

Title: Transforming Legal Aid – Next Steps: Government Response, Procurement of Criminal Legal Aid Services IA No: MoJ199 Lead department or agency: Ministry of Justice Other departments or agencies: Legal Aid Agency	Impact Assessment (IA)				
	Date: 27 th February 2014				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Secondary Legislation				
Contact for enquiries: Matt Shelley matthew.shelley@legalaid.gsi.gov.uk					
Summary: Intervention and Options				RPC Opinion: RPC Opinion Status	

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	No	NA

What is the problem under consideration? Why is government intervention necessary?
 We currently spend around £1bn per year on criminal legal aid services delivered by over 1600 providers and over 4000 advocates in England and Wales. Against a backdrop of continuing financial pressure on public finances, any legal aid scheme needs to be properly targeted at the cases and people where funding is most needed and in turn deliver a credible and efficient system. Ministers have committed to continue to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system continues to command the confidence of the public.

What are the policy objectives and the intended effects?
 The Government’s policy objectives are to deliver quality assured criminal legal aid services at a lower cost to the taxpayer, but achieving this in a way that ensures effectiveness and sustainability of service. We believe the scale of reductions required would only be sustainable if the market consolidates, thereby achieving economies of scale. It is the Government’s view that this is best achieved through a combination of phased fee reductions and subsequent procurement process described in summary below and in detail in the Response to Consultation.

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 will maintain a duty provider scheme. However, in order for that scheme to be sustainable at the rates of pay on offer we will consolidate the number of contracts to deliver Duty Provider Work by running a competitive tendering process. 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. Therefore, any provider meeting our minimum tender requirements will 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. The rates of pay for Own Client Work will be set administratively and there will be an unlimited number of contracts available for this work, so access to this work will not be subject to a competition.

For Duty Provider Work, the LAA will 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). The rates of pay for Duty Provider Work will also be set administratively and are the same as for the Own Client Work.

What policy options have been considered, including any alternatives to regulation?
 Each design element has been assessed against the “do nothing” option.

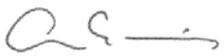
Will the policy be reviewed? We will monitor the impacts of the policy. **If applicable, set review date:** /Year

Does implementation go beyond minimum EU requirements?

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. N/A

What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Micro	< 20	Small	Medium	Large
	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 27 February 2014

Summary: Analysis & Evidence

Description: Transforming Legal Aid: Procurement of Criminal Legal Aid Services
FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Negligible

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate		£120m	

Description and scale of key monetised costs by 'main affected groups'

Legal aid providers: Legal aid providers are expected to experience a decrease in fee revenue of £120m per annum in steady state. This, however, is set against the opportunities we are attempting to create in terms of economies of scale and other efficiencies.

Other key non-monetised costs by 'main affected groups'

Legal aid providers: Legal aid providers are likely to incur a one-off cost as they reorganise in response to the competitive tender for Duty Provider Work. It may also be necessary for some providers choosing to deliver just Own Client Work to restructure their businesses in order to cope with the reduction in fees.

The Legal Aid Agency will incur a one off cost in making the administrative changes required to implement the new contracts and remuneration mechanisms. The LAA has taken the decision to incur the cost of funding peer reviews.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			Optional
High			Optional
Best Estimate		£120m	Optional

Description and scale of key monetised benefits by 'main affected groups'

Legal Aid Fund: The legal aid fund will have a reduced spend of approximately £120m per annum in the steady state. The Legal Aid Agency will make administrative savings from the policy, but these are difficult to quantify.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks	N/A
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- Given the flexible arrangements for businesses to submit joint bids, we believe the risk of an insufficient number of bidders for Duty Provider Work contracts is unlikely, but we have mitigations such as offering more work to successful bidders, or to retender on same basis with interim cover
- With the Law Society, we jointly commissioned independent research to ensure the contract sizes on offer were financially viable¹, to ensure that the Duty Provider service is sustainable during the contract term. In the event we do experience duty provider failure, we plan to offer the work to other providers that have been awarded contracts in the area, or re-compete this work in a new "mini-competition", inviting any Own Client Provider to bid.
- Those unsuccessful in winning a Duty Provider Contract may attempt to increase their Own Client Work, making the volume of work available for duty contracts less viable. Alternatively some of these providers may leave the market, increasing the volumes of work available to successful bidders.

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

¹ https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view

Evidence Base (for summary sheets)

1. Introduction

Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's *Transforming Legal Aid – Next Steps: Government response*. The associated document was published on 27th February 2014 and can be found at: www.gov.uk. This document assesses the impact of the announced changes to procuring criminal legal aid services, as set out in the government response paper.
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services both for providers and individuals. Expenditure accrued to the Legal Aid Fund was £1.9bn for 2012/13², and as part of this, £975m was spent on criminal legal aid services, delivered by over 1600 providers and over 4000 advocates. The Legal Aid Agency (“LAA”) is responsible for administering the legal aid scheme in England and Wales.
3. Over the last five years the criminal legal aid market has already faced declining fees and volumes of business that has put incumbent providers of criminal legal aid under increasing pressure. However, against a backdrop of continuing financial pressure on public finances, any legal aid scheme needs to be properly targeted at the cases and people where funding is most needed and in turn deliver a credible and efficient system. Ministers have committed to continue to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system continues to command the confidence of the public.

Policy Objectives

4. Legal aid is a fundamental part of our criminal justice system (CJS) but resources are not limitless. As part of wider governmental fiscal tightening we will procure criminal legal aid services at a lower cost to the taxpayer and in a way that ensures delivery of a quality assured, sustainable service.
5. Furthermore, criminal legal aid providers currently operate in an extremely fragmented market (in some areas more than others) at a time where there are additional pressures created by declining case volumes. This presents additional challenges in coping with reductions in fees.
6. We therefore agree with the Law Society and a number of respondents to the previous consultation that the market needs to consolidate in order for the market to remain sustainable at lower fee levels. It is the Government's view that consolidation will be achieved through a combination of phased fee reductions and the subsequent procurement process described below.

Implementation timetable and phased fee reduction

7. We have sought to design a procurement process to give providers the maximum opportunity to explore potential business relationships and prepare their applications for a new contract.
8. As well as giving providers the time they need to develop business cases and raise funds for restructuring, we have decided to be more flexible in the types of business structure that would be permissible. Therefore, in addition to allowing applicants to be individual organisations, a joint venture or an Alternative Business Structure, partnering arrangements with a lead contractor who will hold the contract and be responsible for the delivery of all services under the contract, and up to 3 delivery partners (restricted to 2 delivery partners in urban procurement areas) would also be permissible provided they can demonstrate they have an agreement between them that covers certain key aspects of service delivery. This, we believe, would mitigate the pace and scale of the change while facilitating the longer term efficiencies offered by competition.

² Source: www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf

9. Under the modified model, we will reach a reduction in fees of 17.5% by June 2015, the Service Commencement date of the new criminal legal aid contract. However, rather than making a one step reduction to the 17.5%, we will make two successive reductions of first a 8.75% fee reduction in March 2014 across all litigation services³ (with the exception of VHCCs) and magistrates' court advocacy fees; followed by a second reduction to current rates of 8.75% across the same range of fees in June 2015. Although the effect will be to reduce current rates by 17.5% we will also be introducing a change to the structure of the existing fee scheme. Both fee reductions would cover Own Client Work and Duty Provider Work.
10. Such an approach would enable us to begin realising necessary savings and help providers to adapt to a more gradual reduction in fees over the course of the extended period before commencement of the new contracts. It would encourage providers to explore the opportunities for the level of market consolidation necessary to ensure sustainable services in the longer term, providing as much flexibility as possible in the different business structures the LAA would accept. We think a more phased implementation of the ultimate fee reduction, beginning with an 8.75% interim reduction, strikes the appropriate balance of delivering initial savings and mitigating the risk of a single, substantial drop in prices while incentivising change.

Policy

11. This IA is confined to four elements of the competition model which require legislative change:
 - (i) Initial reduction in fees prior to the competitive tendering
 - (ii) The number of contracts to deliver Duty Provider Work
 - (iii) The introduction of a series of fixed fees in the Police Station, Magistrates Court and Crown Court
 - (iv) Reduction in fees after the competitive tendering

Main affected groups

12. We do not consider that this proposal will have a direct financial impact on clients as it affects the provider's remuneration, not the grant of legal aid to the client. Clients could be affected, however, if the changes have an impact on the sustainability of the legal aid market resulting in an adverse effect on service provision, though we believe this is unlikely.
13. Potential impacts on clients are likely to depend upon the provider response to the changes and as such remain unquantifiable. There may however be changes which affect the user experience, for example if the identity of a preferred provider changes. But we do not consider that this would amount to a disadvantage.
14. We focus on the impact on the following key groups:
 - Criminal legal aid service providers - organisations contracted with the LAA to deliver criminal legal aid services.
 - LAA.
15. The original proposal was criticised for not having assessed the wider impact on the CJS. We feel the revised model would not have any adverse impact on the CJS. In fact, we believe our model should make Legal Aid simpler to administer, whilst continuing to provide quality assured legal services.

³ References to 'litigation services' throughout this chapter means all services currently in scope of the 2010 Standard Crime Contract

Costs and benefits

16. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales, with the aim of understanding the overall impact on society from implementing these reforms. The costs and benefits of each reform are compared to the “do nothing” option. IAs place strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are some aspects that cannot always be monetised.
17. This IA considers the impact of each of the design elements when implemented as a package as opposed to in isolation. Impacts on each CJS region are assessed on the basis of the introduction of fixed fees at the police station, magistrates’ court and Crown Court and an overall cumulative assessment is made accounting for all other work facing a flat 17.5% fee cut.

Methodology and Assumptions

18. The following assumptions have been made in the estimation of the costs and benefits:
 - (i) Providers will deliver the same level and quality of service as at present.
 - (ii) All savings figures have been rounded to the nearest £1m for estimates below £10m, to the nearest £5m for estimates above £10m, and to the nearest £10m for those above £100m.
 - (iii) All estimates of impacts and calculation of the fixed fee are made using one year of LAA administrative data up to and including September 2013. Fixed fees are quoted excluding VAT.

Option 0 – baseline:

19. The “do nothing” option in each of the design elements below is the base case. This in effect would mean that the current fee remuneration rates and market structure would continue to operate as now. As this option is compared against itself, its costs and benefits are zero, as is its Net Present Value (NPV).

Element 1: Initial reduction in fees prior to competitive tendering

Description

20. We intend to apply a more gradual reduction in fees than proposed in the April 2013 consultation; an interim reduction of 8.75% in March 2014 and second, further reduction of 8.75% in June 2015. Service under the new criminal legal aid contracts would commence in June 2015, once the full 17.5% reduction in fees on current rates has taken effect.
21. This phased approach assists providers in adapting to the reduction in fees by mitigating the risk of a single drop in prices whilst also enabling the government to begin realising necessary savings.

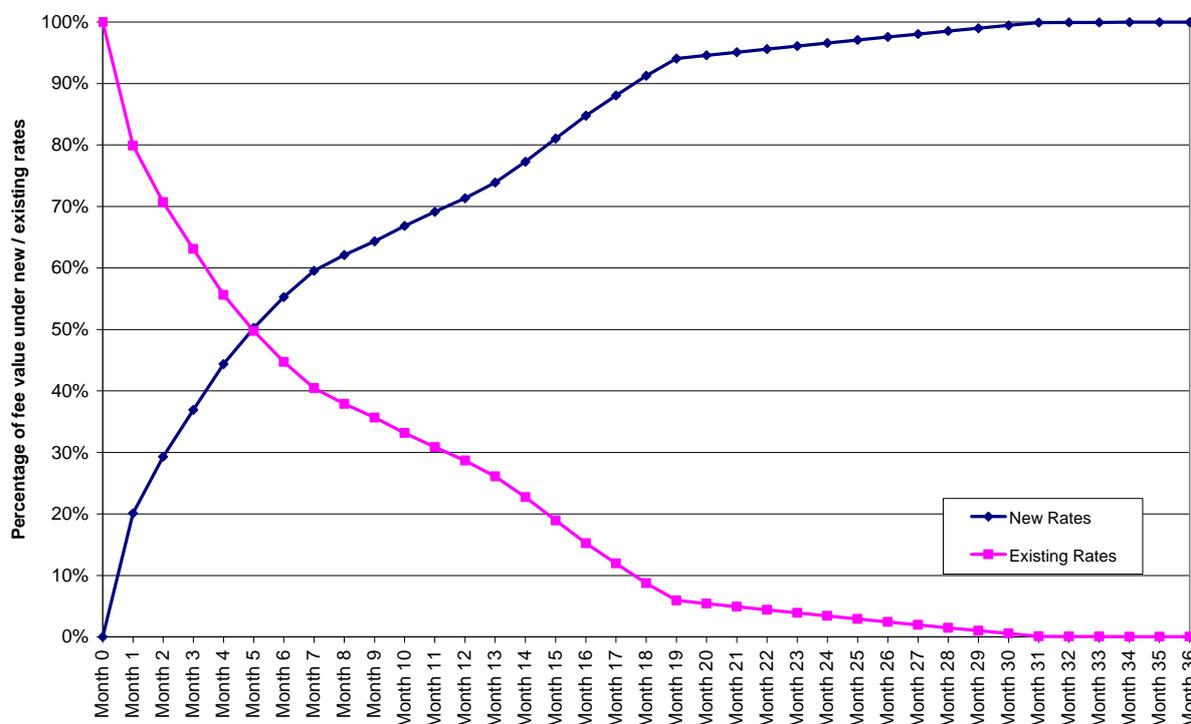
Impact

Legal aid service providers

22. Legal aid providers will see lower revenue due to this policy change. We estimate an 8.75% reduction in the fees paid for criminal litigation would result in an estimated £60m per annum reduction in fees paid to legal aid service providers in the steady state.
23. Any fee reduction would only apply to new cases starting after the commencement of the change and would therefore take a period of time to take effect and have a large impact on revenue for providers. The chart below shows that after five months, half of the legal aid fee revenue paid will still be on the existing higher remunerated scheme. This means that providers would be

increasingly required to explore opportunities to consolidate and make efficiency savings over a period of months. We are proposing the reduction to come into effect three weeks after it is announced.

Chart 1: The proportion of fee revenue paid at new and existing rates over time⁴



24. A number of respondents have argued that the interim fee reduction would present challenges for providers in terms of securing upfront investment which they suggest may be very difficult to obtain. We have heard throughout the consultation periods that in order to undergo the level of restructuring and consolidation required, businesses require support both in terms of information and guidance and financial support to help firms invest in their infrastructure. We and the Law Society have developed a package of support measures to help businesses cope with the challenges ahead.
25. We acknowledge that some providers would find it challenging to cope with an 8.75% fee reduction ahead of the opportunity to exploit economies of scale from a more consolidated market structure. However, we believe that there are others that could sustain the fee reduction without any significant structural changes to their business and most providers could look at more efficient ways of working, such as a better use of duty solicitors and if necessary looking at overhead costs. Some providers will choose to take early steps to join with others and explore opportunities to share back office functions and the cost of support staff.

⁴ This is based on weighted profiles of when spend occurs on a Variable Monthly Payment basis for a given cohort. Some providers will be paid on a Standard Monthly Payment for their crime lower work, which will be slower to adjust. For these firms, in practice, the fee reduction is likely to take longer to work through than is shown in this graph.

26. There will be a one-off financial cost to the LAA to implement this fee, although this is expected to be small.

Element 2: Number of contracts to deliver Duty Provider Work

27. In the further consultation published in September 2013, we said that in determining the number of Duty Provider Work contracts we proposed to have regard to the same four factors identified in the April consultation paper (sufficient supply to deal with potential conflicts of interest; sufficient case volume to allow fixed fee schemes to work; market agility; and sustainable procurement) in addition to one further factor. We said that our intention was 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 proposed cumulative reduction in fees by 17.5%, so far as is possible.
28. In order to help inform our analysis of sustainability and the final decision on the number of contracts for Duty Provider Work, we set out our intention to jointly commission with the Law Society a further piece of research to get more detailed information for this purpose. As per that commitment, we commissioned, jointly with the Law Society, independent research to get more information from the current market to help inform the final decision on the number of contracts for Duty Provider Work. The research was conducted in two parts⁵:
- (i) Otterburn Legal Consulting was asked to conduct a survey of current criminal legal aid providers to explore:
 - the current financial position of criminal defence firms;
 - firms' views on the size of contract they would need to deliver a viable Duty and Own Client contract;
 - the impact of the proposals on firms that just have an Own Client contract.
 - (ii) KPMG were then asked to take the data from Otterburn and, combined with the claim data from the Legal Aid Agency, construct a financial model to advise MoJ on the recommended number of Duty Provider Work contracts in each procurement area.
29. The independent research provides an important evidence base for determining the optimum range of Duty Provider Work contracts to offer in each procurement area. The modelling itself takes account of some of the other factors set out below (namely sufficient supply to deal with potential conflicts of interest; market agility; and sustainable procurement) in coming to its conclusions/recommendations but makes a number of suggestions (at page 12 of their report) on further issues MoJ should consider in order to inform this final advice.
30. Therefore, in addition to the independent research from Otterburn and KPMG we have conducted our own internal analysis of the four factors listed in Next Steps and summarised below.
- (i) Sufficient supply to deal with potential conflicts of interest
- There will always be a pool of cases that involve more than one defendant. We need to ensure there are a sufficient number of contractors in each CJS area to provide advice, assistance and representation to clients where there may be a conflict with another defendant. In the September consultation response we determined that a minimum of four contractors in each area would address this factor and we stand by this view. We believe this would be a manageable number of cases to allocate to another contractor in a neighbouring CJS area or to a pool of reserve contractors when such conflicts arise. The contract numbers

⁵ The KPMG and Otterburn reports are available at: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view

for each procurement area allow for at least four Duty Provider Work Contracts (and of course, an unlimited amount of Own Client Work contracts).

(ii) Sufficient case numbers to allow fixed fee schemes to work

One of the factors we considered in determining the number of contracts for Duty Provider Work in a procurement area is to limit the potential impact of introducing a fixed fee scheme. Our judgement is that it would be reasonable to expect, as a result of the fixed fee scheme, that individual providers could absorb up to an additional 3% change in revenue on Duty Provider Work, in any one year, relative to the average revenue for the procurement area as a whole. This is discussed in more detail in paragraphs 41 to 43.

(iii) Market agility

The independent research from Otterburn and KPMG addresses this point directly but we have conducted a sense check of the analysis against what we know about the current criminal legal aid market and how they currently deliver criminal legal aid services. Part of this analysis includes an assessment of what the consolidation challenge means for providers in practice. The KPMG report states the challenge in percentage terms against the likely value of work in the remainder of the market. In order to assess the extent to which the challenge is realistic we have therefore explored what this means in terms of how many additional fee earners a firm would need to employ; and/or how many other delivery partners that firm would have to join with in order to meet the resource demand. Based on the Otterburn and KPMG reports and our discussion with senior Law Society officials, we are confident the market is sufficiently agile to meet the demands of the Duty Provider Work competition.

(iv) Sustainable procurement

Finally, we have considered the need to ensure the market is competitive in future tendering rounds. One obvious source of future competition is the ability for contract holders from the first round bid to bid in new or multiple areas in the next round. Another is ensuring a sufficient supply of legal aid lawyers who a potential new entrant could hire in the next tender round. On the expectation, shared with the Law Society, that most successful bidders will be joint ventures or a legal entity with lead and sub-contracting relationships, there is scope for those sub-contractors or members of the joint venture to join with others to form new legal entities next time, which would help to sustain a dynamic and competitive market.

Impact

Legal aid service providers

31. The impact on providers will depend on whether they are successful in winning a Duty Provider Contract. Providers who win these contracts are likely to have access to greater volumes of work, albeit at a lower level of fees. Providers who do not hold Duty Provider Work contracts will still be able to deliver Own Client Work. However, not having access to new Duty Provider Work might be challenging for these providers in terms of their long run sustainability, though they may be able to mitigate this impact by extending their Own Client Work base.
32. The impact will also depend on how the market structures itself to bid for the Duty Provider Work contracts. Having 525 contracts to deliver Duty Provider Work will mean a reduction in the number of organisations directly contracted to deliver Duty Provider Work. To meet the challenge of larger contracts, providers could hire more fee earners, join with other firms in the market, or those providers currently operating with multiple offices could consolidate and deliver in fewer areas. Providers will also be able to offer Own Client Work provided they meet the minimum tender requirements (including the required quality standards).
33. Giving providers the opportunity to be more flexible in the way they structure their business, whether that is through joint ventures, use of agents or Alternative Business Structures (ABS), is

essential if a more efficient and cost effective criminal legal aid system is to be established. Therefore, in addition to allowing applicants to be individual organisations, a joint venture or an Alternative Business Structure, partnering arrangements with a lead contractor who will hold the contract and be responsible for delivery of all services under the contract, and up to 3 delivery partners (restricted to 2 delivery partners in urban procurement areas) would also be permissible provided they can demonstrate they have an agreement between them that covers certain key aspects of service delivery. In addition, Duty Provider Work currently makes up on average less than 40% of criminal legal aid work. This means that initially the majority of criminal legal aid work would be available to providers on an Own Client Work basis.

34. We recognise there is likely to be a one-off cost to providers interested in bidding for a contract to deliver Duty Provider Work as they reorganise in response to this competitive tender. It may also be necessary for some providers choosing to deliver just Own Client Work to restructure their businesses in order to cope with the reduction in fees. We have heard throughout the consultation periods that in order to undergo the level of restructuring and consolidation required, businesses require support both in terms of information and guidance and financial support to help firms invest in their infrastructure. We and the Law Society have developed a package of support measures to help businesses cope with the challenges ahead.

Legal Aid Fund

35. There will be no direct impact on the Legal Aid Fund from limiting contract numbers. However, increasing the size of Duty Provider Work contracts should help providers to be sustainable.

Risks and Uncertainties

36. If the contracts for Duty Provider Work were not set at the right size, there would be a risk that providers are not sustainable. If they are too large, providers might not be able to scale up sufficiently, if they are too small it may impact the provider's viability. We have attempted to mitigate this risk by working with the Law Society in commissioning independent research to ensure the contract sizes reflect capacity and viability constraints while offering as much flexibility to the market as possible.
37. In the event we do experience duty provider failure, we plan to offer the work to other providers that have been awarded contracts in the area, or re-compete this work in a new "mini-competition", inviting any Own Client Provider to bid.

Design Element 3: Revised fixed fee scheme

Description

38. We maintain our view that the current fee schemes for criminal legal aid, specifically the Litigators Graduated Fee Scheme is unnecessarily complex and administratively burdensome both for providers and the LAA. Therefore, we have simplified and streamlined the administration of the scheme, using fixed fees as far as reasonably possible, to help drive efficiencies. Having a fixed fee encourages the swift resolution of a case, as there are no incentives to prolong a case and receive higher revenue.
39. In light of responses to the September 2013 consultation, we have decided to change aspects of the fixed fee scheme, which are set out in Annex C in the consultation response. We have made the fee scheme more granular to reduce the risk to providers of losing out in terms of revenue as a result of having an unfavourable mix of cases. We are therefore now implementing:

- Two fixed fees for police station attendance work; one for London and one for the rest of England and Wales. We also intend to retain a scheme similar to the existing escape mechanism.
- Four fixed fees for magistrates' court representation work Category 1a, Category 1b, Category 2 and Category 3. We also intend to retain the current magistrates' court duty hourly rate scheme and the non-standard fee escape mechanism.
- A number of fixed fees in the Crown Court for cases with 500 pages of prosecution evidence (PPE) or less – 5 fixed fees for each of the 11 offence types. These 5 fixed fees would be broken into brackets of evidence page counts (e.g. 0 to 100, 101 to 200, 201 to 300, 301 to 400, and 401 to 500). We have also introduced a third variable: case type (e.g. guilty plea, cracked trial or trial). Therefore, the fixed fees for this work would be set by offence type, bands of PPE and case type.
- Cases over 500 PPE will be remunerated based on the current graduated fee scheme, but at a reduced rate (17.5% reduction on current rates)
- We will maintain the current Retrial and Transfer provisions set out in Schedule 2 of the Criminal Legal Aid (Remuneration) Regulations 2013, whereby a proportion of the applicable fee (either the fixed fee or LGFS as applicable) is payable where one of the scenarios described applies.
- All other payments will be paid on administratively set rates, but at a reduced rate (17.5% reduction on current rates).

Impact

Legal aid service providers

40. The extent to which there would be a financial impact (positive or negative) on providers from introducing a fixed fee scheme will depend entirely on the case mix each provider is allocated. However the introduction of two fees for police station work, four fees for magistrates' court work and additional fixed fees in the Crown Court mitigates this somewhat compared to the September 2013 model which proposed one fixed fee for the police station and magistrates' courts and 55 Crown Court fixed fees for cases under 500 PPE. The additional fees are designed to minimise the gains or losses in revenue from having a fixed fee compared to the current scheme whilst still simplifying the system.
41. One of the factors considered in determining the number of contracts for Duty Provider Work in a procurement area is to limit the potential impact of introducing a fixed fee scheme. A series of fee schemes that are largely based on fixed fees (as set out in Annex C of the consultation response paper) mean that providers might make a profit on the fixed fee if relatively little work was required on the case. However, in other cases which required more work, they could make a loss. In order to manage the level of risk of financial loss faced by providers, contracts to deliver Duty Provider Work (in so far as possible, given capacity viability tradeoffs) need to offer sufficient volume of duty slots in order for providers to have a varied case mix.
42. Our judgement is that it would be reasonable to expect, as a result of the fixed fee scheme, that individual providers could absorb up to an additional 3% change in revenue on Duty Provider Work, in any one year, relative to the average revenue for the procurement area as a whole. For example, for an area with an average claim value of £400 (once the new fee regime has been taken into account), we wish to be statistically confident⁶ that under the new fixed fee schemes, the average claim value for an individual provider would be no less than £388 (-3%) and no more than £412 (+3%). This is calculated using a year's claim data to September 2013.

⁶ At the 95% level.

43. For the vast majority of procurement areas the revenue risk is within this range. However, for some procurement areas the CJS region has been split in an attempt to offer firms greater flexibility. In some of these areas, smaller duty volumes might mean that the revenue risk exceeds 3%⁷. The government's view is that the benefits of increased flexibility for providers and the greater simplicity of the new fee scheme are likely to justify this higher risk. Individual providers in these areas may decide to mitigate the risk by choosing to bid in multiple regions, undertaking Own Client Work alongside their Duty Contract, or looking to expand this Own Client Work.

LAA Administrative Costs

44. There would be a financial saving to the LAA through the introduction of a fixed fee for Crown Court cases with 500 PPE or less. The Legal Aid Agency will make administrative savings from the policy, but these have not been quantified.

Risks and Uncertainties

45. There remains a small risk that under a fixed fee system, a provider could be allocated a series of complex and consequently "expensive" cases, thereby making substantial losses. However, we have tried to mitigate this as much as possible by adopting a more granular fixed fee scheme, with escape mechanisms for the most complex cases.

Design Element 4: Remuneration level

Description

46. By June 2015, both Own Client Work and Duty Provider Work in England and Wales will be remunerated at 17.5% below current rates.

Impact

47. Providers will receive less fee income from legal aid as a result of the 17.5% reduction in administratively set rates. However, we believe the fee reductions will encourage the consolidation of the legal aid market, which will offer opportunities for providers to be more efficient.
48. The criminal legal aid market (both litigators and advocates) has sustained a series of fee reductions and fee structure changes over the past ten years and yet still retains relatively the same size and structure of provider base that existed ten years ago. This market has been extremely resilient to previous fee cuts.
49. Each CJS region will face different overall cumulative impacts from a combination of the remuneration changes and introduction of the fixed fees. The overall cumulative impacts table is provided below. There are difficulties in disaggregating the LAA administrative data at a sub-CJS region level, so therefore all impacts are estimated at the existing CJS region level.

⁷ There is some uncertainty around the precise level of risk in these areas given that there is no marker in the data to precisely allocate all of the cases below the level of CJS region.

Table 1: Cumulative impact by Criminal justice scheme

CJS Region	Impact of fee reduction	CJS Region	Impact of fee reduction	CJS Region	Impact of fee reduction
AVON & SOMERSET	-17%	HAMPSHIRE	-20%	SOUTH WALES	-18%
BEDFORDSHIRE	-19%	HERTFORDSHIRE	-25%	SOUTH YORKSHIRE	-14%
CAMBRIDGESHIRE	-13%	HUMBERSIDE	-13%	STAFFORDSHIRE	-19%
CHESHIRE	-16%	KENT	-23%	SUFFOLK	-16%
CLEVELAND	-5%	LANCASHIRE	-12%	SURREY	-23%
CUMBRIA	-12%	LEICESTERSHIRE	-20%	SUSSEX	-19%
DERBYSHIRE	-20%	LINCOLNSHIRE	-15%	THAMES VALLEY	-22%
DEVON & CORNWALL	-16%	LONDON	-18%	WARWICKSHIRE	-18%
DORSET	-11%	MERSEYSIDE	-17%	WEST MERCIA	-18%
DURHAM	-14%	NORFOLK	-15%	WEST MIDLANDS	-18%
DYFED-POWYS	-15%	NORTH WALES	-18%	WEST YORKSHIRE	-13%
ESSEX	-20%	NORTH YORKSHIRE	-16%	WILTSHIRE	-17%
GLOUCESTERSHIRE	-14%	NORTHAMPTONSHIRE	-19%		
GREATER MANCHESTER	-17%	NORTHUMBRIA	-11%		
GWENT	-17%	NOTTINGHAMSHIRE	-20%	TOTAL	-17.5%

Risks and Uncertainties

50. A reduction in remuneration rates may have an adverse impact on market sustainability. Together with the Law Society we commissioned KPMG LLP to independently assess the optimum number of duty contracts in each procurement region, ensuring that contracts are of sufficient size that successful providers are likely to be viable. We believe that the 525 Duty Provider Work Contracts the government has decided to offer best ensures financial viability for contract winners whilst also not providing an excessive growth challenge for those providers.

Costs

Legal aid service providers

51. We estimate the initial reduction in early 2014 of 8.75% will mean legal aid providers receive £60m less in revenue in steady state, and the later reduction in June 2015 will also reduce their revenue by £60m. In total, we estimate the steady savings from the 17.5% reduction to be £120m.

Future clients eligible for criminal legal aid services

52. We do not envisage there would be any major impact on future clients eligible for criminal legal aid services by remunerating cases at 17.5% less than current rates. A consolidation of the market may mean they have less providers to choose from, however, under the modified model, they will still be able to choose and there will be a number of providers remaining in the market offering quality legal advice.

Benefits

Legal Aid Fund

53. There will be a financial saving to the Legal Aid Fund. Based on our long-run view of criminal legal aid expenditure, it is estimated to reduce spend by approximately £120m per annum in steady state.

Wider economic benefits

54. A reduction in Government spending associated with the reduction in criminal legal aid expenditure would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Enforcement and implementation

55. Subject to the outcome of consultation, the design elements of the competition model would be implemented and enforced by the new contracts and, where necessary, changes to secondary legislation.

Cumulative overall Legal Aid Transformation Impacts

56. There are 4 policies across the September 2013 and this consultation response which may directly affect the amount of criminal legal aid spent on litigation. Two of these are remuneration changes: the competition policy outlined above (£120m in steady state) and the 30% reduction in VHCCs (approximately £10m reduction to litigators in steady state). The other two policies are to restrict the scope of criminal work, removing some categories of Prison Law cases (£4m saving in steady state) and introducing an upper eligibility threshold (£3m saving in steady state). In total we estimate a reduction of £130m from the criminal legal aid fund as a result of these proposals.⁸

⁸ Note, numbers may not sum due to rounding