the cost of the most expensive and long-running criminal cases (VHCCs).

Barristers:

- 20.6 Fee reforms to criminal VHCCs, the harmonisation of civil advocacy fees and a reduction in work as a result of the reduction in use of multiple advocates may lead to a reduction in income and workload of Barristers involved in legal aid funded work. The Barristers' Working Lives survey 2011 suggests that women and BAME Barristers are over-represented in publicly funded work, and are more likely to do criminal or family law as a main area of practice. Therefore such persons may be disproportionately impacted as a result. However, were there to be a disproportionate effect on particular groups, we believe it would not be proportionate or practicable to make changes to address the impact and consider that the reforms are justified in pursuit of the objectives set out in paragraph 6.3 above. The reforms

ensure limited public resources achieve value for money and are targeted where most necessary and justified by reducing the cost of the most expensive and long-running criminal cases (VHCCs); ensuring similar rates are paid for similar services; and achieving a more proportionate approach to the use of multiple advocates.

- 20.7 Respondents to the consultation suggested that reductions in levels of remuneration would result in a less diverse Bar, in turn resulting in a less diverse judiciary. As set out above, we do not consider that the reforms will put women or BAME practitioners at a particular disadvantage over others in practice at the Bar and that this would ultimately reduce the diversity of the pool of practitioners applying for judicial office. In any event, the primary responsibility of MoJ in administering the legal aid system must be to provide fair and effective legal aid to those clients most in need. Although MoJ is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity generally, MoJ does not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve diversity in the professions or the judiciary.

For clients:

- 20.8 As set out in paragraph 6.9 above, we do not consider that the proposals in relation to criminal and civil remuneration will have a direct impact on clients. Recipients will be affected by the proposals affecting eligibility for and the scope of legal aid: namely, the prison law scope change and Crown Court eligibility threshold on the criminal side and on the civil side, the residence test and change in the merits tests. However, we believe it is unlikely that there will be a cumulative impact on recipients of Legal Aid due to the proposals being taken forward at this time.
- 20.9 If an individual is denied civil Legal Aid due to the residence test, he or she will not be affected by the removal of the borderline merits category therefore there is no interaction between these two policies. It is possible that a defendant could be ineligible for criminal legal aid under the new disposable income threshold in the Crown Court and, if sentenced to prison, seek to bring a claim removed from the scope of criminal legal aid by the change to prison law. To the extent this constitutes a cumulative impact, in the absence of data on the individuals in question, we have assessed the impact on the basis of the impacts which may be reasonably anticipated. There is potential for disproportionate impact on men and BAME persons, who are disproportionately represented among the affected groups. Were any such impact to result, we believe it would not be proportionate or practicable to make further changes to address the impact and consider that the reforms, modified as addressed in Annex B and above regarding the prison law scope reform, are justified in pursuit of the objectives set out in paragraph 6.3 above. By targeting limited public resources at the persons and cases where funding is most needed, the reforms ensure the legal aid scheme commands public confidence.

21 Analysis of client and LAA supplier demographic data

The tables are limited to those areas of analysis where raw data was available and so are limited to clients and contracted suppliers only. Due to rounding, percentages may not sum to exactly 100%.

21.1 Prison Law

21.1.1 Impact of Prison Law scope on Clients by protected characteristics based on data for the 2011/12 year

Protected Characteristics		Effectuated by Prison law scope cut (n=10,864)	All Prison Law clients (n=43,788)
Race	White	53%	56%
	BAME	25%	17%
	Unknown	22%	24%
Disability	Disabled	6%	8%
	Non-Disabled	66%	62%
	Unknown	29%	30%
Sex	Male	97%	96%
	Female	3%	3%
	Unknown	0%	0%

Source: Legal Services Commission

21.1.2 Impact of Prison Law scope changes on Legal Aid Agency Prison Law suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		Prison law scope cut (n=186)	All CDS providers (n=1,222)
Majority Ethnic OMC	White British	65%	74%
	BME	30%	20%
	Split	6%	6%
Majority Gender OMC	Male	70%	71%
	Female	13%	12%
	Split	17%	17%
Any ill/disabled OMC	No	96%	96%
	Yes	4%	5%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010; Legal Services Commission

21.2 Financial threshold in the Crown Court

21.2.1 Impact of imposition of financial threshold in the Crown Court on Clients by protected characteristics based on data for the 2011/12 year

Protected Characteristics		Clients effected by Crown Court financial threshold (n=184)	All Crown Court Clients (n=75,898)
Race	White	51%	57%
	BAME	28%	19%
	Unknown	21%	24%
Age	18-24 years	4%	36%
	25-64 years	85%	63%
	65 yrs and older	11%	1%
	Unknown	0%	0%
Disability	Disabled	4%	15%
	Non-Disabled	42%	56%
	Unknown	53%	28%
Sex	Male	82%	77%
	Female	7%	9%
	Unknown	12%	13%

Source: Legal Services Commission

21.3 Paying for permission in Judicial Review cases

21.3.1 Impact of imposition of paying for permission work in Judicial Review cases on Clients by protected characteristics based on data for the 2011/12 year

Protected Characteristics		Judicial Review Clients (n=802)	All Civil Representation Clients (n=144,875)
Race	White	8%	63%
	BAME	11%	13%
	Unknown	81%	24%
Age	18-24 years	25%	16%
	25-64 years	65%	64%
	65 yrs and older	2%	1%
	Unknown	8%	19%
Disability	Disabled	10%	10%
	Non-Disabled	61%	58%
	Unknown	28%	32%
Sex	Male	74%	41%
	Female	24%	57%
	Unknown	2%	2%

Source: Legal Services Commission

21.3.2 Impact of imposition of paying for permission work in Judicial Review cases on Legal Aid Agency suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		Judicial Review providers (n=140)	All civil & family providers (n=2,032)
Majority Ethnic OMC	White British	60%	87%
	BME	29%	9%
	Split	9%	4%
Majority Gender OMC	Male	56%	64%
	Female	21%	18%
	Split	24%	18%
Any ill/disabled OMC	No	91%	95%
	Yes	9%	6%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010;
Legal Services Commission

21.4 Removal of Legal Aid in borderline civil cases

21.4.1 Impact of the removal of legal aid for borderline Civil cases on Clients by protected characteristics based on data for the 2011/12 year

Protected Characteristics		Removal of Civil Borderline Cases (n=120)	All Civil Representation Clients (n=144,875)
Race	White	2%	63%
	BAME	4%	13%
	Unknown	94%	24%
Age	18-24 years	13%	16%
	25-64 years	80%	64%
	65 yrs and older	5%	1%
	Other	2%	19%
Disability	Disabled	26%	10%
	Non-Disabled	51%	58%
	Unknown	23%	32%
Sex	Male	46%	41%
	Female	53%	57%
	Unknown	2%	2%

Source: Legal Services Commission

21.4.2 Impact of the removal of legal aid for borderline Civil cases on Legal Aid Agency suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		Involved in borderline work during FY2011/12 (n=140)	All civil & family providers (n=2,032)
Majority Ethnic OMC	White British	88%	87%
	BME	5%	9%
	Split	8%	4%
Majority Gender OMC	Male	46%	64%
	Female	22%	18%
	Split	32%	18%
Any ill/disabled OMC	No	93%	95%
	Yes	8%	6%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010; Legal Services Commission

21.5 Reducing fees in VHCC

21.5.1 Impact of reducing fees in VHCC on Legal Aid Agency suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		VHCC criminal cut (n=152)	All CDS providers (n=1,222)
Majority Ethnic OMC	White British	64%	74%
	BME	27%	20%
	Split	7%	6%
Majority Gender OMC	Male	77%	71%
	Female	11%	12%
	Split	12%	17%
Any ill/disabled OMC	No	93%	96%
	Yes	7%	5%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010; Legal Services Commission

21.6 Multiple Advocates

21.6.1 Impact of limiting multiple Advocates on Legal Aid Agency suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		Providers who used 2 counsel (n=31)	All CDS providers (n=1,222)
Majority Ethnic OMC	White British	71%	74%
	BME	19%	20%
	Split	10%	6%
Majority Gender OMC	Male	81%	71%
	Female	6%	12%
	Split	13%	17%
Any ill/disabled OMC	No	97%	96%
	Yes	3%	5%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010;
Legal Services Commission

21.7 Reducing representation fees paid to solicitors in Care Proceedings Graduated fee scheme

21.7.1 Impact of reducing representation fees paid to solicitors in Care Proceedings Graduated fee scheme on Legal Aid Agency suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		Public family law providers (n=1,399)	All civil & family providers (n=2,032)
Majority Ethnic OMC	White British	90%	87%
	BME	7%	9%
	Split	3%	4%
Majority Gender OMC	Male	65%	64%
	Female	17%	18%
	Split	18%	18%
Any ill/disabled OMC	No	95%	95%
	Yes	5%	6%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010;
Legal Services Commission

21.8 Removing uplift in Immigration and Asylum Upper Tribunal appeals

2.8.1 Impact of removing Immigration and Asylum uplift on Legal Aid Agency suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		Impacted providers (n=99)	All civil & family providers (n=2,032)
Majority Ethnic OMC	White British	44%	87%
	BME	48%	9%
	Split	10%	4%
Majority Gender OMC	Male	52%	64%
	Female	24%	18%
	Split	24%	18%
Any ill/disabled OMC	No	91%	95%
	Yes	12%	6%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010;
Legal Services Commission

21.9 Profile of Crime suppliers

21.9.1 Legal Aid Agency Criminal Law suppliers by demographics of majority managerial control based on data for the 2011/12 year

Demographics of ownership/ managerial control (OMC)		Providers	
		CDS providers (n=1,222)	All Legal Aid providers (n=3,663)
Majority Ethnic OMC	White British	74%	82%
	BME	20%	14%
	Split	6%	5%
Majority Gender OMC	Male	71%	61%
	Female	12%	23%
	Split	17%	17%
Any ill/disabled OMC	No	96%	93%
	Yes	5%	7%

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010;
Legal Services Commission

21.10 Cumulative Impact

21.10.1 Cumulative impact on Legal Aid Agency suppliers by demographics of majority managerial control based on data for the 2011/12 year†

Demographics of ownership/ managerial control (OMC)		Number of impacts supplier effected by			
		1 (n=993)	2 (n=145)	3 (n=38)	4 (n=2)
Majority Ethnic OMC	White British	80%	72%	51%	50%
	BME	15%	22%	47%	50%
	Split	5%	6%	0%	0%
Majority Gender OMC	Male	66%	72%	66%	100%
	Female	18%	16%	18%	0%
	Split	20%	12%	16%	0%
Any ill/disabled OMC	No	94%	95%	87%	100%
	Yes	6%	5%	13%	0%

†For the reasons set out in paragraph 19.2, the cumulative impact assessment is limited to the exposure to proposals concerning family public law family cases, immigration and asylum, prison law and firms involved in VHCC work

Source: Legal Services Research Centre Supplier Diversity survey 2006–2010; Legal Services Commission

Annex G: Data in support of the modified model of procurement of criminal legal aid services

The information set out in the following tables are provided in support of some of the element of the proposed modified model of procurement of criminal legal aid services described in Chapter 3.

Table G1: Classes of criminal legal aid work proposed for inclusion in scope of the new contract(s)

The following table sets out the classes of criminal legal aid work we propose should be included in the scope of the new contracts.

Criminal Investigations

Class of criminal legal aid work	In scope of Own Client Work Contract	In scope of Duty Provider Work Contract
Free Standing Advice and Assistance	x	x
Police Station Telephone Advice	x	x
Police Station Attendance	x	x
Police Station Attendance (Armed Forces)	x	x
Warrant of Further Detention	x	x
Warrant of Further Detention (Armed Forces)	x	x
Duty Solicitor Stand-by		x
Police Station Post-Charge Attendance (Breach of Bail/Arrest on Warrant)	x	x
Police Station Post-Charge Attendance (Post Charge ID, Referral for Caution, Recharge, Reprimand, Warning)	x	x
Immigration matter	x	x

Criminal Proceedings

Class of criminal legal aid work	In scope of Own Client Work Contract	In scope of Duty Provider Work Contract
Magistrates Court Advocacy Assistance	x	x
Court Duty Solicitor Session		x
Representation in the magistrates' court	x	x
Crown Court Advocacy Assistance	x	x
High Court Representation	x	x
Second Claim for Deferred Sentence	x	x
Pre-Order Cover	x	x
Early Cover	x	x
Refused Means Test – Form Completion Fee	x	x

Associated Civil Work

Class of criminal legal aid work	In scope of Own Client Work Contract	In scope of Duty Provider Work Contract
Legal Help and Associated Civil Work	x	x

Crown Court

Class of criminal legal aid work	In scope of Own Client Work Contract	In scope of Duty Provider Work Contract
Crown Court litigation	x	x
Crown Court advocacy	Not in scope	
Very High Cost Cases	Not in scope	

Higher courts

Class of criminal legal aid work	In scope of Own Client Work Contract	In scope of Duty Provider Work Contract
Representation for appeals heard by the Court of Appeal	x	x
Representation for appeals heard by the Supreme Court	x	x

Transforming legal aid: Next steps

Providers wishing to apply to conduct prison law and/or appeals and reviews classes of criminal legal aid services would be able to do so, whether they deliver other criminal legal aid services or not. Prison law and appeals reviews classes of work include the following:

Prison Law

Class of criminal legal aid work	In scope of Contract
Advice and Assistance	x
Advocacy Assistance (Disciplinary)	x
Advocacy Assistance (Parole)	x

Appeal and Reviews

Class of criminal legal aid work	In scope of Contract
Advice and Assistance regarding an Appeal (excluding CCRC)	x
Advice and Assistance regarding a CCRC Application	x
Representation on an Appeal by way of case stated	x

Table G2: Current and proposed reduced rates for the criminal legal aid services affected by the proposed interim fee cut (8.75% reduction in rates of pay set out in Criminal Legal Aid (Remuneration) Regulations 2013)

	Current rates (£)	Proposed reduced rates (after 8.75% reduction) (£)
1.—(1) The Fixed Fee for Police Station Telephone Advice is—		
(a) per claim in London; and	31.45	28.70
(b) per claim outside London (“National”).	30.25	27.60
(2) The Criminal Defence Direct Fixed Acceptance Fee is per Matter.	8	7.30

Police Station attendance hourly rates

	London		National	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Own or Duty Solicitor	£56.20	£51.28	£52.00	£47.45
Duty Solicitor (Unsocial Hours)	£69.05	£63.01	£69.05	£63.01
Duty Solicitor – serious offence rate	£65.00	£59.31	£60.00	£54.75
Duty Solicitor – serious offence rate (Unsocial Hours)	£80.00	£73.00	£80.00	£73.00

Travel and waiting hourly rates

Own Solicitor	£28.80	£26.28	£28.80	£26.28
Duty Solicitor	£56.20	£51.28	£52.00	£47.45
Duty Solicitor (Unsocial Hours)	£69.05	£63.01	£69.05	£63.01

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Cleveland	Hartlepool	144	131.40	444.27	405.40
	Teesside	149	135.96	457.02	417.03
Durham	Darlington	169.36	154.54	508.08	463.62
	South Durham	167	152.39	513.18	468.28
	Durham	195	177.94	607.65	554.48
	Derwentside	188.09	171.63	564.27	514.90
	Easington	183	166.99	561.69	512.54
Northumbria	South East Northumberland	162.55	148.33	487.65	444.98
	Newcastle upon Tyne	151	137.79	464.67	424.01
	Gateshead	156.6	142.90	469.8	428.69
	North Tyneside	154	140.53	472.35	431.02
	South Tyneside	146	133.23	449.37	410.05
	Sunderland / Houghton Le Spring	163	148.74	502.98	458.97
	Berwick & Alnwick	194	177.03	597.45	545.17
	Tynedale & Hexham	169	154.21	520.86	475.28
Avon & Somerset	Avon North & Thornbury	195	177.94	615.33	561.49
	Bath & Wansdyke	211.91	193.37	635.73	580.10
	Mendip/Yeovil & South Somerset	237.45	216.67	712.35	650.02
	Bristol	175.32	159.98	525.96	479.94
	Sedgemore / Taunton Dane	199	181.59	674.04	615.06
	Weston-Super-Mare	198.3	180.95	594.9	542.85
Dorset	Central Dorset	200	182.50	600	547.50
	Bournemouth & Christchurch	159.15	145.22	477.45	435.67
	Poole East Dorset	168	153.30	515.73	470.60
	Bridport West Dorset / Weymouth & Dorchester	160	146.00	480	438.00

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Wiltshire	Salisbury	191	174.29	587.22	535.84
	Chippenham / Trowbridge	205.96	187.94	617.88	563.82
	Swindon	188	171.55	579.57	528.86
Gloucestershire	Cheltenham	173	157.86	533.61	486.92
	Gloucester	170	155.13	523.41	477.61
	Stroud	195	177.94	600	547.50
Devon & Cornwall	Barnstaple	190.64	173.96	571.92	521.88
	Exeter	169.36	154.54	508.08	463.62
	Plymouth	196.6	179.40	589.8	538.19
	East Cornwall	218	198.93	740.43	675.64
	Carrick / Kerrier (Camborne) / Penwith	195	177.94	617.88	563.82
	Teignbridge / Torbay	178.82	163.17	536.16	489.25
	Staffordshire	Stoke on Trent / Leek	195	177.94	617.88
	Stafford / Cannock & Rugeley	195	177.94	600	547.50
	Lichfield & Tamworth / Burton Upon Trent / Uttoxeter	189	172.46	582.12	531.18
Warwickshire	Leamington / Nuneaton / Rugby	195.74	178.61	587.22	535.84
West Mercia	Hereford / Leominster	170.21	155.32	510.63	465.95
	Kidderminster / Redditch	217.87	198.81	653.61	596.42
	Shrewsbury	182	166.08	559.14	510.22
	Telford	189	172.46	582.12	531.18
	Worcester	198.3	180.95	594.9	542.85
West Midlands	Sandwell	193	176.11	592.35	540.52
	Wolverhampton & Seisdon	193	176.11	592.35	540.52
	Dudley & Halesowen	189.79	173.18	569.37	519.55
	Walsall	195	177.94	602.55	549.83
	Birmingham	195	177.94	620.43	566.14
	Solihull	205.11	187.16	615.33	561.49
	Coventry	168.51	153.77	505.53	461.30

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Dyfed Powys	Amman Valley	195	177.94	625.53	570.80
	Carmarthen East Dyfed	221.28	201.92	663.84	605.75
	Llanelli	152	138.70	467.22	426.34
	Brecon & Radnor	222.98	203.47	668.94	610.41
	Mid Wales	170.21	155.32	510.63	465.95
	North Ceredigion / South Ceredigion	223.83	204.24	671.49	612.73
	Pembrokeshire	183	166.99	564.27	514.90
Gwent	East Gwent	186	169.73	571.92	521.88
	Newport	183	166.99	561.69	512.54
	Lower Rhymney Valley / North Bedwellty/ South Bedwellty	195	177.94	610.20	556.81
	Bangor & Caernarfon	207.66	189.49	622.98	568.47
North Wales	Colwyn Bay	190	173.38	584.67	533.51
	Denbighshire	206.81	188.71	620.43	566.14
	Dolgellau	206.81	188.71	620.43	566.14
	Mold & Hawarden	195	177.94	607.65	554.48
	North Anglesey	216.17	197.26	648.51	591.77
	Pwllheli	146.38	133.57	439.14	400.72
	Wrexham	177.02	161.53	531.06	484.59
South Wales	Cardiff	195	177.94	643.41	587.11
	Vale of Glamorgan	228.09	208.13	684.27	624.40
	Cynon Valley	195	177.94	617.88	563.82
	Mid Glamorgan & Miskin	195	177.94	643.41	587.11
	Merthyr Tydfil	195	177.94	638.31	582.46
	Port Talbot	240	219.00	811.92	740.88
	Newcastle & Ogmore	195	177.94	653.61	596.42
	Neath	198	180.68	671.49	612.73
	Swansea	188	171.55	579.57	528.86

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Merseyside	Bootle & Crosby	178	162.43	546.39	498.58
	Southport	148.94	135.91	446.82	407.72
	Liverpool	196.6	179.40	589.80	538.19
	St Helens	168	153.30	518.31	472.96
	Knowsley	181	165.16	556.59	507.89
	Wirral	173	157.86	531.06	484.59
	Cheshire	Crewe & Nantwich / Sandbach & Congleton / Macclesfield	193	176.11	592.35
Warrington / Halton		169.36	154.54	508.08	463.62
Chester / Vale Royal (Northwich)		176.17	160.76	528.51	482.27
Cumbria	Barrow in Furness	168.51	153.77	505.53	461.30
	Kendal & Windermere	200.85	183.28	602.55	549.83
	Penrith / Carlisle	189.79	173.18	569.37	519.55
	Whitehaven / Workington	157.45	143.67	472.35	431.02
Greater Manchester	Manchester	195	177.94	643.41	587.11
	Stockport	183.83	167.74	551.49	503.23
	Trafford	195	177.94	612.78	559.16
	Salford	195	177.94	625.53	570.80
	Bolton	180.43	164.64	541.29	493.93
	Bury	175.32	159.98	525.96	479.94
	Wigan	186.38	170.07	559.14	510.22
	Rochdale / Middleton	185.53	169.30	556.59	507.89
	Tameside	171	156.04	525.96	479.94
Oldham	150.64	137.46	451.92	412.38	

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Lancashire	Burnley / Rossendale	177.87	162.31	533.61	486.92
	Blackburn / Accrington / Ribble Valley	195	177.94	635.73	580.10
	Blackpool	138.72	126.58	416.16	379.75
	Fleetwood	142.13	129.69	426.39	389.08
	Lancaster	174.47	159.20	523.41	477.61
	Chorley / Ormskirk / South Ribble & Leyland	191.49	174.73	574.47	524.20
	Preston	156.6	142.90	469.8	428.69
	Kent	Dartford & Gravesend	255.32	232.98	765.96
Ashford & Tenterden / Dover / Folkestone		225	205.31	763.41	696.61
Medway		224.68	205.02	674.04	615.06
Swale		266.38	243.07	799.14	729.22
Maidstone & West Malling		237.45	216.67	712.35	650.02
Canterbury / Thanet		195	177.94	661.29	603.43
West Kent (Tonbridge)		228.09	208.13	684.27	624.40
Surrey		Guildford & Farnham	197	179.76	668.94
	North West Surrey (Woking)	215	196.19	730.2	666.31
	South East Surrey	227	207.14	771.06	703.59
	Epsom	230	209.88	781.29	712.93
	Staines	264	240.90	893.61	815.42
Sussex	Brighton & Hove & Lewes	201	183.41	681.69	622.04
	Chichester & District	178	162.43	546.39	498.58
	Crawley / Horsham	250.21	228.32	750.63	684.95
	Hastings	156	142.35	480	438.00
	Worthing	180	164.25	554.04	505.56
	Eastbourne	189.79	173.18	569.37	519.55

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Derbyshire	East Derbyshire (Ripley) / Ilkeston	226.38	206.57	679.14	619.72
	Ashbourne / Matlock / High Peak (Buxton)	208.51	190.27	625.53	570.80
	Chesterfield	194.89	177.84	584.67	533.51
Leicestershire	Derby / Swadlincote	195	177.94	625.53	570.80
	Ashby & Coalville / Loughborough / Melton Mowbray	199.15	181.72	597.45	545.17
	Leicester	195	177.94	605.1	552.15
Lincolnshire	Hinckley / Market Harborough	221.28	201.92	663.84	605.75
	Boston, Bourne, Stamford	190	173.38	584.67	533.51
	Skegness	171.06	156.09	513.18	468.28
Nottinghamshire	Lincoln / Gainsborough	177.02	161.53	531.06	484.59
	Grantham & Sleaford	175	159.69	538.71	491.57
	Mansfield	176	160.60	541.29	493.93
Northamptonshire	Newark	197.45	180.17	592.35	540.52
	Nottingham	196.6	179.40	589.8	538.19
	Worksop & East Retford	187	170.64	574.47	524.20
Bedfordshire	Corby (Kettering) / Wellingborough	172.77	157.65	518.31	472.96
	Northampton	187.23	170.85	561.69	512.54
Cambridgeshire	Bedford	184	167.90	566.82	517.22
	Luton	195	177.94	658.71	601.07
	Cambridge	178	162.43	548.94	500.91
Cambridgeshire	Ely	195	177.94	630.63	575.45
	Huntingdon	189.79	173.18	569.37	519.55
	March & Wisbech	188.09	171.63	564.27	514.90
	Peterborough	156.6	142.90	469.8	428.69

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Essex	Basildon	195	177.94	602.55	549.83
	Brentwood	273	249.11	926.82	845.72
	Braintree	218	198.93	737.88	673.32
	Clacton & Harwich / Colchester	195	177.94	617.88	563.82
	Grays	255	232.69	865.53	789.80
	Harlow & Loughton	255	232.69	865.53	789.80
	Stansted	282	257.33	957.45	873.67
	Rayleigh / Southend on Sea	182.98	166.97	548.94	500.91
	Chelmsford / Witham	193	176.11	594.9	542.85
	Hertfordshire	Dacorum (Hemel Hempstead)	230	209.88	778.71
Bishop's Stortford / East Hertfordshire		279	254.59	947.22	864.34
Stevenage & North Hertfordshire		259	236.34	878.31	801.46
St. Albans		235	214.44	769.59	702.25
Watford		231	210.79	783.84	715.25
Norfolk	Cromer & North Walsham	202	184.33	684.27	624.40
	Great Yarmouth	184.68	168.52	554.04	505.56
	Kings Lynn & West Norfolk	180.43	164.64	541.29	493.93
	Norwich & District	185.53	169.30	556.59	507.89
	Diss / Thetford	192	175.20	589.8	538.19
Suffolk	Dereham	217	198.01	735.33	670.99
	Lowestoft / Beccles & Halesworth / Aldeburgh	185.53	169.30	556.59	507.89
	Felixstowe / Ipswich & District / Woodbridge	188.94	172.41	566.82	517.22
	Sudbury & Hadleigh / Bury St. Edmunds / Haverhill / Newmarket	195	177.94	605.1	552.15

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
Thames Valley	Abingdon, Didcot & Witney (South Oxfordshire)	229	208.96	776.16	708.25
	Aylesbury	217.87	198.81	653.61	596.42
	High Wycombe & Amersham	209	190.71	709.8	647.69
	Milton Keynes	181	165.16	556.59	507.89
	Bicester / North Oxon (Banbury)	213	194.36	722.55	659.33
	Oxford	213	194.36	722.55	659.33
	Reading	206.81	188.71	620.43	566.14
	Slough (East Berkshire)	229	208.96	776.16	708.25
	West Berkshire (Newbury etc.)	191.49	174.73	574.47	524.20
	Hampshire	Aldershot / Petersfield (North East Hampshire)	219	199.84	742.98
Andover / Basingstoke / Winchester (North West Hampshire)		230.64	210.46	691.92	631.38
Isle of Wight		188.09	171.63	564.27	514.90
Portsmouth / Waterlooville (South East Hampshire)		193.19	176.29	579.57	528.86
Gosport & Fareham		235.74	215.11	707.22	645.34
Southampton (South West Hampshire)		217.87	198.81	653.61	596.42
Humberside	Grimsby & Cleethorpes	147.23	134.35	441.69	403.04
	Scunthorpe	158	144.18	487.65	444.98
	Hull	168	153.30	515.73	470.60
	Beverley / Bridlington	195	177.94	643.41	587.11
	Goole	200	182.50	676.59	617.39
North Yorkshire	Northallerton & Richmond	210.21	191.82	630.63	575.45
	Harrogate & Ripon	201.7	184.05	605.1	552.15
	Skipton, Settle & Ingleton	195	177.94	600	547.50
	Scarborough / Whitby	167	152.39	513.18	468.28
	Malton & Rydale	160.85	146.78	482.55	440.33
	York / Selby	175	159.69	538.71	491.57

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)		
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold	
South Yorkshire	Barnsley	174	158.78	536.16	489.25	
	Doncaster	168	153.30	515.73	470.60	
	Rotherham	178	162.43	548.94	500.91	
	Sheffield	183	166.99	564.27	514.90	
West Yorkshire	Halifax	190.64	173.96	571.92	521.88	
	Huddersfield	160.85	146.78	482.55	440.33	
	Dewsbury	174.47	159.20	523.41	477.61	
	Bradford	149	135.96	459.57	419.36	
	Keighley & Bingley	168	153.30	515.73	470.60	
	Leeds	158	144.18	485.1	442.65	
	Pontefract & Castleford	154.89	141.34	464.67	424.01	
	Wakefield	153	139.61	469.8	428.69	
	London	Barking	246	224.48	834.9	761.85
		Bexley	220	200.75	745.53	680.30
Bishopsgate		257	234.51	870.63	794.45	
Brent		240	219.00	811.92	740.88	
Brentford		244	222.65	827.22	754.84	
Bromley		232	211.70	786.39	717.58	
Camberwell Green		240	219.00	814.47	743.20	
Central London		260	237.25	880.86	803.78	
Clerkenwell / Hampstead		243	221.74	822.12	750.18	
Croydon		237	216.26	801.69	731.54	
Ealing		252	229.95	855.53	780.67	
Enfield		239	218.09	809.37	738.55	
Greenwich / Woolwich		229	208.96	776.16	708.25	
Haringey		247	225.39	837.45	764.17	
Harrow		240	219.00	814.47	743.20	
Havering		224	204.40	758.31	691.96	
Heathrow	301	274.66	1,021.29	931.93		
Hendon / Barnet	242	220.83	819.57	747.86		
Highbury Corner	252	229.95	852.78	778.16		

Criminal Justice System Area	Scheme	Fixed Fee (£)		Escape Fee Threshold (£)	
		Current rates	Proposed reduced rates	Current threshold	Proposed reduced threshold
	Kingston-Upon-Thames	250	228.13	847.65	773.48
	Newham	241	219.91	817.02	745.53
	Old Street	240	219.00	814.47	743.20
	Redbridge	247	225.39	837.45	764.17
	Richmond-Upon-Thames	264	240.90	893.61	815.42
	South London	252	229.95	852.78	778.16
	Sutton	239	218.09	809.37	738.55
	Thames	239	218.09	809.37	738.55
	Tower Bridge	255	232.69	865.53	789.80
	Uxbridge	231	210.79	783.84	715.25
	Waltham Forest	224	204.40	760.86	694.28
	West London	258	235.43	875.73	799.10
	Wimbledon	245	223.56	829.8	757.19

Free standing Advice and Assistance	London (£)		National (£)	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Routine letters written and routine telephone calls per item	3.85	3.51	3.7	3.38
Preparation hourly rate	49.7	45.35	46.9	42.80
Travel and waiting hourly rate	26.3	24.00	26.3	24.00

Table A

Advocacy Assistance on a warrant of further detention – Magistrates’ Court or judicial authority	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Routine letters written and telephone calls (per item)				
Own Solicitor and Duty Solicitor	3.85	3.51	3.7	3.38
Duty Solicitor (Unsocial Hours)	5.1	4.65	4.9	4.47
Preparation hourly rate				
Own Solicitor and Duty Solicitor	49.7	45.35	46.9	42.80
Duty Solicitor (Unsocial Hours)	66.3	60.50	62.5	57.03
Advocacy hourly rate				
Own Solicitor and Duty Solicitor	59	53.84	59	53.84
Duty Solicitor (Unsocial Hours)	78.65	71.77	78.65	71.77
Travelling and waiting hourly rate				
Own Solicitor and Duty Solicitor	26.3	24.00	26.3	24.00
Duty Solicitor (Unsocial Hours)	35.05	31.98	35.05	31.98

Table B

Advocacy Assistance on a warrant of further detention – High Court or a senior judge	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Routine letter out per item	7.5	6.84	7.5	6.84
Routine telephone calls per item	4.15	3.79	4.15	3.79
All other preparation work, hourly rate	79.5	72.54	75	68.44
Attending counsel in conference or at the trial or hearing of any summons or application at court or other appointment, hourly rate	37	33.76	37	33.76
Attending without counsel at the trial or hearing of any cause or the hearing of any summons or application at court, or other appointment, hourly rate	75	68.44	75	68.44
Travelling and waiting, hourly rate	33.25	30.34	33.25	30.34

	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Advocacy Assistance for armed forces custody hearings				
Routine letters written and telephone calls (per item)				
Own Solicitor and Duty Solicitor	3.85	3.51	3.7	3.38
Duty Solicitor (Unsocial Hours)	5.1	4.65	4.9	4.47
Preparation hourly rate				
Own Solicitor and Duty Solicitor	49.7	45.35	46.9	42.80
Duty Solicitor (Unsocial Hours)	66.3	60.50	62.5	57.03
Advocacy hourly rate				
Own Solicitor and Duty Solicitor	59	53.84	59	53.84
Duty Solicitor (Unsocial Hours)	78.65	71.77	78.65	71.77
Travelling and waiting hourly rate				
Own Solicitor and Duty Solicitor	26.3	24.00	26.3	24.00
Duty Solicitor (Unsocial Hours)	35.05	31.98	35.05	31.98

	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Advocacy Assistance in the magistrates' court in connection with an application to vary police bail conditions				
Routine letters written and telephone calls per item	4.05	3.70	3.9	3.56
Preparation hourly rate	52.55	47.95	49.7	45.35
Advocacy hourly rate	62.35	56.89	62.35	56.89
Travelling and waiting hourly rate	26.3	24.00	26.3	24.00

	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Advice and Assistance and Advocacy Assistance by a court Duty Solicitor				
Standard hourly rate (attendance and waiting at a magistrates' court)	55.15	50.32	53.85	49.14
Enhanced hourly rate (only payable in respect of work done on a day which is not a Business Day)	68.9	62.87	67.3	61.41
Travelling hourly rate (only payable where the Duty Solicitor is called out (including being called to return) to the court from the Office or attends on a day that is not a Business Day. Reasonable travel expenses may also be claimed (where relevant)).	26.3	24.00	26.3	24.00

Advocacy Assistance at the Virtual Court	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Virtual Court Fixed Fee where the hearing is held during normal working hours	200	182.50	150	136.88
Virtual Court Fixed Fee where the hearing is held during Unsocial hours	240	219.00	180	164.25

Representation in a magistrates' court	<i>All Areas</i>	
	Current rates	Proposed reduced rates
Routine letters written and telephone calls per item	3.9	3.56
Preparation hourly rate	49.7	45.35
Advocacy hourly rate (including applications for bail and other applications to the court)	62.35	56.89
Hourly rate for attendance at court where Counsel is assigned (including conferences with Counsel at court)	34	31.03
Travelling and waiting hourly rate (only claimable where the undesignated area fees apply)	26.3	24.00

Higher and Lower Standard Fees Table	<i>Lower Standard Fee (£)</i>		<i>Lower Standard Fee Limit (£)</i>		<i>Higher Standard Fee (£)</i>		<i>Higher Standard Fee Limit (£)</i>	
	Current rates	Proposed reduced rates	Current limit	Proposed reduced limit	Current rates	Proposed reduced rates	Current limit	Proposed reduced limit
Designated Area Standard Fees								
Category 1A	272.56	248.71	298.45	272.34	517.05	471.81	517.1	471.85
Category 1B	221.59	202.20	298.45	272.34	477.41	435.64	517.1	471.85
Category 2	378.46	345.34	512.7	467.84	792.71	723.35	854.4	779.64
Category 3	357.87	326.56	452.2	412.63	734.56	670.29	789.5	720.42
Undesignated Area Standard Fees								
Category 1A	213.35	194.68	298.45	272.34	451.84	412.30	517.1	471.85
Category 1B	173.45	158.27	298.45	272.34	417.2	380.70	517.1	471.85
Category 2	306.25	279.45	512.7	467.84	702.4	640.94	854.4	779.64
Category 3	276.5	252.31	452.2	412.63	626.5	571.68	789.5	720.42

Own client work	Current rates	Proposed reduced rates
------------------------	----------------------	-------------------------------

1.—(1) The fixed amounts and hourly rates for Pre-Order Cover, Early Cover and means test form completion are specified in the table following this paragraph.

(2) The amount payable for Pre-Order cover is subject to an Upper Limit of—		
(a) per claim in London; and	52.55	47.95
(b) per claim outside London (“National”).	49.7	45.35
(3) The Fixed Fee for Early Cover.	75	68.44
(4) The refused means test completion fee.	25	22.81

Own client work	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Routine letters written and telephone calls per item	4.05	3.70	3.9	3.56
Preparation hourly rate	52.55	47.95	49.7	45.35
Advocacy (including applications for bail and other applications to the court) hourly rate	62.35	56.89	62.35	56.89
Travelling and waiting hourly rate (only applicable where the Undesignated Area fees apply)	N/A	N/A	26.3	24.00

Representation in Prescribed Proceedings in a Magistrates’ Court	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Routine letters written and telephone calls per item	4.05	3.70	3.9	3.56
Preparation hourly rate	52.55	47.95	49.7	45.35
Advocacy hourly rate	62.35	56.89	62.35	56.89
Travelling and waiting hourly rate	26.3	24.00	26.3	24.00

Representation in Prescribed Proceedings in the High Court or a county court	<i>London (£)</i>		<i>National (£)</i>	
	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
Routine letters out per item	7.50	6.84	6.60	6.02
Routine telephone calls per item	4.15	3.79	3.65	3.33
All other preparation work hourly rate	75.00 (79.50 where Provider's office is in London)	68.44 (72.54 where Provider's office is in London)	66.00 (70.00 where Provider's office is in London)	60.23 (63.88 where Provider's office is in London)
Attending counsel in conference or at the trial or hearing of any summons or application at court or other appointment – hourly rate	37	33.76	32.50	29.66
Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court or other appointment – hourly rate	75	68.44	66	60.23
Travelling and waiting hourly rate	33.25	30.34	29.20	26.65

Hourly rates for determining whether Escape Fee

Threshold reached

	<i>All areas (£)</i>	
	Current rates	Proposed reduced rates
Routine letters written and routine telephone calls per item	3.70	3.38
Preparation hourly rate	46.90	42.80
Travel and waiting hourly rate	26.30	24.00

Hourly rates in Disciplinary Cases for determining application of Standard Fees

	<i>All areas (£)</i>	
	Current rates	Proposed reduced rates
Routine letters written and routine telephone calls per item	4.05	3.70
Preparation hourly rate	56.15	51.24
Advocacy hourly rate	68.25	62.28
Travel and waiting hourly rate	26.30	24.00

Higher and Lower Standard Fees Table for Disciplinary Cases

Lower Standard Fee (£)		Lower Standard Fee Limit (£)		Higher Standard Fee (£)		Higher Standard Fee Limit (£)	
Current rates	Proposed reduced rates	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
223.48	203.93	391.3	357.06	618.26	564.16	1,853.91	1,691.69

Hourly rates in Parole Board Cases for determining application of Standard Fees

	All areas (£)	
	Current rates	Proposed reduced rates
Routine letters written and routine telephone calls per item	4.05	3.70
Preparation hourly rate	56.15	51.24
Advocacy hourly rate	68.25	62.28
Travel and waiting hourly rate	26.3	24.00

Higher and Lower Standard Fees Table for Parole Board Cases

Lower Standard Fee (£)		Lower Standard Fee Limit (£)		Higher Standard Fee (£)		Higher Standard Fee Limit (£)	
Current rates	Proposed reduced rates	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
479.13	437.21	1,023.48	933.93	1,593.91	1,454.44	4,780.87	4,362.54

Fixed fee for guilty pleas or cracked trials

	Current rates	Proposed reduced rates
11 The fee payable to a litigator in relation to a guilty plea or cracked trial to which this Part applies is per proceedings.	362	298.65

Types of proceedings	Fee payable – (£ per proceedings)	
	Current rates	Proposed reduced rates
Appeal against sentence from a magistrates' court	170.21	155.32
Appeal against conviction from a magistrates' court	382.98	349.47
Committal for sentence	255.32	232.98
Hearing subsequent to sentence	170.21	155.32
Contempt proceedings (where contempt is alleged to have been committed by a person other than the defendant)	127.66	116.49
Alleged breach of a Crown Court Order	85.11	77.66

Prescribed fee rates (current rates)

Class of work	Grade of fee earner	Rate	Variations	Rate	Variations
Preparation	Senior solicitor	£53 per hour	£55.75 per hour for a fee earner whose office is situated within the City of London or a London borough	53	55.75
	Solicitor, legal executive or fee earner of equivalent experience	£45 per hour	£47.25 per hour for a fee earner whose office is situated within the City of London or a London borough	45	47.25
	Trainee or fee earner of equivalent experience	£29.75 per hour	£34.00 per hour for a fee earner whose office is situated within the City of London or a London borough	29.75	34.00
Attendance at court where more than one representative instructed	Senior solicitor	£42.25 per hour		42.25	
	Solicitor, legal executive or fee earner of equivalent experience	£34.00 per hour		34.00	
	Trainee or fee earner of equivalent experience	£20.50 per hour		20.50	
Travelling and waiting	Senior solicitor	£24.75 per hour		24.75	
	Solicitor, legal executive or fee earner of equivalent experience	£24.75 per hour		24.75	
	Trainee or fee earner of equivalent experience	£12.50 per hour		12.50	
Writing routine letters and dealing with routine telephone calls		£3.45 per item	£3.60 per item for a fee earner whose office is situated within the City of London or a London borough	3.45	3.60

Prescribed fee rates (proposed reduced rates)

Class of work	Grade of fee earner	Rate	Variations	Rate	Variations
Preparation	Senior solicitor	£48.36 per hour	£50.87 per hour for a fee earner whose office is situated within the City of London or a London borough	48.36	50.87
	Solicitor, legal executive or fee earner of equivalent experience	£41.06 per hour	£43.12 per hour for a fee earner whose office is situated within the City of London or a London borough	41.06	43.12
	Trainee or fee earner of equivalent experience	£27.15 per hour	£31.03 per hour for a fee earner whose office is situated within the City of London or a London borough	27.15	31.03
Attendance at court where more than one representative instructed	Senior solicitor	£38.55 per hour		38.55	
	Solicitor, legal executive or fee earner of equivalent experience	£31.03 per hour		31.03	
	Trainee or fee earner of equivalent experience	£18.71 per hour		18.71	
Travelling and waiting	Senior solicitor	£22.58 per hour		22.58	
	Solicitor, legal executive or fee earner of equivalent experience	£22.58 per hour		22.58	
	Trainee or fee earner of equivalent experience	£11.41 per hour		11.41	
Writing routine letters and dealing with routine telephone calls		£3.15 per item	£3.29 per item for a fee earner whose office is situated within the City of London or a London borough	3.15	3.29

SCHEDULE 3

Litigators' fees for proceedings in the Court of Appeal (current rates)

Class of work	Grade of fee earner	Rate	Variations	Rate	Variations
Preparation	Senior solicitor	£53 per hour	£55.75 per hour for a litigator whose office is situated within the City of London or a London borough	53	55.75
	Solicitor, legal executive or fee earner of equivalent experience	£45 per hour	£47.25 per hour for a litigator whose office is situated within the City of London or a London borough	45	47.25
	Trainee or fee earner of equivalent experience	£29.75 per hour	£34 per hour for a litigator whose office is situated within the City of London or a London borough	29	34
Advocacy	Senior Solicitor	£64 per hour		64	
	Solicitor	£56 per hour		56	
Attendance at court where more than one representative assigned	Senior Solicitor	£42.25 per hour		42.25	
	Solicitor, legal executive or fee earner of equivalent experience	£34 per hour		34	
	Trainee or fee earner of equivalent experience	£20.50 per hour		20.50	
Travelling and waiting	Senior Solicitor	£24.75 per hour		24.75	
	Solicitor, legal executive or fee earner of equivalent experience	£24.75 per hour		24.75	
	Trainee or fee earner of equivalent experience	£12.50 per hour		12.50	
Routine letters written and routine telephone calls		£3.45 per item	£3.60 per item for a litigator whose office is situated within the City of London or a London borough	3.45	3.60

Litigators' fees for proceedings in the Court of Appeal (proposed reduced rates)

Class of work	Grade of fee earner	Rate	Variations	Rate	Variations
Preparation	Senior solicitor	£48.36 per hour	£50.87 per hour for a litigator whose office is situated within the City of London or a London borough	48.36	50.87
	Solicitor, legal executive or fee earner of equivalent experience	£41.06 per hour	£43.12 per hour for a litigator whose office is situated within the City of London or a London borough	41.06	43.12
	Trainee or fee earner of equivalent experience	£26.46 per hour	£31.03 per hour for a litigator whose office is situated within the City of London or a London borough	26.46	31.03
Advocacy	Senior Solicitor	£58.40 per hour		58.40	
	Solicitor	£51.10 per hour		51.10	
Attendance at court where more than one representative assigned	Senior Solicitor	£38.55 per hour		38.55	
	Solicitor, legal executive or fee earner of equivalent experience	£31.03 per hour		31.03	
	Trainee or fee earner of equivalent experience	£18.71 per hour		18.71	
Travelling and waiting	Senior Solicitor	£22.58 per hour		22.58	
	Solicitor, legal executive or fee earner of equivalent experience	£22.58 per hour		22.58	
	Trainee or fee earner of equivalent experience	£11.41 per hour		11.41	
Routine letters written and routine telephone calls		£3.15 per item	£3.29 per item for a litigator whose office is situated within the City of London or a London borough	3.15	3.29

Basic fees for cracked trials or guilty pleas (£) (current rates)

	Class of Offence										
Type of case	A	B	C	D	E	F	G	H	I	J	K
Cracked trial	991.32	775.15	575.16	941.75	255.38	245.73	245.73	259.73	277.99	991.32	848.07
Guilty plea	745.63	609.44	485.38	708.34	202.41	214.59	214.59	209.28	191.34	745.63	702.29

Basic fees for cracked trials or guilty pleas (£) (proposed reduced rates)

	Class of Offence										
Type of case	A	B	C	D	E	F	G	H	I	J	K
Cracked trial	904.58	707.32	524.83	859.35	233.03	224.23	224.23	237.00	253.67	904.58	773.86
Guilty plea	680.39	556.11	442.91	646.36	184.70	195.81	195.81	190.97	174.60	680.39	640.84

Basic fees for trials (£) (current rates)

	Class of Offence										
Type of case	A	B	C	D	E	F	G	H	I	J	K
Trial	1608.31	1202.92	810.51	1527.89	386.54	391.89	391.89	392.05	391.72	1608.31	1130.76

Basic fees for trials (£) (proposed reduced rates)

	Class of Offence										
Type of case	A	B	C	D	E	F	G	H	I	J	K
Trial	1,467.58	1,097.66	739.59	1,394.20	352.72	357.60	357.60	357.75	357.44	1,467.58	1,031.82

Length of trial proxy (£) (current rates)

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
1	0	0	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0	0
3	276.76	496.31	473.98	262.93	785.29	706.78	706.78	771.17	945.08	276.76	629.18
4	843.6	964	924.2	801.42	1,132.77	984.95	984.95	1,106.66	1,447.59	843.6	1,250.00
5	1,382.09	1,408.31	1,351.90	1,312.99	1,462.86	1,249.21	1,249.21	1,425.36	1,924.97	1,382.09	1,839.79
6	1,930.05	1,858.61	1,776.66	1,833.56	1,772.17	1,519.38	1,519.38	1,741.43	2,411.61	1,930.05	2,390.18
7	2,469.99	2,303.80	2,203.87	2,346.50	2,099.12	1,789.40	1,789.40	2,059.74	2,890.57	2,469.99	2,973.44
8	3,009.93	2,748.97	2,631.09	2,859.44	2,426.07	2,055.07	2,055.07	2,378.05	3,369.53	3,009.93	3,556.69
9	3,518.82	3,149.63	3,015.57	3,342.88	2,720.32	2,294.19	2,294.19	2,664.53	3,806.50	3,518.82	4,081.63
10	4,027.71	3,550.30	3,400.07	3,826.32	3,014.59	2,533.30	2,533.30	2,951.00	4,243.47	4,027.71	4,606.55
11	4,540.38	3,951.50	3,794.99	4,313.36	3,322.37	2,779.24	2,779.24	3,245.35	4,689.34	4,540.38	5,155.06
12	5,049.58	4,352.20	4,190.10	4,797.10	3,630.24	3,025.17	3,025.17	3,539.33	5,135.58	5,049.58	5,703.89
13	5,558.78	4,752.90	4,576.22	5,280.84	3,937.70	3,270.12	3,270.12	3,826.93	5,574.00	5,558.78	6,252.75
14	6,067.98	5,153.61	4,962.33	5,764.59	4,235.69	3,510.51	3,510.51	4,114.53	6,012.41	6,067.98	6,801.57
15	6,577.18	5,554.31	5,348.45	6,248.32	4,532.77	3,750.89	3,750.89	4,402.14	6,450.82	6,577.18	7,350.37
16	7,086.38	5,955.02	5,734.56	6,732.06	4,829.87	3,991.29	3,991.29	4,689.74	6,889.23	7,086.38	7,898.30
17	7,595.57	6,355.73	6,120.68	7,215.80	5,126.96	4,231.68	4,231.68	4,977.34	7,327.64	7,595.57	8,431.63
18	8,104.77	6,756.43	6,506.79	7,699.54	5,424.05	4,472.07	4,472.07	5,264.94	7,766.05	8,104.77	8,964.95
19	8,613.97	7,157.13	6,892.90	8,183.28	5,721.14	4,712.46	4,712.46	5,552.54	8,204.46	8,613.97	9,498.27
20	9,123.17	7,557.84	7,279.02	8,667.02	6,018.23	4,952.85	4,952.85	5,840.14	8,642.88	9,123.17	10,031.60
21	9,642.08	7,927.97	7,596.29	9,159.97	6,263.74	5,149.52	5,149.52	6,076.67	9,003.14	9,642.08	10,564.93
22	10,160.89	8,298.07	7,913.63	9,652.84	6,509.26	5,346.28	5,346.28	6,313.31	9,363.42	10,160.89	11,098.26
23	10,670.92	8,668.15	8,231.00	10,137.38	6,747.46	5,543.04	5,543.04	6,549.95	9,723.73	10,670.92	11,631.58
24	11,180.95	9,029.83	8,548.37	10,621.91	6,985.68	5,739.80	5,739.80	6,786.59	10,080.08	11,180.95	12,164.91
25	11,691.00	9,391.50	8,864.09	11,106.44	7,223.89	5,936.55	5,936.55	7,019.41	10,431.95	11,691.00	12,698.24
26	12,201.03	9,753.17	9,174.28	11,590.99	7,462.10	6,133.31	6,133.31	7,250.40	10,783.83	12,201.03	13,231.57
27	12,711.06	10,114.85	9,484.49	12,075.51	7,700.31	6,330.07	6,330.07	7,481.38	11,135.70	12,711.06	13,764.89
28	13,221.10	10,476.53	9,794.68	12,560.05	7,938.53	6,526.83	6,526.83	7,712.37	11,487.57	13,221.10	14,298.22
29	13,731.14	10,838.20	10,104.88	13,044.58	8,176.73	6,721.29	6,721.29	7,943.34	11,839.46	13,731.14	14,831.54
30	14,241.17	11,199.87	10,415.07	13,529.11	8,414.94	6,914.62	6,914.62	8,174.32	12,191.33	14,241.17	15,364.87
31	14,751.21	11,561.55	10,725.27	14,013.65	8,653.16	7,107.96	7,107.96	8,405.31	12,543.20	14,751.21	15,898.20
32	15,261.24	11,923.23	11,035.47	14,498.18	8,891.37	7,301.29	7,301.29	8,636.29	12,895.08	15,261.24	16,431.52
33	15,771.29	12,284.90	11,345.67	14,982.72	9,129.58	7,494.62	7,494.62	8,867.28	13,246.95	15,771.29	16,964.85
34	16,281.32	12,646.57	11,655.86	15,467.26	9,367.79	7,687.96	7,687.96	9,098.26	13,598.83	16,281.32	17,498.18

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
35	16,791.35	13,008.25	11,966.06	15,951.79	9,606.00	7,881.29	7,881.29	9,329.24	13,950.71	16,791.35	18,031.51
36	17,301.39	13,369.92	12,276.26	16,436.32	9,844.21	8,074.63	8,074.63	9,560.22	14,302.58	17,301.39	18,564.83
37	17,811.43	13,731.60	12,586.46	16,920.86	10,082.43	8,267.96	8,267.96	9,791.21	14,654.45	17,811.43	19,098.16
38	18,321.46	14,093.27	12,896.66	17,405.39	10,320.64	8,461.29	8,461.29	10,022.19	15,006.33	18,321.46	19,631.49
39	18,831.50	14,454.94	13,206.85	17,889.92	10,558.84	8,654.63	8,654.63	10,253.17	15,358.20	18,831.50	20,164.82
40	19,312.20	14,785.90	13,329.94	18,346.59	10,654.34	8,797.55	8,797.55	10,353.05	15,651.51	19,312.20	20,674.95
41	19,795.51	15,119.38	13,454.39	18,805.74	10,752.37	8,940.76	8,940.76	10,454.14	15,946.54	19,795.51	21,188.86
42	20,278.95	15,452.95	13,578.88	19,265.01	10,850.45	9,083.97	9,083.97	10,555.27	16,241.65	20,278.95	21,702.94
43	20,762.51	15,786.64	13,703.38	19,724.39	10,948.58	9,227.20	9,227.20	10,656.41	16,536.81	20,762.51	22,217.20
44	21,246.19	16,120.43	13,827.90	20,183.88	11,046.75	9,370.43	9,370.43	10,757.57	16,832.03	21,246.19	22,731.63
45	21,729.98	16,454.31	13,952.45	20,643.48	11,144.95	9,513.67	9,513.67	10,858.77	17,127.33	21,729.98	23,246.22
46	22,213.90	16,788.30	14,077.02	21,103.21	11,243.21	9,656.92	9,656.92	10,959.97	17,422.67	22,213.90	23,761.00
47	22,697.92	17,122.39	14,201.62	21,563.03	11,341.51	9,800.18	9,800.18	11,061.21	17,718.09	22,697.92	24,275.94
48	23,182.08	17,456.59	14,326.24	22,022.98	11,439.86	9,943.44	9,943.44	11,162.47	18,013.57	23,182.08	24,791.06
49	23,666.34	17,790.89	14,450.89	22,483.03	11,538.24	10,086.71	10,086.71	11,263.74	18,309.10	23,666.34	25,306.34
50	24,150.72	18,125.29	14,575.55	22,943.19	11,636.66	10,230.00	10,230.00	11,365.05	18,604.70	24,150.72	25,821.80
51	24,635.23	18,459.79	14,700.25	23,403.47	11,735.14	10,373.29	10,373.29	11,466.37	18,900.37	24,635.23	26,337.44
52	25,119.85	18,794.39	14,824.96	23,863.86	11,833.66	10,516.60	10,516.60	11,567.72	19,196.09	25,119.85	26,853.24
53	25,604.59	19,129.10	14,949.70	24,324.37	11,932.22	10,659.90	10,659.90	11,669.09	19,491.87	25,604.59	27,369.22
54	26,089.45	19,463.91	15,074.46	24,784.97	12,030.83	10,803.22	10,803.22	11,770.48	19,787.72	26,089.45	27,885.37
55	26,574.42	19,798.82	15,199.24	25,245.69	12,129.47	10,946.54	10,946.54	11,871.89	20,083.63	26,574.42	28,401.69
56	27,059.51	20,133.84	15,324.06	25,706.54	12,228.16	11,089.88	11,089.88	11,973.33	20,379.61	27,059.51	28,918.19
57	27,544.72	20,468.95	15,448.89	26,167.49	12,326.89	11,233.23	11,233.23	12,074.78	20,675.64	27,544.72	29,434.86
58	28,030.05	20,804.17	15,573.74	26,628.55	12,425.63	11,376.58	11,376.58	12,176.26	20,971.74	28,030.05	29,951.69
59	28,515.50	21,139.50	15,698.63	27,089.73	12,524.37	11,519.94	11,519.94	12,277.77	21,267.90	28,515.50	30,468.71
60	29,001.06	21,474.92	15,823.53	27,551.00	12,623.11	11,663.31	11,663.31	12,379.29	21,564.12	29,001.06	30,985.90
61	29,486.75	21,810.44	15,948.46	28,012.41	12,721.86	11,806.69	11,806.69	12,480.84	21,860.41	29,486.75	31,503.25
62	29,972.54	22,146.08	16,073.41	28,473.92	12,820.60	11,950.07	11,950.07	12,582.42	22,156.76	29,972.54	32,020.78
63	30,458.47	22,481.80	16,198.38	28,935.55	12,919.34	12,093.46	12,093.46	12,684.01	22,453.17	30,458.47	32,538.49
64	30,944.50	22,817.64	16,323.39	29,397.28	13,018.08	12,236.87	12,236.87	12,785.63	22,749.63	30,944.50	33,056.36
65	31,430.66	23,153.57	16,448.41	29,859.12	13,116.82	12,380.28	12,380.28	12,887.26	23,046.17	31,430.66	33,574.41
66	31,916.93	23,489.62	16,573.46	30,321.09	13,215.56	12,523.70	12,523.70	12,988.92	23,342.77	31,916.93	34,092.62
67	32,403.32	23,825.76	16,698.52	30,783.16	13,314.30	12,667.13	12,667.13	13,090.60	23,639.42	32,403.32	34,611.01
68	32,889.83	24,162.01	16,823.62	31,245.34	13,413.04	12,810.57	12,810.57	13,192.31	23,936.14	32,889.83	35,129.58
69	33,376.46	24,498.35	16,948.73	31,707.63	13,511.78	12,954.02	12,954.02	13,294.04	24,232.93	33,376.46	35,648.31
70	33,863.20	24,834.80	17,073.87	32,170.04	13,610.52	13,097.48	13,097.48	13,395.79	24,529.77	33,863.20	36,167.23

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
71	34,350.07	25,171.35	17,199.04	32,632.57	13,709.26	13,240.94	13,240.94	13,497.57	24,826.68	34,350.07	36,686.31
72	34,837.05	25,508.01	17,324.22	33,095.20	13,808.00	13,384.42	13,384.42	13,599.36	25,123.65	34,837.05	37,205.57
73	35,324.14	25,844.77	17,449.44	33,557.95	13,906.74	13,527.90	13,527.90	13,701.17	25,420.68	35,324.14	37,724.99
74	35,811.36	26,181.63	17,574.67	34,020.80	14,005.48	13,671.39	13,671.39	13,803.02	25,717.78	35,811.36	38,244.59
75	36,298.70	26,518.59	17,699.93	34,483.76	14,104.22	13,814.89	13,814.89	13,904.89	26,014.94	36,298.70	38,764.36
76	36,786.15	26,855.65	17,825.21	34,946.85	14,202.96	13,958.39	13,958.39	14,006.77	26,312.15	36,786.15	39,284.30
77	37,273.73	27,192.82	17,950.52	35,410.04	14,301.70	14,101.91	14,101.91	14,108.67	26,609.43	37,273.73	39,804.42
78	37,761.41	27,530.09	18,075.85	35,873.35	14,400.44	14,245.43	14,245.43	14,210.60	26,906.77	37,761.41	40,324.71
79	38,249.23	27,867.46	18,201.20	36,336.77	14,499.18	14,388.97	14,388.97	14,312.56	27,204.19	38,249.23	40,845.17
80	38,737.15	28,204.93	18,326.58	36,800.29	14,597.92	14,532.51	14,532.51	14,414.54	27,501.65	38,737.15	41,365.80
81	39,225.19	28,542.51	18,451.97	37,263.94	14,696.66	14,676.06	14,676.06	14,516.54	27,799.18	39,225.19	41,886.60
82	39,713.35	28,880.19	18,577.40	37,727.69	14,795.40	14,819.62	14,819.62	14,618.55	28,096.77	39,713.35	42,407.58
83	40,201.63	29,217.97	18,702.85	38,191.56	14,894.14	14,963.18	14,963.18	14,720.60	28,394.43	40,201.63	42,928.73
84	40,690.03	29,555.86	18,828.31	38,655.53	14,992.89	15,106.77	15,106.77	14,822.66	28,692.14	40,690.03	43,450.06
85	41,178.54	29,893.84	18,953.81	39,119.62	15,091.63	15,250.35	15,250.35	14,924.75	28,989.92	41,178.54	43,971.55
86	41,667.18	30,231.93	19,079.34	39,583.83	15,190.37	15,393.94	15,393.94	15,026.86	29,287.77	41,667.18	44,493.22
87	42,155.93	30,570.12	19,204.88	40,048.14	15,289.11	15,537.54	15,537.54	15,129.00	29,585.68	42,155.93	45,015.06
88	42,644.81	30,908.42	19,330.44	40,512.57	15,387.85	15,681.16	15,681.16	15,231.15	29,883.64	42,644.81	45,537.07
89	43,133.80	31,246.81	19,456.03	40,977.11	15,486.59	15,824.77	15,824.77	15,333.33	30,181.67	43,133.80	46,059.26
90	43,622.90	31,585.31	19,581.64	41,441.75	15,585.33	15,968.40	15,968.40	15,435.52	30,479.76	43,622.90	46,581.62
91	44,112.13	31,923.91	19,707.28	41,906.52	15,684.07	16,112.04	16,112.04	15,537.75	30,777.91	44,112.13	47,104.14
92	44,601.46	32,262.61	19,832.94	42,371.40	15,782.81	16,255.69	16,255.69	15,639.99	31,076.13	44,601.46	47,626.84
93	45,090.93	32,601.42	19,958.62	42,836.38	15,881.55	16,399.34	16,399.34	15,742.26	31,374.41	45,090.93	48,149.72
94	45,580.50	32,940.33	20,084.33	43,301.48	15,980.29	16,543.00	16,543.00	15,844.55	31,672.75	45,580.50	48,672.77
95	46,070.20	33,279.34	20,210.06	43,766.69	16,079.03	16,686.67	16,686.67	15,946.87	31,971.15	46,070.20	49,195.98
96	46,560.02	33,618.46	20,335.82	44,232.02	16,177.77	16,830.35	16,830.35	16,049.19	32,269.62	46,560.02	49,719.38
97	47,049.95	33,957.68	20,461.60	44,697.46	16,276.51	16,974.04	16,974.04	16,151.51	32,568.14	47,049.95	50,242.94
98	47,540.00	34,297.00	20,587.40	45,163.00	16,375.25	17,117.74	17,117.74	16,253.84	32,866.73	47,540.00	50,766.68
99	48,030.17	34,636.42	20,713.23	45,628.66	16,473.99	17,261.45	17,261.45	16,356.16	33,165.39	48,030.17	51,290.59
100	48,520.45	34,975.94	20,839.07	46,094.43	16,572.73	17,405.16	17,405.16	16,458.49	33,464.09	48,520.45	51,814.66
101	49,010.86	35,315.57	20,964.94	46,560.32	16,671.47	17,548.89	17,548.89	16,560.81	33,762.88	49,010.86	52,338.92
102	49,501.38	35,655.29	21,090.84	47,026.31	16,770.21	17,692.61	17,692.61	16,663.13	34,061.71	49,501.38	52,863.34
103	49,992.03	35,995.12	21,216.77	47,492.43	16,868.95	17,836.35	17,836.35	16,765.46	34,360.61	49,992.03	53,387.95
104	50,482.78	36,335.06	21,342.70	47,958.65	16,967.69	17,980.10	17,980.10	16,867.78	34,659.57	50,482.78	53,912.71
105	50,973.66	36,675.10	21,468.63	48,424.97	17,066.43	18,123.86	18,123.86	16,970.10	34,958.60	50,973.66	54,437.66
106	51,464.66	37,015.23	21,594.56	48,891.42	17,165.17	18,267.63	18,267.63	17,072.43	35,257.69	51,464.66	54,962.66

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
107	51,955.77	37,355.44	21,720.49	49,357.97	17,263.91	18,411.40	18,411.40	17,174.75	35,556.84	51,955.77	55,487.65
108	52,447.00	37,695.64	21,846.43	49,824.66	17,362.66	18,555.18	18,555.18	17,277.07	35,856.05	52,447.00	56,012.65
109	52,938.35	38,035.85	21,972.36	50,291.43	17,461.40	18,698.98	18,698.98	17,379.40	36,155.33	52,938.35	56,537.64
110	53,429.81	38,376.05	22,098.29	50,758.32	17,560.14	18,842.77	18,842.77	17,481.72	36,454.66	53,429.81	57,062.64
111	53,921.40	38,716.26	22,224.22	51,225.34	17,658.88	18,986.59	18,986.59	17,584.04	36,754.06	53,921.40	57,587.63
112	54,413.10	39,056.46	22,350.15	51,692.45	17,757.62	19,130.40	19,130.40	17,686.37	37,053.52	54,413.10	58,112.63
113	54,904.92	39,396.66	22,476.09	52,159.69	17,856.36	19,274.23	19,274.23	17,788.69	37,353.05	54,904.92	58,637.63
114	55,396.86	39,736.87	22,602.02	52,627.02	17,955.10	19,418.07	19,418.07	17,891.01	37,652.64	55,396.86	59,162.62
115	55,888.92	40,077.07	22,727.95	53,094.47	18,053.84	19,561.91	19,561.91	17,993.34	37,952.28	55,888.92	59,687.62
116	56,381.10	40,417.28	22,853.88	53,562.04	18,152.58	19,705.76	19,705.76	18,095.66	38,251.99	56,381.10	60,212.61
117	56,873.39	40,757.48	22,979.81	54,029.72	18,251.32	19,849.62	19,849.62	18,197.98	38,551.77	56,873.39	60,737.61
118	57,365.80	41,097.69	23,105.74	54,497.51	18,350.06	19,993.49	19,993.49	18,300.31	38,851.60	57,365.80	61,262.60
119	57,858.33	41,437.89	23,231.68	54,965.41	18,448.80	20,137.37	20,137.37	18,402.63	39,151.50	57,858.33	61,787.60
120	58,350.98	41,778.09	23,357.61	55,433.43	18,547.54	20,281.26	20,281.26	18,504.95	39,451.46	58,350.98	62,312.60
121	58,843.74	42,118.30	23,483.54	55,901.56	18,646.28	20,425.15	20,425.15	18,607.28	39,751.48	58,843.74	62,837.59
122	59,329.22	42,458.50	23,609.47	56,362.76	18,745.02	20,568.43	20,568.43	18,709.60	40,047.31	59,329.22	63,362.59
123	59,814.69	42,798.71	23,735.40	56,823.97	18,843.76	20,711.70	20,711.70	18,811.92	40,343.13	59,814.69	63,887.58
124	60,300.17	43,134.92	23,859.50	57,285.16	18,942.50	20,854.97	20,854.97	18,914.25	40,638.96	60,300.17	64,411.56
125	60,785.64	43,470.02	23,983.54	57,746.36	19,041.24	20,998.25	20,998.25	19,016.57	40,934.79	60,785.64	64,928.68
126	61,271.11	43,805.11	24,107.58	58,207.57	19,139.98	21,141.51	21,141.51	19,118.83	41,230.61	61,271.11	65,445.80
127	61,756.60	44,140.22	24,231.63	58,668.77	19,238.72	21,284.79	21,284.79	19,219.63	41,526.44	61,756.60	65,962.93
128	62,242.07	44,475.32	24,355.67	59,129.97	19,337.46	21,428.07	21,428.07	19,320.42	41,822.27	62,242.07	66,480.04
129	62,727.54	44,810.42	24,479.71	59,591.17	19,436.20	21,571.34	21,571.34	19,421.20	42,118.09	62,727.54	66,997.17
130	63,213.02	45,145.52	24,603.75	60,052.37	19,534.94	21,714.61	21,714.61	19,521.99	42,413.92	63,213.02	67,514.29
131	63,698.49	45,480.62	24,727.80	60,513.57	19,633.69	21,857.89	21,857.89	19,622.78	42,709.75	63,698.49	68,031.40
132	64,183.97	45,815.73	24,851.84	60,974.77	19,732.43	22,001.16	22,001.16	19,723.57	43,005.57	64,183.97	68,548.53
133	64,669.45	46,150.83	24,975.88	61,435.97	19,831.17	22,144.43	22,144.43	19,824.36	43,301.40	64,669.45	69,065.65
134	65,154.92	46,485.92	25,099.92	61,897.17	19,929.91	22,287.70	22,287.70	19,925.15	43,597.23	65,154.92	69,582.77
135	65,640.39	46,821.03	25,223.97	62,358.37	20,028.65	22,430.98	22,430.98	20,025.93	43,893.06	65,640.39	70,099.89
136	66,125.87	47,156.13	25,348.02	62,819.57	20,127.39	22,574.26	22,574.26	20,126.72	44,188.89	66,125.87	70,617.01
137	66,611.34	47,491.23	25,472.06	63,280.77	20,226.13	22,717.52	22,717.52	20,227.51	44,484.71	66,611.34	71,134.14
138	67,096.82	47,826.33	25,596.10	63,741.98	20,324.87	22,860.80	22,860.80	20,328.30	44,780.54	67,096.82	71,651.25
139	67,582.29	48,161.43	25,720.14	64,203.18	20,423.61	23,004.08	23,004.08	20,429.09	45,076.37	67,582.29	72,168.37
140	68,067.77	48,496.54	25,844.19	64,664.38	20,522.35	23,147.34	23,147.34	20,529.88	45,372.20	68,067.77	72,685.50
141	68,553.24	48,831.63	25,968.23	65,125.58	20,621.09	23,290.62	23,290.62	20,630.66	45,668.02	68,553.24	73,202.61
142	69,038.71	49,166.74	26,092.27	65,586.78	20,719.83	23,433.90	23,433.90	20,731.46	45,963.85	69,038.71	73,719.74

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
143	69,524.20	49,501.84	26,216.31	66,047.99	20,818.57	23,577.17	23,577.17	20,832.25	46,259.68	69,524.20	74,236.86
144	70,009.67	49,836.94	26,340.36	66,509.19	20,917.31	23,720.44	23,720.44	20,933.03	46,555.50	70,009.67	74,753.97
145	70,495.14	50,172.04	26,464.40	66,970.38	21,016.05	23,863.71	23,863.71	21,033.82	46,851.33	70,495.14	75,271.10
146	70,980.62	50,507.14	26,588.44	67,431.59	21,114.79	24,006.99	24,006.99	21,134.60	47,147.16	70,980.62	75,788.22
147	71,466.09	50,842.25	26,712.49	67,892.79	21,213.53	24,150.26	24,150.26	21,235.40	47,442.98	71,466.09	76,305.34
148	71,951.57	51,177.34	26,836.53	68,354.00	21,312.27	24,293.53	24,293.53	21,336.19	47,738.81	71,951.57	76,822.46
149	72,437.05	51,512.44	26,960.57	68,815.19	21,411.01	24,436.81	24,436.81	21,436.97	48,034.64	72,437.05	77,339.58
150	72,922.52	51,847.55	27,084.61	69,276.39	21,509.75	24,580.09	24,580.09	21,537.76	48,330.46	72,922.52	77,856.71
151	73,407.99	52,182.65	27,208.66	69,737.60	21,608.49	24,723.35	24,723.35	21,638.55	48,626.29	73,407.99	78,373.82
152	73,893.47	52,517.74	27,332.70	70,198.80	21,707.23	24,866.63	24,866.63	21,739.34	48,922.12	73,893.47	78,890.94
153	74,378.94	52,852.85	27,456.74	70,660.00	21,805.97	25,009.91	25,009.91	21,840.13	49,217.94	74,378.94	79,408.07
154	74,864.42	53,187.95	27,580.78	71,121.20	21,904.71	25,153.17	25,153.17	21,940.92	49,513.77	74,864.42	79,925.18
155	75,349.90	53,523.06	27,704.83	71,582.40	22,003.46	25,296.45	25,296.45	22,041.70	49,809.60	75,349.90	80,442.31
156	75,835.37	53,858.15	27,828.87	72,043.61	22,102.20	25,439.72	25,439.72	22,142.49	50,105.42	75,835.37	80,959.43
157	76,320.84	54,193.25	27,952.91	72,504.80	22,200.94	25,583.00	25,583.00	22,243.29	50,401.25	76,320.84	81,476.54
158	76,806.32	54,528.36	28,076.95	72,966.01	22,299.68	25,726.27	25,726.27	22,344.07	50,697.08	76,806.32	81,993.67
159	77,291.80	54,863.46	28,201.00	73,427.21	22,398.42	25,869.54	25,869.54	22,444.86	50,992.90	77,291.80	82,510.79
160	77,777.27	55,198.56	28,325.05	73,888.41	22,497.16	26,012.82	26,012.82	22,545.65	51,288.73	77,777.27	83,027.91
161	78,262.75	55,533.66	28,449.09	74,349.61	22,595.90	26,156.09	26,156.09	22,646.43	51,584.56	78,262.75	83,545.03
162	78,748.22	55,868.76	28,573.13	74,810.81	22,694.64	26,299.36	26,299.36	22,747.23	51,880.38	78,748.22	84,062.15
163	79,233.69	56,203.86	28,697.17	75,272.02	22,793.38	26,442.64	26,442.64	22,848.02	52,176.21	79,233.69	84,579.28
164	79,719.17	56,538.96	28,821.22	75,733.22	22,892.12	26,585.91	26,585.91	22,948.80	52,472.04	79,719.17	85,096.39
165	80,204.65	56,874.07	28,945.26	76,194.41	22,990.86	26,729.18	26,729.18	23,049.59	52,767.86	80,204.65	85,613.51
166	80,690.12	57,209.17	29,069.30	76,655.62	23,089.60	26,872.46	26,872.46	23,150.38	53,063.69	80,690.12	86,130.64
167	81,175.59	57,544.26	29,193.34	77,116.82	23,188.34	27,015.73	27,015.73	23,251.17	53,359.52	81,175.59	86,647.75
168	81,661.07	57,879.37	29,317.39	77,578.03	23,287.08	27,159.00	27,159.00	23,351.96	53,655.34	81,661.07	87,164.88
169	82,146.54	58,214.47	29,441.43	78,039.22	23,385.82	27,302.28	27,302.28	23,452.75	53,951.17	82,146.54	87,682.00
170	82,632.02	58,549.57	29,565.47	78,500.42	23,484.56	27,445.55	27,445.55	23,553.53	54,247.00	82,632.02	88,199.11
171	83,117.50	58,884.67	29,689.51	78,961.63	23,583.30	27,588.83	27,588.83	23,654.32	54,542.83	83,117.50	88,716.24
172	83,602.97	59,219.77	29,813.56	79,422.83	23,682.04	27,732.10	27,732.10	23,755.11	54,838.66	83,602.97	89,233.36
173	84,088.44	59,554.88	29,937.60	79,884.03	23,780.78	27,875.37	27,875.37	23,855.90	55,134.49	84,088.44	89,750.49
174	84,573.92	59,889.97	30,061.64	80,345.23	23,879.52	28,018.65	28,018.65	23,956.69	55,430.31	84,573.92	90,267.60
175	85,059.40	60,225.07	30,185.69	80,806.43	23,978.26	28,161.92	28,161.92	24,057.47	55,726.14	85,059.40	90,784.72
176	85,544.87	60,560.18	30,309.73	81,267.63	24,077.00	28,305.19	28,305.19	24,158.26	56,021.97	85,544.87	91,301.85
177	86,030.35	60,895.28	30,433.77	81,728.83	24,175.74	28,448.47	28,448.47	24,259.06	56,317.79	86,030.35	91,818.96
178	86,515.82	61,230.38	30,557.81	82,190.03	24,274.49	28,591.74	28,591.74	24,359.84	56,613.62	86,515.82	92,336.09

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
179	87,001.29	61,565.48	30,681.86	82,651.23	24,373.23	28,735.01	28,735.01	24,460.63	56,909.45	87,001.29	92,853.21
180	87,486.77	61,900.58	30,805.90	83,112.43	24,471.97	28,878.29	28,878.29	24,561.42	57,205.27	87,486.77	93,370.32
181	87,972.25	62,235.69	30,929.95	83,573.63	24,570.71	29,021.56	29,021.56	24,662.20	57,501.10	87,972.25	93,887.45
182	88,457.72	62,570.78	31,053.99	84,034.83	24,669.45	29,164.83	29,164.83	24,763.00	57,796.93	88,457.72	94,404.57
183	88,943.20	62,905.89	31,178.03	84,496.04	24,766.77	29,308.11	29,308.11	24,863.79	58,092.75	88,943.20	94,921.69
184	89,428.67	63,240.99	31,302.08	84,957.24	24,864.03	29,451.38	29,451.38	24,964.57	58,388.58	89,428.67	95,438.81
185	89,914.14	63,576.09	31,426.12	85,418.43	24,961.29	29,594.66	29,594.66	25,065.36	58,684.41	89,914.14	95,955.93
186	90,399.63	63,911.19	31,550.16	85,879.64	25,058.55	29,737.93	29,737.93	25,166.15	58,980.23	90,399.63	96,473.06
187	90,885.10	64,246.29	31,674.20	86,340.84	25,155.81	29,881.20	29,881.20	25,266.94	59,276.06	90,885.10	96,990.17
188	91,370.57	64,581.39	31,798.25	86,802.05	25,253.07	30,024.48	30,024.48	25,367.73	59,571.89	91,370.57	97,507.29
189	91,856.04	64,916.49	31,922.29	87,263.24	25,350.33	30,167.74	30,167.74	25,468.52	59,867.71	91,856.04	98,024.42
190	92,341.52	65,251.59	32,046.33	87,724.44	25,447.59	30,311.02	30,311.02	25,569.30	60,163.54	92,341.52	98,541.53
191	92,827.00	65,586.70	32,170.37	88,185.65	25,544.85	30,454.30	30,454.30	25,670.09	60,459.37	92,827.00	99,058.66
192	93,312.47	65,921.80	32,294.42	88,646.85	25,642.11	30,597.57	30,597.57	25,770.89	60,755.19	93,312.47	99,575.78
193	93,797.95	66,256.89	32,418.46	89,108.05	25,739.37	30,740.84	30,740.84	25,871.67	61,051.02	93,797.95	100,092.89
194	94,283.42	66,592.00	32,542.50	89,569.25	25,836.63	30,884.12	30,884.12	25,972.46	61,346.85	94,283.42	100,610.02
195	94,768.89	66,927.10	32,666.54	90,030.45	25,933.89	31,027.39	31,027.39	26,073.25	61,642.67	94,768.89	101,127.14
196	95,254.37	67,262.20	32,790.59	90,491.66	26,031.15	31,170.66	31,170.66	26,174.03	61,938.50	95,254.37	101,644.26
197	95,739.85	67,597.30	32,914.63	90,952.85	26,128.41	31,313.93	31,313.93	26,274.83	62,234.33	95,739.85	102,161.38
198	96,225.32	67,932.40	33,038.67	91,414.06	26,225.67	31,457.21	31,457.21	26,375.62	62,530.15	96,225.32	102,678.50
199	96,710.80	68,267.51	33,162.71	91,875.26	26,322.93	31,600.49	31,600.49	26,476.40	62,825.98	96,710.80	103,195.63
200	97,196.27	68,602.60	33,286.76	92,336.46	26,420.19	31,743.75	31,743.75	26,577.19	63,121.81	97,196.27	103,712.74

Length of trial proxy (£) (proposed reduced rates)

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
1	-	-	-	-	-	-	-	-	-	-	-
2	-	-	-	-	-	-	-	-	-	-	-
3	252.54	452.88	432.51	239.92	716.58	644.94	644.94	703.69	862.39	252.54	574.13
4	769.79	879.65	843.33	731.30	1,033.65	898.77	898.77	1,009.83	1,320.93	769.79	1,140.63
5	1,261.16	1,285.08	1,233.61	1,198.10	1,334.86	1,139.90	1,139.90	1,300.64	1,756.54	1,261.16	1,678.81
6	1,761.17	1,695.98	1,621.20	1,673.12	1,617.11	1,386.43	1,386.43	1,589.05	2,200.59	1,761.17	2,181.04
7	2,253.87	2,102.22	2,011.03	2,141.18	1,915.45	1,632.83	1,632.83	1,879.51	2,637.65	2,253.87	2,713.26
8	2,746.56	2,508.44	2,400.87	2,609.24	2,213.79	1,875.25	1,875.25	2,169.97	3,074.70	2,746.56	3,245.48
9	3,210.92	2,874.04	2,751.71	3,050.38	2,482.29	2,093.45	2,093.45	2,431.38	3,473.43	3,210.92	3,724.49
10	3,675.29	3,239.65	3,102.56	3,491.52	2,750.81	2,311.64	2,311.64	2,692.79	3,872.17	3,675.29	4,203.48
11	4,143.10	3,605.74	3,462.93	3,935.94	3,031.66	2,536.06	2,536.06	2,961.38	4,279.02	4,143.10	4,703.99
12	4,607.74	3,971.38	3,823.47	4,377.35	3,312.59	2,760.47	2,760.47	3,229.64	4,686.22	4,607.74	5,204.80
13	5,072.39	4,337.02	4,175.80	4,818.77	3,593.15	2,983.98	2,983.98	3,492.07	5,086.28	5,072.39	5,705.63
14	5,537.03	4,702.67	4,528.13	5,260.19	3,865.07	3,203.34	3,203.34	3,754.51	5,486.32	5,537.03	6,206.43
15	6,001.68	5,068.31	4,880.46	5,701.59	4,136.15	3,422.69	3,422.69	4,016.95	5,886.37	6,001.68	6,707.21
16	6,466.32	5,433.96	5,232.79	6,143.00	4,407.26	3,642.05	3,642.05	4,279.39	6,286.42	6,466.32	7,207.20
17	6,930.96	5,799.60	5,585.12	6,584.42	4,678.35	3,861.41	3,861.41	4,541.82	6,686.47	6,930.96	7,693.86
18	7,395.60	6,165.24	5,937.45	7,025.83	4,949.45	4,080.76	4,080.76	4,804.26	7,086.52	7,395.60	8,180.52
19	7,860.25	6,530.88	6,289.77	7,467.24	5,220.54	4,300.12	4,300.12	5,066.69	7,486.57	7,860.25	8,667.17
20	8,324.89	6,896.53	6,642.11	7,908.66	5,491.63	4,519.48	4,519.48	5,329.13	7,886.63	8,324.89	9,153.84
21	8,798.40	7,234.27	6,931.61	8,358.47	5,715.66	4,698.94	4,698.94	5,544.96	8,215.37	8,798.40	9,640.50
22	9,271.81	7,571.99	7,221.19	8,808.22	5,939.70	4,878.48	4,878.48	5,760.90	8,544.12	9,271.81	10,127.16
23	9,737.21	7,909.69	7,510.79	9,250.36	6,157.06	5,058.02	5,058.02	5,976.83	8,872.90	9,737.21	10,613.82
24	10,202.62	8,239.72	7,800.39	9,692.49	6,374.43	5,237.57	5,237.57	6,192.76	9,198.07	10,202.62	11,100.48
25	10,668.04	8,569.74	8,088.48	10,134.63	6,591.80	5,417.10	5,417.10	6,405.21	9,519.15	10,668.04	11,587.14
26	11,133.44	8,899.77	8,371.53	10,576.78	6,809.17	5,596.65	5,596.65	6,615.99	9,840.24	11,133.44	12,073.81
27	11,598.84	9,229.80	8,654.60	11,018.90	7,026.53	5,776.19	5,776.19	6,826.76	10,161.33	11,598.84	12,560.46
28	12,064.25	9,559.83	8,937.65	11,461.05	7,243.91	5,955.73	5,955.73	7,037.54	10,482.41	12,064.25	13,047.13
29	12,529.67	9,889.86	9,220.70	11,903.18	7,461.27	6,133.18	6,133.18	7,248.30	10,803.51	12,529.67	13,533.78
30	12,995.07	10,219.88	9,503.75	12,345.31	7,678.63	6,309.59	6,309.59	7,459.07	11,124.59	12,995.07	14,020.44
31	13,460.48	10,549.91	9,786.81	12,787.46	7,896.01	6,486.01	6,486.01	7,669.85	11,445.67	13,460.48	14,507.11
32	13,925.88	10,879.95	10,069.87	13,229.59	8,113.38	6,662.43	6,662.43	7,880.61	11,766.76	13,925.88	14,993.76
33	14,391.30	11,209.97	10,352.92	13,671.73	8,330.74	6,838.84	6,838.84	8,091.39	12,087.84	14,391.30	15,480.43
34	14,856.70	11,540.00	10,635.97	14,113.87	8,548.11	7,015.26	7,015.26	8,302.16	12,408.93	14,856.70	15,967.09

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
35	15,322.11	11,870.03	10,919.03	14,556.01	8,765.48	7,191.68	7,191.68	8,512.93	12,730.02	15,322.11	16,453.75
36	15,787.52	12,200.05	11,202.09	14,998.14	8,982.84	7,368.10	7,368.10	8,723.70	13,051.10	15,787.52	16,940.41
37	16,252.93	12,530.09	11,485.14	15,440.28	9,200.22	7,544.51	7,544.51	8,934.48	13,372.19	16,252.93	17,427.07
38	16,718.33	12,860.11	11,768.20	15,882.42	9,417.58	7,720.93	7,720.93	9,145.25	13,693.28	16,718.33	17,913.73
39	17,183.74	13,190.13	12,051.25	16,324.55	9,634.94	7,897.35	7,897.35	9,356.02	14,014.36	17,183.74	18,400.40
40	17,622.38	13,492.13	12,163.57	16,741.26	9,722.09	8,027.76	8,027.76	9,447.16	14,282.00	17,622.38	18,865.89
41	18,063.40	13,796.43	12,277.13	17,160.24	9,811.54	8,158.44	8,158.44	9,539.40	14,551.22	18,063.40	19,334.83
42	18,504.54	14,100.82	12,390.73	17,579.32	9,901.04	8,289.12	8,289.12	9,631.68	14,820.51	18,504.54	19,803.93
43	18,945.79	14,405.31	12,504.33	17,998.51	9,990.58	8,419.82	8,419.82	9,723.97	15,089.84	18,945.79	20,273.20
44	19,387.15	14,709.89	12,617.96	18,417.79	10,080.16	8,550.52	8,550.52	9,816.28	15,359.23	19,387.15	20,742.61
45	19,828.61	15,014.56	12,731.61	18,837.18	10,169.77	8,681.22	8,681.22	9,908.63	15,628.69	19,828.61	21,212.18
46	20,270.18	15,319.32	12,845.28	19,256.68	10,259.43	8,811.94	8,811.94	10,000.97	15,898.19	20,270.18	21,681.91
47	20,711.85	15,624.18	12,958.98	19,676.26	10,349.13	8,942.66	8,942.66	10,093.35	16,167.76	20,711.85	22,151.80
48	21,153.65	15,929.14	13,072.69	20,095.97	10,438.87	9,073.39	9,073.39	10,185.75	16,437.38	21,153.65	22,621.84
49	21,595.54	16,234.19	13,186.44	20,515.76	10,528.64	9,204.12	9,204.12	10,278.16	16,707.05	21,595.54	23,092.04
50	22,037.53	16,539.33	13,300.19	20,935.66	10,618.45	9,334.88	9,334.88	10,370.61	16,976.79	22,037.53	23,562.39
51	22,479.65	16,844.56	13,413.98	21,355.67	10,708.32	9,465.63	9,465.63	10,463.06	17,246.59	22,479.65	24,032.91
52	22,921.86	17,149.88	13,527.78	21,775.77	10,798.21	9,596.40	9,596.40	10,555.54	17,516.43	22,921.86	24,503.58
53	23,364.19	17,455.30	13,641.60	22,195.99	10,888.15	9,727.16	9,727.16	10,648.04	17,786.33	23,364.19	24,974.41
54	23,806.62	17,760.82	13,755.44	22,616.29	10,978.13	9,857.94	9,857.94	10,740.56	18,056.29	23,806.62	25,445.40
55	24,249.16	18,066.42	13,869.31	23,036.69	11,068.14	9,988.72	9,988.72	10,833.10	18,326.31	24,249.16	25,916.54
56	24,691.80	18,372.13	13,983.20	23,457.22	11,158.20	10,119.52	10,119.52	10,925.66	18,596.39	24,691.80	26,387.85
57	25,134.56	18,677.92	14,097.11	23,877.83	11,248.29	10,250.32	10,250.32	11,018.24	18,866.52	25,134.56	26,859.31
58	25,577.42	18,983.81	14,211.04	24,298.55	11,338.39	10,381.13	10,381.13	11,110.84	19,136.71	25,577.42	27,330.92
59	26,020.39	19,289.79	14,325.00	24,719.38	11,428.49	10,511.95	10,511.95	11,203.47	19,406.96	26,020.39	27,802.70
60	26,463.47	19,595.86	14,438.97	25,140.29	11,518.59	10,642.77	10,642.77	11,296.10	19,677.26	26,463.47	28,274.63
61	26,906.66	19,902.03	14,552.97	25,561.32	11,608.70	10,773.60	10,773.60	11,388.77	19,947.62	26,906.66	28,746.72
62	27,349.94	20,208.30	14,666.99	25,982.45	11,698.80	10,904.44	10,904.44	11,481.46	20,218.04	27,349.94	29,218.96
63	27,793.35	20,514.64	14,781.02	26,403.69	11,788.90	11,035.28	11,035.28	11,574.16	20,488.52	27,793.35	29,691.37
64	28,236.86	20,821.10	14,895.09	26,825.02	11,879.00	11,166.14	11,166.14	11,666.89	20,759.04	28,236.86	30,163.93
65	28,680.48	21,127.63	15,009.17	27,246.45	11,969.10	11,297.01	11,297.01	11,759.62	21,029.63	28,680.48	30,636.65
66	29,124.20	21,434.28	15,123.28	27,667.99	12,059.20	11,427.88	11,427.88	11,852.39	21,300.28	29,124.20	31,109.52
67	29,568.03	21,741.01	15,237.40	28,089.63	12,149.30	11,558.76	11,558.76	11,945.17	21,570.97	29,568.03	31,582.55
68	30,011.97	22,047.83	15,351.55	28,511.37	12,239.40	11,689.65	11,689.65	12,037.98	21,841.73	30,011.97	32,055.74
69	30,456.02	22,354.74	15,465.72	28,933.21	12,329.50	11,820.54	11,820.54	12,130.81	22,112.55	30,456.02	32,529.08
70	30,900.17	22,661.76	15,579.91	29,355.16	12,419.60	11,951.45	11,951.45	12,223.66	22,383.42	30,900.17	33,002.60

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
71	31,344.44	22,968.86	15,694.12	29,777.22	12,509.70	12,082.36	12,082.36	12,316.53	22,654.35	31,344.44	33,476.26
72	31,788.81	23,276.06	15,808.35	30,199.37	12,599.80	12,213.28	12,213.28	12,409.42	22,925.33	31,788.81	33,950.08
73	32,233.28	23,583.35	15,922.61	30,621.63	12,689.90	12,344.21	12,344.21	12,502.32	23,196.37	32,233.28	34,424.05
74	32,677.87	23,890.74	16,036.89	31,043.98	12,780.00	12,475.14	12,475.14	12,595.26	23,467.47	32,677.87	34,898.19
75	33,122.56	24,198.21	16,151.19	31,466.43	12,870.10	12,606.09	12,606.09	12,688.21	23,738.63	33,122.56	35,372.48
76	33,567.36	24,505.78	16,265.50	31,889.00	12,960.20	12,737.03	12,737.03	12,781.18	24,009.84	33,567.36	35,846.92
77	34,012.28	24,813.45	16,379.85	32,311.66	13,050.30	12,867.99	12,867.99	12,874.16	24,281.10	34,012.28	36,321.53
78	34,457.29	25,121.21	16,494.21	32,734.43	13,140.40	12,998.95	12,998.95	12,967.17	24,552.43	34,457.29	36,796.30
79	34,902.42	25,429.06	16,608.60	33,157.30	13,230.50	13,129.94	13,129.94	13,060.21	24,823.82	34,902.42	37,271.22
80	35,347.65	25,737.00	16,723.00	33,580.26	13,320.60	13,260.92	13,260.92	13,153.27	25,095.26	35,347.65	37,746.29
81	35,792.99	26,045.04	16,837.42	34,003.35	13,410.70	13,391.90	13,391.90	13,246.34	25,366.75	35,792.99	38,221.52
82	36,238.43	26,353.17	16,951.88	34,426.52	13,500.80	13,522.90	13,522.90	13,339.43	25,638.30	36,238.43	38,696.92
83	36,683.99	26,661.40	17,066.35	34,849.80	13,590.90	13,653.90	13,653.90	13,432.55	25,909.92	36,683.99	39,172.47
84	37,129.65	26,969.72	17,180.83	35,273.17	13,681.01	13,784.93	13,784.93	13,525.68	26,181.58	37,129.65	39,648.18
85	37,575.42	27,278.13	17,295.35	35,696.65	13,771.11	13,915.94	13,915.94	13,618.83	26,453.30	37,575.42	40,124.04
86	38,021.30	27,586.64	17,409.90	36,120.24	13,861.21	14,046.97	14,046.97	13,712.01	26,725.09	38,021.30	40,600.06
87	38,467.29	27,895.23	17,524.45	36,543.93	13,951.31	14,178.01	14,178.01	13,805.21	26,996.93	38,467.29	41,076.24
88	38,913.39	28,203.93	17,639.03	36,967.72	14,041.41	14,309.06	14,309.06	13,898.42	27,268.82	38,913.39	41,552.58
89	39,359.59	28,512.71	17,753.63	37,391.61	14,131.51	14,440.10	14,440.10	13,991.66	27,540.77	39,359.59	42,029.07
90	39,805.90	28,821.60	17,868.25	37,815.60	14,221.61	14,571.17	14,571.17	14,084.91	27,812.78	39,805.90	42,505.73
91	40,252.32	29,130.57	17,982.89	38,239.70	14,311.71	14,702.24	14,702.24	14,178.20	28,084.84	40,252.32	42,982.53
92	40,698.83	29,439.63	18,097.56	38,663.90	14,401.81	14,833.32	14,833.32	14,271.49	28,356.97	40,698.83	43,459.49
93	41,145.47	29,748.80	18,212.24	39,088.20	14,491.91	14,964.40	14,964.40	14,364.81	28,629.15	41,145.47	43,936.62
94	41,592.21	30,058.05	18,326.95	39,512.60	14,582.01	15,095.49	15,095.49	14,458.15	28,901.38	41,592.21	44,413.90
95	42,039.06	30,367.40	18,441.68	39,937.10	14,672.11	15,226.59	15,226.59	14,551.52	29,173.67	42,039.06	44,891.33
96	42,486.02	30,676.84	18,556.44	40,361.72	14,762.22	15,357.69	15,357.69	14,644.89	29,446.03	42,486.02	45,368.93
97	42,933.08	30,986.38	18,671.21	40,786.43	14,852.32	15,488.81	15,488.81	14,738.25	29,718.43	42,933.08	45,846.68
98	43,380.25	31,296.01	18,786.00	41,211.24	14,942.42	15,619.94	15,619.94	14,831.63	29,990.89	43,380.25	46,324.60
99	43,827.53	31,605.73	18,900.82	41,636.15	15,032.52	15,751.07	15,751.07	14,925.00	30,263.42	43,827.53	46,802.66
100	44,274.91	31,915.55	19,015.65	42,061.17	15,122.62	15,882.21	15,882.21	15,018.37	30,535.98	44,274.91	47,280.88
101	44,722.41	32,225.46	19,130.51	42,486.29	15,212.72	16,013.36	16,013.36	15,111.74	30,808.63	44,722.41	47,759.26
102	45,170.01	32,535.45	19,245.39	42,911.51	15,302.82	16,144.51	16,144.51	15,205.11	31,081.31	45,170.01	48,237.80
103	45,617.73	32,845.55	19,360.30	43,336.84	15,392.92	16,275.67	16,275.67	15,298.48	31,354.06	45,617.73	48,716.50
104	46,065.54	33,155.74	19,475.21	43,762.27	15,483.02	16,406.84	16,406.84	15,391.85	31,626.86	46,065.54	49,195.35
105	46,513.46	33,466.03	19,590.12	44,187.79	15,573.12	16,538.02	16,538.02	15,485.22	31,899.72	46,513.46	49,674.36
106	46,961.50	33,776.40	19,705.04	44,613.42	15,663.22	16,669.21	16,669.21	15,578.59	32,172.64	46,961.50	50,153.43

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
107	47,409.64	34,086.84	19,819.95	45,039.15	15,753.32	16,800.40	16,800.40	15,671.96	32,445.62	47,409.64	50,632.48
108	47,857.89	34,397.27	19,934.87	45,465.00	15,843.43	16,931.60	16,931.60	15,765.33	32,718.65	47,857.89	51,111.54
109	48,306.24	34,707.71	20,049.78	45,890.93	15,933.53	17,062.82	17,062.82	15,858.70	32,991.74	48,306.24	51,590.60
110	48,754.70	35,018.15	20,164.69	46,316.97	16,023.63	17,194.03	17,194.03	15,952.07	33,264.88	48,754.70	52,069.66
111	49,203.28	35,328.59	20,279.60	46,743.12	16,113.73	17,325.26	17,325.26	16,045.44	33,538.08	49,203.28	52,548.71
112	49,651.95	35,639.02	20,394.51	47,169.36	16,203.83	17,456.49	17,456.49	16,138.81	33,811.34	49,651.95	53,027.77
113	50,100.74	35,949.45	20,509.43	47,595.72	16,293.93	17,587.73	17,587.73	16,232.18	34,084.66	50,100.74	53,506.84
114	50,549.63	36,259.89	20,624.34	48,022.16	16,384.03	17,718.99	17,718.99	16,325.55	34,358.03	50,549.63	53,985.89
115	50,998.64	36,570.33	20,739.25	48,448.70	16,474.13	17,850.24	17,850.24	16,418.92	34,631.46	50,998.64	54,464.95
116	51,447.75	36,880.77	20,854.17	48,875.36	16,564.23	17,981.51	17,981.51	16,512.29	34,904.94	51,447.75	54,944.01
117	51,896.97	37,191.20	20,969.08	49,302.12	16,654.33	18,112.78	18,112.78	16,605.66	35,178.49	51,896.97	55,423.07
118	52,346.29	37,501.64	21,083.99	49,728.98	16,744.43	18,244.06	18,244.06	16,699.03	35,452.09	52,346.29	55,902.12
119	52,795.73	37,812.07	21,198.91	50,155.94	16,834.53	18,375.35	18,375.35	16,792.40	35,725.74	52,795.73	56,381.19
120	53,245.27	38,122.51	21,313.82	50,583.00	16,924.63	18,506.65	18,506.65	16,885.77	35,999.46	53,245.27	56,860.25
121	53,694.91	38,432.95	21,428.73	51,010.17	17,014.73	18,637.95	18,637.95	16,979.14	36,273.23	53,694.91	57,339.30
122	54,137.91	38,743.38	21,543.64	51,431.02	17,104.83	18,768.69	18,768.69	17,072.51	36,543.17	54,137.91	57,818.36
123	54,580.90	39,053.82	21,658.55	51,851.87	17,194.93	18,899.43	18,899.43	17,165.88	36,813.11	54,580.90	58,297.42
124	55,023.91	39,360.61	21,771.79	52,272.71	17,285.03	19,030.16	19,030.16	17,259.25	37,083.05	55,023.91	58,775.55
125	55,466.90	39,666.39	21,884.98	52,693.55	17,375.13	19,160.90	19,160.90	17,352.62	37,353.00	55,466.90	59,247.42
126	55,909.89	39,972.16	21,998.17	53,114.41	17,465.23	19,291.63	19,291.63	17,445.93	37,622.93	55,909.89	59,719.29
127	56,352.90	40,277.95	22,111.36	53,535.25	17,555.33	19,422.37	19,422.37	17,537.91	37,892.88	56,352.90	60,191.17
128	56,795.89	40,583.73	22,224.55	53,956.10	17,645.43	19,553.11	19,553.11	17,629.88	38,162.82	56,795.89	60,663.04
129	57,238.88	40,889.51	22,337.74	54,376.94	17,735.53	19,683.85	19,683.85	17,721.85	38,432.76	57,238.88	61,134.92
130	57,681.88	41,195.29	22,450.92	54,797.79	17,825.63	19,814.58	19,814.58	17,813.82	38,702.70	57,681.88	61,606.79
131	58,124.87	41,501.07	22,564.12	55,218.63	17,915.74	19,945.32	19,945.32	17,905.79	38,972.65	58,124.87	62,078.65
132	58,567.87	41,806.85	22,677.30	55,639.48	18,005.84	20,076.06	20,076.06	17,997.76	39,242.58	58,567.87	62,550.53
133	59,010.87	42,112.63	22,790.49	56,060.32	18,095.94	20,206.79	20,206.79	18,089.73	39,512.53	59,010.87	63,022.41
134	59,453.86	42,418.40	22,903.68	56,481.17	18,186.04	20,337.53	20,337.53	18,181.70	39,782.47	59,453.86	63,494.28
135	59,896.86	42,724.19	23,016.87	56,902.01	18,276.14	20,468.27	20,468.27	18,273.66	40,052.42	59,896.86	63,966.15
136	60,339.86	43,029.97	23,130.07	57,322.86	18,366.24	20,599.01	20,599.01	18,365.63	40,322.36	60,339.86	64,438.02
137	60,782.85	43,335.75	23,243.25	57,743.70	18,456.34	20,729.74	20,729.74	18,457.60	40,592.30	60,782.85	64,909.90
138	61,225.85	43,641.53	23,356.44	58,164.56	18,546.44	20,860.48	20,860.48	18,549.57	40,862.24	61,225.85	65,381.77
139	61,668.84	43,947.30	23,469.63	58,585.40	18,636.54	20,991.22	20,991.22	18,641.54	41,132.19	61,668.84	65,853.64
140	62,111.84	44,253.09	23,582.82	59,006.25	18,726.64	21,121.95	21,121.95	18,733.52	41,402.13	62,111.84	66,325.52
141	62,554.83	44,558.86	23,696.01	59,427.09	18,816.74	21,252.69	21,252.69	18,825.48	41,672.07	62,554.83	66,797.38
142	62,997.82	44,864.65	23,809.20	59,847.94	18,906.84	21,383.43	21,383.43	18,917.46	41,942.01	62,997.82	67,269.26

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
143	63,440.83	45,170.43	23,922.38	60,268.79	18,996.95	21,514.17	21,514.17	19,009.43	42,211.96	63,440.83	67,741.13
144	63,883.82	45,476.21	24,035.58	60,689.64	19,087.05	21,644.90	21,644.90	19,101.39	42,481.89	63,883.82	68,213.00
145	64,326.82	45,781.99	24,148.77	61,110.47	19,177.15	21,775.64	21,775.64	19,193.36	42,751.84	64,326.82	68,684.88
146	64,769.82	46,087.77	24,261.95	61,531.33	19,267.25	21,906.38	21,906.38	19,285.32	43,021.78	64,769.82	69,156.75
147	65,212.81	46,393.55	24,375.15	61,952.17	19,357.35	22,037.11	22,037.11	19,377.30	43,291.72	65,212.81	69,628.62
148	65,655.81	46,699.32	24,488.33	62,373.03	19,447.45	22,167.85	22,167.85	19,469.27	43,561.66	65,655.81	70,100.49
149	66,098.81	47,005.10	24,601.52	62,793.86	19,537.55	22,298.59	22,298.59	19,561.24	43,831.61	66,098.81	70,572.37
150	66,541.80	47,310.89	24,714.71	63,214.71	19,627.65	22,429.33	22,429.33	19,653.21	44,101.54	66,541.80	71,044.25
151	66,984.79	47,616.67	24,827.90	63,635.56	19,717.75	22,560.06	22,560.06	19,745.18	44,371.49	66,984.79	71,516.11
152	67,427.79	47,922.44	24,941.09	64,056.41	19,807.85	22,690.80	22,690.80	19,837.15	44,641.43	67,427.79	71,987.98
153	67,870.78	48,228.23	25,054.28	64,477.25	19,897.95	22,821.54	22,821.54	19,929.12	44,911.37	67,870.78	72,459.86
154	68,313.78	48,534.00	25,167.46	64,898.10	19,988.05	22,952.27	22,952.27	20,021.09	45,181.32	68,313.78	72,931.73
155	68,756.78	48,839.79	25,280.66	65,318.94	20,078.16	23,083.01	23,083.01	20,113.05	45,451.26	68,756.78	73,403.61
156	69,199.78	49,145.56	25,393.84	65,739.79	20,168.26	23,213.74	23,213.74	20,205.02	45,721.20	69,199.78	73,875.48
157	69,642.77	49,451.34	25,507.03	66,160.63	20,258.36	23,344.49	23,344.49	20,297.00	45,991.14	69,642.77	74,347.34
158	70,085.77	49,757.13	25,620.22	66,581.48	20,348.46	23,475.22	23,475.22	20,388.96	46,261.09	70,085.77	74,819.22
159	70,528.77	50,062.91	25,733.41	67,002.33	20,438.56	23,605.96	23,605.96	20,480.93	46,531.02	70,528.77	75,291.10
160	70,971.76	50,368.69	25,846.61	67,423.17	20,528.66	23,736.70	23,736.70	20,572.91	46,800.97	70,971.76	75,762.97
161	71,414.76	50,674.46	25,959.79	67,844.02	20,618.76	23,867.43	23,867.43	20,664.87	47,070.91	71,414.76	76,234.84
162	71,857.75	50,980.24	26,072.98	68,264.86	20,708.86	23,998.17	23,998.17	20,756.85	47,340.85	71,857.75	76,706.71
163	72,300.74	51,286.02	26,186.17	68,685.72	20,798.96	24,128.91	24,128.91	20,848.82	47,610.79	72,300.74	77,178.59
164	72,743.74	51,591.80	26,299.36	69,106.56	20,889.06	24,259.64	24,259.64	20,940.78	47,880.74	72,743.74	77,650.46
165	73,186.74	51,897.59	26,412.55	69,527.40	20,979.16	24,390.38	24,390.38	21,032.75	48,150.67	73,186.74	78,122.33
166	73,629.73	52,203.37	26,525.74	69,948.25	21,069.26	24,521.12	24,521.12	21,124.72	48,420.62	73,629.73	78,594.21
167	74,072.73	52,509.14	26,638.92	70,369.10	21,159.36	24,651.85	24,651.85	21,216.69	48,690.56	74,072.73	79,066.07
168	74,515.73	52,814.93	26,752.12	70,789.95	21,249.46	24,782.59	24,782.59	21,308.66	48,960.50	74,515.73	79,537.95
169	74,958.72	53,120.70	26,865.30	71,210.79	21,339.56	24,913.33	24,913.33	21,400.63	49,230.44	74,958.72	80,009.83
170	75,401.72	53,426.48	26,978.49	71,631.63	21,429.66	25,044.06	25,044.06	21,492.60	49,500.39	75,401.72	80,481.69
171	75,844.72	53,732.26	27,091.68	72,052.49	21,519.76	25,174.81	25,174.81	21,584.57	49,770.33	75,844.72	80,953.57
172	76,287.71	54,038.04	27,204.87	72,473.33	21,609.86	25,305.54	25,305.54	21,676.54	50,040.28	76,287.71	81,425.44
173	76,730.70	54,343.83	27,318.06	72,894.18	21,699.96	25,436.28	25,436.28	21,768.51	50,310.22	76,730.70	81,897.32
174	77,173.70	54,649.60	27,431.25	73,315.02	21,790.06	25,567.02	25,567.02	21,860.48	50,580.16	77,173.70	82,369.19
175	77,616.70	54,955.38	27,544.44	73,735.87	21,880.16	25,697.75	25,697.75	21,952.44	50,850.10	77,616.70	82,841.06
176	78,059.69	55,261.16	27,657.63	74,156.71	21,970.26	25,828.49	25,828.49	22,044.41	51,120.05	78,059.69	83,312.94
177	78,502.69	55,566.94	27,770.82	74,577.56	22,060.36	25,959.23	25,959.23	22,136.39	51,389.98	78,502.69	83,784.80
178	78,945.69	55,872.72	27,884.00	74,998.40	22,150.47	26,089.96	26,089.96	22,228.35	51,659.93	78,945.69	84,256.68

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
179	79,388.68	56,178.50	27,997.20	75,419.25	22,240.57	26,220.70	26,220.70	22,320.32	51,929.87	79,388.68	84,728.55
180	79,831.68	56,484.28	28,110.38	75,840.09	22,330.67	26,351.44	26,351.44	22,412.30	52,199.81	79,831.68	85,200.42
181	80,274.68	56,790.07	28,223.58	76,260.94	22,420.77	26,482.17	26,482.17	22,504.26	52,469.75	80,274.68	85,672.30
182	80,717.67	57,095.84	28,336.77	76,681.78	22,510.87	26,612.91	26,612.91	22,596.24	52,739.70	80,717.67	86,144.17
183	81,160.67	57,401.62	28,449.95	77,102.64	22,599.68	26,743.65	26,743.65	22,688.21	53,009.63	81,160.67	86,616.04
184	81,603.66	57,707.40	28,563.15	77,523.48	22,688.43	26,874.38	26,874.38	22,780.17	53,279.58	81,603.66	87,087.91
185	82,046.65	58,013.18	28,676.33	77,944.32	22,777.18	27,005.13	27,005.13	22,872.14	53,549.52	82,046.65	87,559.79
186	82,489.66	58,318.96	28,789.52	78,365.17	22,865.93	27,135.86	27,135.86	22,964.11	53,819.46	82,489.66	88,031.67
187	82,932.65	58,624.74	28,902.71	78,786.02	22,954.68	27,266.60	27,266.60	23,056.08	54,089.40	82,932.65	88,503.53
188	83,375.65	58,930.52	29,015.90	79,206.87	23,043.43	27,397.34	27,397.34	23,148.05	54,359.35	83,375.65	88,975.40
189	83,818.64	59,236.30	29,129.09	79,627.71	23,132.18	27,528.06	27,528.06	23,240.02	54,629.29	83,818.64	89,447.28
190	84,261.64	59,542.08	29,242.28	80,048.55	23,220.93	27,658.81	27,658.81	23,331.99	54,899.23	84,261.64	89,919.15
191	84,704.64	59,847.86	29,355.46	80,469.41	23,309.68	27,789.55	27,789.55	23,423.96	55,169.18	84,704.64	90,391.03
192	85,147.63	60,153.64	29,468.66	80,890.25	23,398.43	27,920.28	27,920.28	23,515.94	55,439.11	85,147.63	90,862.90
193	85,590.63	60,459.41	29,581.84	81,311.10	23,487.18	28,051.02	28,051.02	23,607.90	55,709.06	85,590.63	91,334.76
194	86,033.62	60,765.20	29,695.03	81,731.94	23,575.92	28,181.76	28,181.76	23,699.87	55,979.00	86,033.62	91,806.64
195	86,476.61	61,070.98	29,808.22	82,152.79	23,664.67	28,312.49	28,312.49	23,791.84	56,248.94	86,476.61	92,278.52
196	86,919.61	61,376.76	29,921.41	82,573.64	23,753.42	28,443.23	28,443.23	23,883.80	56,518.88	86,919.61	92,750.39
197	87,362.61	61,682.54	30,034.60	82,994.48	23,842.17	28,573.96	28,573.96	23,975.78	56,788.83	87,362.61	93,222.26
198	87,805.60	61,988.32	30,147.79	83,415.33	23,930.92	28,704.70	28,704.70	24,067.75	57,058.76	87,805.60	93,694.13
199	88,248.61	62,294.10	30,260.97	83,836.17	24,019.67	28,835.45	28,835.45	24,159.72	57,328.71	88,248.61	94,166.01
200	88,691.60	62,599.87	30,374.17	84,257.02	24,108.42	28,966.17	28,966.17	24,251.69	57,598.65	88,691.60	94,637.88

Table of final fees in cracked trials

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
A	0-79	991.32	904.58	0	-
A	80-249	991.32	904.58	11.7216	10.70
A	250-999	2,983.99	2,722.89	7.3571	6.71
A	1000-2799	8,501.81	7,757.90	4.3001	3.92
A	2800-4599	16,241.92	14,820.75	4.3001	3.92
A	4600-6399	23,982.04	21,883.61	3.4135	3.11
A	6400-8199	30,126.41	27,490.35	3.4135	3.11
A	8200-9999	36,270.78	33,097.09	3.4135	3.11
A	10,000	42,411.74	38,700.71	0	-
B	0-69	777.15	709.15	0	-
B	70-249	777.15	709.15	8.5755	7.83
B	250-999	2,320.73	2,117.67	4.0137	3.66
B	1000-2799	5,331.02	4,864.56	2.6733	2.44
B	2800-4599	10,143.02	9,255.51	2.6733	2.44
B	4600-6399	14,955.02	13,646.46	2.2478	2.05
B	6400-8199	19,001.08	17,338.49	2.2478	2.05
B	8200-9999	23,047.12	21,030.50	2.2478	2.05
B	10,000	27,090.92	24,720.46	0	-
C	0-39	575.17	524.84	0	-
C	40-249	575.17	524.84	4.2997	3.92
C	250-999	1,478.10	1,348.77	2.4611	2.25
C	1000-2799	3,323.90	3,033.06	1.5674	1.43
C	2800-4599	6,145.18	5,607.48	1.5674	1.43
C	4600-6399	8,966.46	8,181.89	1.5674	1.43
C	6400-8199	11,787.74	10,756.31	1.5674	1.43
C	8200-9999	14,609.03	13,330.74	1.5674	1.43
C	10,000	17,428.74	15,903.73	0	-
D	0-79	941.75	859.35	0	-
D	80-249	941.75	859.35	11.1082	10.14
D	250-999	2,830.14	2,582.50	6.6941	6.11
D	1000-2799	7,850.70	7,163.76	3.9525	3.61

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
D	2800-4599	14,965.19	13,655.74	3.9525	3.61
D	4600-6399	22,079.68	20,147.71	3.2433	2.96
D	6400-8199	27,917.58	25,474.79	3.2433	2.96
D	8200-9999	33,755.47	30,801.87	3.2433	2.96
D	10,000	39,590.12	36,125.98	0	-
E	0-39	255.38	233.03	0	-
E	40-249	255.38	233.03	5.0432	4.60
E	250-999	1,314.44	1,199.43	1.5958	1.46
E	1000-2799	2,511.28	2,291.54	0.6689	0.61
E	2800-4599	3,715.35	3,390.26	0.6689	0.61
E	4600-6399	4,919.42	4,488.97	0.6689	0.61
E	6400-8199	6,123.50	5,587.69	0.6689	0.61
E	8200-9999	7,327.57	6,686.41	0.6689	0.61
E	10,000	8,530.97	7,784.51	0	-
F	0-49	245.72	224.22	0	-
F	50-249	245.72	224.22	4.84	4.42
F	250-999	1,213.73	1,107.53	1.9622	1.79
F	1000-2799	2,685.36	2,450.39	0.7636	0.70
F	2800-4599	4,059.91	3,704.67	0.7636	0.70
F	4600-6399	5,434.46	4,958.94	0.7636	0.70
F	6400-8199	6,809.00	6,213.21	0.7636	0.70
F	8200-9999	8,183.55	7,467.49	0.7636	0.70
F	10,000	9,557.33	8,721.06	0	-
G	0-49	245.72	224.22	0	-
G	50-249	245.72	224.22	4.84	4.42
G	250-999	1,213.73	1,107.53	1.9622	1.79
G	1000-2799	2,685.36	2,450.39	0.7636	0.70
G	2800-4599	4,059.91	3,704.67	0.7636	0.70
G	4600-6399	5,434.46	4,958.94	0.7636	0.70
G	6400-8199	6,809.00	6,213.21	0.7636	0.70
G	8200-9999	8,183.55	7,467.49	0.7636	0.70
G	10,000	9,557.33	8,721.06	0	-
H	0-39	259.73	237.00	0	-
H	40-249	259.73	237.00	4.6685	4.26
H	250-999	1,240.12	1,131.61	1.7046	1.56

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
H	1000-2799	2,518.58	2,298.20	0.7626	0.70
H	2800-4599	3,891.28	3,550.79	0.7626	0.70
H	4600-6399	5,263.97	4,803.37	0.7626	0.70
H	6400-8199	6,636.67	6,055.96	0.7626	0.70
H	8200-9999	8,009.37	7,308.55	0.7626	0.70
H	10,000	9,381.30	8,560.44	0	-
I	0-39	278	253.68	0	-
I	40-249	278	253.68	6.4873	5.92
I	250-999	1,640.33	1,496.80	2.5353	2.31
I	1000-2799	3,541.82	3,231.91	0.9835	0.90
I	2800-4599	5,312.17	4,847.36	0.9835	0.90
I	4600-6399	7,082.51	6,462.79	0.9835	0.90
I	6400-8199	8,852.85	8,078.23	0.9835	0.90
I	8200-9999	10,623.20	9,693.67	0.9835	0.90
I	10,000	12,392.55	11,308.20	0	-
J	0-79	991.32	904.58	0	-
J	80-249	991.32	904.58	11.7216	10.70
J	250-999	2,983.99	2,722.89	7.3571	6.71
J	1000-2799	8,501.81	7,757.90	4.3001	3.92
J	2800-4599	16,241.92	14,820.75	4.3001	3.92
J	4600-6399	23,982.04	21,883.61	3.4135	3.11
J	6400-8199	30,126.41	27,490.35	3.4135	3.11
J	8200-9999	36,270.78	33,097.09	3.4135	3.11
J	10,000	42,411.74	38,700.71	0	-
K	0-119	848.07	773.86	0	-
K	120-249	848.07	773.86	7.1738	6.55
K	250-999	1,780.66	1,624.85	5.5001	5.02
K	1000-2799	5,905.73	5,388.98	4.8159	4.39
K	2800-4599	14,574.29	13,299.04	4.8159	4.39
K	4600-6399	23,242.87	21,209.12	4.1067	3.75
K	6400-8199	30,634.84	27,954.29	4.1067	3.75
K	8200-9999	38,026.81	34,699.46	4.1066	3.75
K	10,000	45,414.67	41,440.89	0	-

Table of final fees in guilty pleas

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
A	0-79	745.63	680.39	0	-
A	80-399	745.63	680.39	6.1572	5.62
A	400-999	2,715.93	2,478.29	3.2471	2.96
A	1000-2799	4,664.21	4,256.09	2.0766	1.89
A	2800-4599	8,402.07	7,666.89	2.0766	1.89
A	4600-6399	12,139.92	11,077.68	1.2255	1.12
A	6400-8199	14,345.86	13,090.60	1.2255	1.12
A	8200-9999	16,551.81	15,103.53	1.2255	1.12
A	10,000	18,756.53	17,115.33	0	-
B	0-69	609.44	556.11	0	-
B	70-399	609.44	556.11	4.9497	4.52
B	400-999	2,242.84	2,046.59	2.4934	2.28
B	1000-2799	3,738.90	3,411.75	1.5916	1.45
B	2800-4599	6,603.75	6,025.92	1.5916	1.45
B	4600-6399	9,468.61	8,640.11	1.1661	1.06
B	6400-8199	11,567.51	10,555.35	1.1661	1.06
B	8200-9999	13,666.41	12,470.60	1.1661	1.06
B	10,000	15,764.14	14,384.78	0	-
C	0-39	485.38	442.91	0	-
C	40-399	485.38	442.91	2.9193	2.66
C	400-999	1,536.31	1,401.88	1.5971	1.46
C	1000-2799	2,494.54	2,276.27	0.8668	0.79
C	2800-4599	4,054.72	3,699.93	0.8668	0.79
C	4600-6399	5,614.91	5,123.61	0.8668	0.79
C	6400-8199	7,175.10	6,547.28	0.8668	0.79
C	8200-9999	8,735.29	7,970.95	0.8668	0.79
C	10,000	10,294.60	9,393.82	0	-
D	0-79	708.34	646.36	0	-
D	80-399	708.34	646.36	5.7339	5.23
D	400-999	2,543.19	2,320.66	3.0095	2.75
D	1000-2799	4,348.90	3,968.37	1.8739	1.71
D	2800-4599	7,721.86	7,046.20	1.8739	1.71
D	4600-6399	11,094.83	10,124.03	1.1647	1.06

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
D	6400-8199	13,191.21	12,036.98	1.1646	1.06
D	8200-9999	15,287.57	13,949.91	1.1647	1.06
D	10,000	17,382.78	15,861.79	0	-
E	0-39	202.41	184.70	0	-
E	40-399	202.41	184.70	3.2041	2.92
E	400-999	1,355.88	1,237.24	1.3732	1.25
E	1000-2799	2,179.80	1,989.07	0.5057	0.46
E	2800-4599	3,090.08	2,819.70	0.5057	0.46
E	4600-6399	4,000.36	3,650.33	0.5057	0.46
E	6400-8199	4,910.64	4,480.96	0.5057	0.46
E	8200-9999	5,820.92	5,311.59	0.5057	0.46
E	10,000	6,730.69	6,141.75	0	-
F	0-49	214.59	195.81	0	-
F	50-399	214.59	195.81	3.1058	2.83
F	400-999	1,301.62	1,187.73	1.084	0.99
F	1000-2799	1,952.01	1,781.21	0.3488	0.32
F	2800-4599	2,579.80	2,354.07	0.3488	0.32
F	4600-6399	3,207.59	2,926.93	0.3488	0.32
F	6400-8199	3,835.38	3,499.78	0.3488	0.32
F	8200-9999	4,463.17	4,072.64	0.3488	0.32
F	10,000	5,090.61	4,645.18	0	-
G	0-49	214.59	195.81	0	-
G	50-399	214.59	195.81	3.1058	2.83
G	400-999	1,301.62	1,187.73	1.084	0.99
G	1000-2799	1,952.01	1,781.21	0.3488	0.32
G	2800-4599	2,579.80	2,354.07	0.3488	0.32
G	4600-6399	3,207.59	2,926.93	0.3488	0.32
G	6400-8199	3,835.38	3,499.78	0.3488	0.32
G	8200-9999	4,463.17	4,072.64	0.3488	0.32
G	10,000	5,090.61	4,645.18	0	-
H	0-39	209.28	190.97	0	-
H	40-399	209.28	190.97	3.0613	2.79
H	400-999	1,311.33	1,196.59	1.0852	0.99
H	1000-2799	1,962.46	1,790.74	0.3465	0.32
H	2800-4599	2,586.14	2,359.85	0.3465	0.32

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
H	4600-6399	3,209.84	2,928.98	0.3465	0.32
H	6400-8199	3,833.53	3,498.10	0.3465	0.32
H	8200-9999	4,457.23	4,067.22	0.3465	0.32
H	10,000	5,080.55	4,636.00	0	-
I	0-39	191.34	174.60	0	-
I	40-399	191.34	174.60	3.4214	3.12
I	400-999	1,423.04	1,298.52	1.4936	1.36
I	1000-2799	2,319.22	2,116.29	0.5581	0.51
I	2800-4599	3,323.86	3,033.02	0.5581	0.51
I	4600-6399	4,328.49	3,949.75	0.5581	0.51
I	6400-8199	5,333.13	4,866.48	0.5581	0.51
I	8200-9999	6,337.78	5,783.22	0.5581	0.51
I	10,000	7,341.86	6,699.45	0	-
J	0-79	745.63	680.39	0	-
J	80-399	745.63	680.39	6.1572	5.62
J	400-999	2,715.93	2,478.29	3.2471	2.96
J	1000-2799	4,664.21	4,256.09	2.0766	1.89
J	2800-4599	8,402.07	7,666.89	2.0766	1.89
J	4600-6399	12,139.92	11,077.68	1.2255	1.12
J	6400-8199	14,345.86	13,090.60	1.2255	1.12
J	8200-9999	16,551.81	15,103.53	1.2255	1.12
J	10,000	18,756.53	17,115.33	0	-
K	0-119	702.29	640.84	0	-
K	120-399	702.29	640.84	5.7624	5.26
K	400-999	2,315.76	2,113.13	3.2075	2.93
K	1000-2799	4,240.26	3,869.24	2.9871	2.73
K	2800-4599	9,617.04	8,775.55	2.9871	2.73
K	4600-6399	14,993.82	13,681.86	2.2779	2.08
K	6400-8199	19,094.01	17,423.28	2.2779	2.08
K	8200-9999	23,194.20	21,164.71	2.2779	2.08
K	10,000	27,292.10	24,904.04	0	-

Table of final fees in trials

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
A	0-79	1608.31	1,467.58	0	-
A	80-209	1608.31	1,467.58	18.1662	16.58
A	210-699	3,969.91	3,622.54	13.8717	12.66
A	700-1049	10,767.03	9,824.91	11.6431	10.62
A	1050-1999	14,842.10	13,543.42	10.096	9.21
A	2000-3599	24,433.34	22,295.42	9.2271	8.42
A	3600-5199	39,196.75	35,767.03	9.2271	8.42
A	5200-6799	53,960.15	49,238.64	9.2271	8.42
A	6800-8399	68,723.57	62,710.26	9.2271	8.42
A	8400-9999	83,486.98	76,181.87	9.2272	8.42
A	10000	98,241.16	89,645.06	0	-
B	0-69	1,202.92	1,097.66	0	-
B	70-199	1,202.92	1,097.66	14.0353	12.81
B	200-499	3,027.51	2,762.60	12.5398	11.44
B	500-899	6,789.46	6,195.38	10.5557	9.63
B	900-1299	11,011.74	10,048.21	8.868	8.09
B	1300-1999	14,558.94	13,285.03	7.7722	7.09
B	2000-3299	19,999.46	18,249.51	7.7722	7.09
B	3300-4999	30,103.28	27,469.24	7.7722	7.09
B	5000-5999	43,315.97	39,525.82	7.7722	7.09
B	6000-7999	51,088.14	46,617.93	7.7722	7.09
B	8000-8999	66,632.48	60,802.14	7.7722	7.09
B	9000-9999	74,404.65	67,894.24	7.7722	7.09
B	10000	82,169.05	74,979.26	0	-
C	0-39	810.51	739.59	0	-
C	40-299	810.51	739.59	11.5783	10.57
C	300-799	3,820.87	3,486.54	10.1155	9.23
C	800-1249	8,878.62	8,101.74	8.466	7.73
C	1250-1999	12,688.32	11,578.09	7.4854	6.83
C	2000-3199	18,302.39	16,700.93	5.1761	4.72
C	3200-4559	24,513.74	22,368.79	5.1761	4.72
C	4560-5919	31,553.29	28,792.38	5.1761	4.72
C	5920-7279	38,592.83	35,215.96	5.1761	4.72

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
C	7280-8639	45,632.37	41,639.54	5.1761	4.72
C	8640-9999	52,671.91	48,063.12	5.1762	4.72
C	10,000	59,706.30	54,482.00	0	-
D	0-79	1527.89	1,394.20	0	-
D	80-209	1527.89	1,394.20	17.2578	15.75
D	210-699	3,771.41	3,441.41	13.1781	12.03
D	700-1049	10,228.68	9,333.67	11.0609	10.09
D	1050-1999	14,100.00	12,866.25	9.5912	8.75
D	2000-3599	23,211.67	21,180.65	8.7658	8.00
D	3600-5199	37,236.90	33,978.67	8.7658	8.00
D	5200-6799	51,262.14	46,776.70	8.7658	8.00
D	6800-8399	65,287.39	59,574.74	8.7658	8.00
D	8400-9999	79,312.63	72,372.77	8.7658	8.00
D	10000	93,329.1	85,162.80	0	-
E	0-39	386.54	352.72	0	-
E	40-69	386.54	352.72	10.4287	9.52
E	70-129	699.40	638.20	9.395	8.57
E	130-599	1,263.10	1,152.58	9.0869	8.29
E	600-1349	5,533.96	5,049.74	5.9649	5.44
E	1350-2999	10,007.63	9,131.96	2.6174	2.39
E	3000-4749	14,326.32	13,072.77	2.6174	2.39
E	4750-6499	18,906.75	17,252.41	2.6174	2.39
E	6500-8249	23,487.17	21,432.04	2.6174	2.39
E	8250-9999	28,067.60	25,611.69	2.6174	2.39
E	10000	32,645.40	29,788.93	0	-
F	0-49	391.89	357.60	0	-
F	50-229	391.89	357.60	8.0098	7.31
F	230-699	1,833.66	1,673.21	7.6326	6.96
F	700-1399	5,420.98	4,946.64	6.1357	5.60
F	1400-1949	9,715.95	8,865.80	4.7354	4.32
F	1950-3549	12,320.41	11,242.37	2.3624	2.16
F	3550-5149	16,100.18	14,691.41	2.3624	2.16
F	5150-6749	19,879.95	18,140.45	2.3624	2.16
F	6750-8349	23,659.72	21,589.49	2.3624	2.16
F	8350-9999	27,439.49	25,038.53	2.3624	2.16

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
F	10000	31,335.02	28,593.21	0	-
G	0-49	391.89	357.60	0	-
G	50-229	391.89	357.60	8.0098	7.31
G	230-699	1,833.66	1,673.21	7.6326	6.96
G	700-1399	5420.98	4,946.64	6.1357	5.60
G	1400-1949	9715.95	8,865.80	4.7354	4.32
G	1950-3549	12,320.41	11,242.37	2.3624	2.16
G	3550-5149	16,100.18	14,691.41	2.3624	2.16
G	5150-6749	19,879.95	18,140.45	2.3624	2.16
G	6750-8349	23,659.72	21,589.49	2.3624	2.16
G	8350-9999	27,439.49	25,038.53	2.3624	2.16
G	10000	31,335.02	28,593.21	0	-
H	0-39	392.05	357.75	0	-
H	40-249	392.05	357.75	9.4203	8.60
H	250-619	2370.32	2,162.92	7.8338	7.15
H	620-1299	5,268.81	4,807.79	5.8194	5.31
H	1300-2999	9,226.02	8,418.74	4.6188	4.21
H	3000-4999	17,077.91	15,583.59	2.4911	2.27
H	5000-5999	22,060.10	20,129.84	2.491	2.27
H	6000-6999	24,551.12	22,402.90	2.4911	2.27
H	7000-7999	27,042.22	24,676.03	2.4911	2.27
H	8000-8999	29,533.32	26,949.15	2.4911	2.27
H	9000-9999	32024.42	29,222.28	2.4911	2.27
H	10000	34513.02	31,493.13	0	-
I	0-39	391.72	357.44	0	-
I	40-369	391.72	357.44	10.0165	9.14
I	370-799	3,697.16	3,373.66	9.9618	9.09
I	800-1299	7,980.75	7,282.43	9.8555	8.99
I	1300-2699	12,908.52	11,779.02	7.7641	7.08
I	2700-4199	23,778.23	21,697.63	3.3365	3.04
I	4200-5359	28,783.04	26,264.52	3.3365	3.04
I	5360-6519	32,653.42	29,796.25	3.3365	3.04
I	6520-7679	36,523.80	33,327.97	3.3366	3.04
I	7680-8839	40,394.20	36,859.71	3.3365	3.04
I	8840-9999	44,264.58	40,391.43	3.3365	3.04

Class of Offence	PPE Range	Initial Fee (£)		Incremental fee per page of prosecution evidence (£)	
		Current rates	Proposed reduced rates	Current rates	Proposed reduced rates
I	10000	48,131.63	43,920.11	0	-
J	0-79	1,608.31	1,467.58	0	-
J	80-209	1,608.31	1,467.58	18.1662	16.58
J	210-699	3,969.91	3,622.54	13.8717	12.66
J	700-1049	10,767.03	9,824.91	11.6431	10.62
J	1050-1999	14,842.10	13,543.42	10.096	9.21
J	2000-3599	24,433.34	22,295.42	9.2271	8.42
J	3600-5199	39,196.75	35,767.03	9.2271	8.42
J	5200-6799	53,960.15	49,238.64	9.2271	8.42
J	6800-8399	68,723.57	62,710.26	9.2271	8.42
J	8400-9999	83,486.98	76,181.87	9.2272	8.42
J	10000	98,241.16	89,645.06	0	-
K	0-119	1,130.76	1,031.82	0	-
K	120-734	1,130.76	1,031.82	9.4875	8.66
K	735-1289	6,965.55	6,356.06	9.5522	8.72
K	1290-2399	12,267.04	11,193.67	9.7237	8.87
K	2400-4499	23,060.31	21,042.53	9.6873	8.84
K	4500-7999	43,403.55	39,605.74	9.6873	8.84
K	8000-8399	77,308.93	70,544.40	9.6872	8.84
K	8400-8799	81,183.82	74,080.24	9.6872	8.84
K	8800-9199	85,058.72	77,616.08	9.6873	8.84
K	9200-9599	88,933.63	81,151.94	9.6872	8.84
K	9600-9999	92,808.53	84,687.78	9.6872	8.84
K	10000	96,673.74	88,214.79	0	-

Table G3: Indicative Proposed Crown Court Fixed Fees (including VAT) for cases up to 500 Pages of Prosecution Evidence⁹⁰

Offence Type	Pages of Prosecution Evidence				
	0-100	101-200	201-300	301-400	401-500
A	£2,159	£3,302	£4,473	£6,234	£7,259
B	£916	£1,687	£2,774	£3,501	£4,522
C	£779	£1,367	£2,076	£2,837	£3,222
D	£1,346	£2,236	£3,656	£4,446	£5,533
E	£378	£847	£1,464	£2,099	£2,270
F	£376	£791	£1,287	£1,560	£2,047
G	£488	£891	£1,268	£1,943	£2,254
H	£378	£907	£1,462	£1,694	£2,174
I	£553	£1,393	£2,003	£2,737	£3,510
J	£1,462	£2,603	£4,006	£5,028	£6,398
K	£1,535	£1,323	£1,874	£2,559	£3,405

All fees shown are rounded to the nearest pound

Table G4: Indicative Proposed Magistrates' Court Fixed Fees (including VAT) and Non-Standard Fee Threshold under proposed modified model⁹¹

	Fixed Fee (£)	Non-Standard Fee Threshold (£)
Category 1A	310.45	426.61
Category 1B	310.45	426.61
Category 2	310.45	704.88
Category 3	310.45	651.34

⁹⁰ Based on 2012/13 billing data, manipulated for the fee reduction.

⁹¹ Based on 2012/13 billing data, manipulated for the fee reduction.

Annex H: Revised Advocacy Scheme 1

Table H1. Revised Crown Court Advocates Graduated Fees for Guilty pleas and Cracked Trials

Advocate type	Class of Offence	Basic Fee	Evidence uplift per page of prosecution evidence (pages 1 to 250)	Evidence uplift per page of prosecution evidence (pages 251 to 1000)	Evidence uplift per page of prosecution evidence (pages 1001 to 10000)
QC	a	£1,895	£4.13	£1.04	£1.37
	b	£1,421	£2.61	£0.65	£0.86
	c	£1,239	£1.85	£0.46	£0.61
	d	£1,421	£4.13	£1.04	£1.37
	e	£1,082	£1.33	£0.33	£0.44
	f	£1,082	£1.74	£0.44	£0.58
	g	£1,082	£1.74	£0.44	£0.58
	h	£1,256	£2.39	£0.60	£0.78
	i	£1,303	£2.34	£0.58	£0.77
	j	£1,895	£4.13	£1.04	£1.37
	k	£1,895	£2.31	£0.58	£0.77
Leading Junior	a	£1,421	£3.10	£0.78	£1.03
	b	£1,066	£1.96	£0.49	£0.65
	c	£929	£1.39	£0.35	£0.46
	d	£1,066	£3.10	£0.78	£1.03
	e	£812	£1.00	£0.25	£0.33
	f	£812	£1.31	£0.33	£0.44
	g	£812	£1.31	£0.33	£0.44
	h	£942	£1.79	£0.45	£0.59
	i	£977	£1.76	£0.44	£0.58
	j	£1,421	£3.10	£0.78	£1.03
	k	£1,421	£1.73	£0.44	£0.58
Led Junior	a	£948	£2.07	£0.52	£0.69
	b	£711	£1.31	£0.33	£0.43
	c	£620	£0.93	£0.23	£0.31
	d	£711	£2.07	£0.52	£0.69
	e	£542	£0.67	£0.17	£0.22
	f	£542	£0.87	£0.22	£0.29
	g	£542	£0.87	£0.22	£0.29
	h	£628	£1.20	£0.30	£0.39
	i	£652	£1.17	£0.29	£0.39
	j	£948	£2.07	£0.52	£0.69
	k	£948	£1.16	£0.29	£0.39
Junior Alone	a	£1,061	£3.68	£1.72	£0.56
	b	£739	£2.53	£1.18	£0.39
	c	£470	£1.89	£0.86	£0.29
	d	£695	£3.68	£1.72	£0.56
	e	£412	£1.09	£0.51	£0.16
	f	£412	£1.69	£0.78	£0.26
	g	£412	£1.69	£0.78	£0.26
	h	£502	£1.70	£0.80	£0.29
	i	£586	£1.33	£0.62	£0.21
	j	£1,061	£3.68	£1.72	£0.56
	k	£1,004	£3.19	£1.48	£0.49

Annex I: Revised Advocacy Scheme 2

Table I1. Modified CPS Crown Court Advocacy Fee Scheme Model

The fees shown below relate to a trial. Guilty pleas are paid at 45% of the trial rate, cracked trials are paid at 80% of the trial rate.

Option 2	Lone Junior							QC						
	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+
A - Homicide	2,000	£2,770	£5,530	£2.61	£419	£210	£225	5,000	£7,900	£15,800	£5.93	£773	£306	£327
B - Serious violence or drugs	1,000	£1,700	£3,400	£2.61	£371	£195	£209	2,500	£7,900	£15,800	£5.93	£677	£306	£327
C - Less serious violence or drugs	250	£910	£1,820	£2.61	£322	£195	£209	750	£7,900	£15,800	£5.93	£645	£306	£327
D - Sexual offences	500	£1,300	£2,920	£2.61	£322	£210	£225	1,500	£7,900	£15,800	£5.93	£645	£306	£327
E - Burglary	500	£700	£1,740	£2.61	£258	£178	£190	1,500	£7,900	£15,800	£5.93	£483	£306	£327
F - Dishonesty (value to £30k)	500	£700	£1,740	£2.61	£258	£178	£190	1,500	£7,900	£15,800	£5.93	£483	£306	£327
G - Dishonesty (value £30-100k)	2,000	£2,370	£4,740	£2.61	£258	£178	£190	6,000	£7,900	£15,800	£5.93	£483	£306	£327
H - Miscellaneous	250	£950	£1,900	£2.61	£322	£195	£209	750	£7,900	£15,800	£5.93	£645	£306	£327
I - Offences against public justice	500	£1,110	£2,210	£2.61	£322	£195	£209	1,500	£7,900	£15,800	£5.93	£645	£306	£327
J - Serious Sexual Offences	500	£2,050	£4,110	£2.61	£419	£210	£225	1,500	£7,900	£15,800	£5.93	£773	£306	£327
K - Dishonest (value £100k+)	5,000	£4,740	£9,480	£2.61	£419	£210	£225	5,000	£7,900	£15,800	£5.93	£773	£306	£327

	Leading Junior							Led Junior						
	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+
A - Homicide	5,000	£5,925	£11,850	£4.42	£580	£261	£281	5,000	£3,950	£5,925	£2.96	£387	£175	£187
B - Serious violence or drugs	2,500	£5,925	£11,850	£4.42	£508	£261	£281	2,500	£3,950	£5,925	£2.96	£338	£175	£187
C - Less serious violence or drugs	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£5,925	£2.96	£322	£175	£187
D - Sexual offences	1,500	£5,925	£11,850	£4.42	£483	£261	£281	1,500	£3,950	£5,925	£2.96	£322	£175	£187
E - Burglary	1,500	£5,925	£11,850	£4.42	£363	£261	£281	1,500	£3,950	£5,925	£2.96	£242	£175	£187
F - Dishonesty (value to £30k)	1,500	£5,925	£11,850	£4.42	£363	£261	£281	1,500	£3,950	£5,925	£2.96	£242	£175	£187
G - Dishonesty (value £30-100k)	6,000	£5,925	£11,850	£4.42	£363	£261	£281	6,000	£3,950	£5,925	£2.96	£242	£175	£187
H - Miscellaneous	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£5,925	£2.96	£322	£175	£187
I - Offences against public justice	1,500	£5,925	£11,850	£4.42	£483	£261	£281	1,500	£3,950	£5,925	£2.96	£322	£175	£187
J - Serious Sexual Offences	1,500	£5,925	£11,850	£4.42	£580	£261	£281	1,500	£3,950	£5,925	£2.96	£387	£175	£187
K - Dishonest (value £100k+)	5,000	£5,925	£11,850	£4.42	£580	£261	£281	5,000	£3,950	£5,925	£2.96	£387	£175	£187

© Crown copyright 2013
Produced by the Ministry of Justice

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from LegalAidReformMoJ@justice.gsi.gov.uk