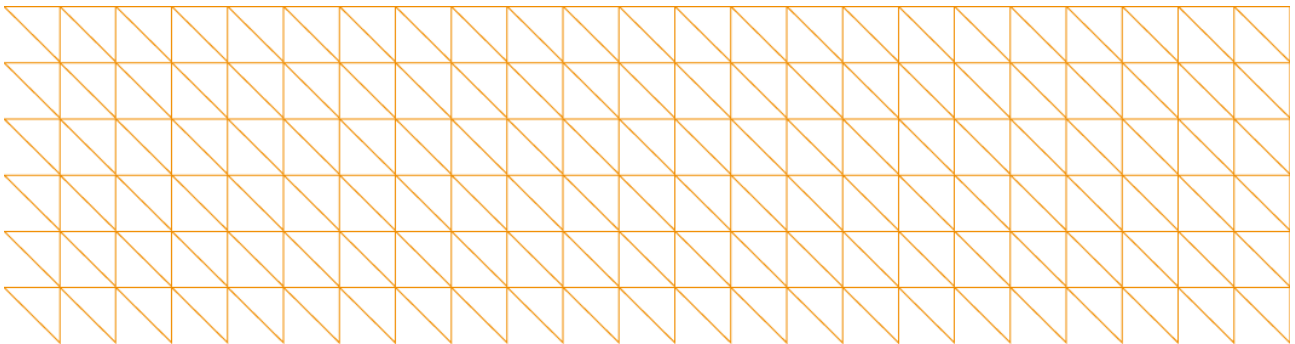




Ministry
of Justice

Transforming Legal Aid – Next Steps: Government Response

This response is published on 27 February 2014





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of Justice

Transforming Legal Aid – Next Steps: Government Response

Response to consultation carried out by the Ministry of Justice

This information is also available at <https://consult.justice.gov.uk/>

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Introduction and contact details

This document is the post-consultation report for the consultation paper, Transforming Legal Aid: – Next Steps.

It will cover:

- the background to the report
- the Governments' decisions
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the plans for implementation.

Further copies of this report and the consultation paper can be obtained by contacting **Annette Cowell** at the address below:

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This report is also available at <https://consult.justice.gov.uk/>

A Welsh language response paper will be made available online in due course at the same web address.

Alternative format versions of this publication can be requested from 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.

Ministerial foreword



Ensuring that those accused of a crime have the right to a defence is a vital part of our justice system. I am determined to uphold that principle and to protect access to justice. Legal aid guarantees a defence for those who cannot afford it, and that will always remain the case.

Equally, I believe it is right that in upholding that principle, we ensure that the interests of taxpayers are properly protected by a Government that delivers the savings necessary to reduce the deficit and that seeks a more efficient criminal justice system, including legal aid. That is what the plans in this document are intended to do, and even after the changes we are making, we will still have one of the most generous legal aid systems in the world.

As you know this Government is dealing with an unprecedented financial challenge, and I have no choice but to seek savings across the full range of the Ministry of Justice's work. By 2015/16 the department's budget will be reduced by around a third in real terms and, as one of our largest areas of expenditure, I cannot exempt legal aid. Nothing can change the financial reality, and the fee reductions we are announcing, following consultation, are therefore essential. However, I do understand how challenging they will be for some. For that reason, as we now move to implement the changes, I have done everything that I can to ease their impact, and to support the legal professions during the transition.

I am particularly keen that we improve the efficiency of the whole system, in order to reduce the amount of time wasted and the work that needs to be done by both litigators and advocates in return for the fees received. I have agreed with the Lord Chief Justice that Sir Brian Leveson, President of the Queen's Bench Division, will undertake a review of criminal proceedings to identify ways to reduce and streamline them. As part of this he will consider how to reduce to a minimum the number of pre-trial hearings that require lawyers to travel to and attend court. We are also building on recent criminal justice reforms and investment in digitisation by speeding up the roll out of Wi-Fi and new technology across the Court estate.

I am committed to ensuring that we review the sustainability of the changes we are making, both to the litigators' contracts and the advocacy scheme. The Government will review both a year after implementation of the respective new arrangements. I also want to make clear that this Government will not seek further savings from criminal legal aid.

We have had intensive discussions with The Law Society, and have taken on board many of their key requests relating to the litigators' contracts. This will enable all those providers who meet the quality standard to remain in the criminal legal aid market, and will allow the maximum number of both small and large providers to take part in bidding for duty contracts. We have also agreed a transition package of support, which amongst other things offers government guarantees to commercial funding for law firms that seek to scale up.

For both advocates and litigators, we are putting in place a system of interim payments, so that lawyers can in part be paid up front for longer trials. I hope this will cushion the impact of fee reductions by speeding up payments and improving cashflow.

And whilst my Department does need to make fee reductions across the board, we are restoring the cracked trial fees for elected either way cases which crack because the prosecution offers no evidence on all counts. This means that defence lawyers will no longer lose out financially when a case cracks for this reason, in circumstances beyond their control.

I hope it is clear that, whilst making fee reductions is unavoidable, we have listened to the professions wherever we can, taking concrete steps to ease the impact of the changes we are making and to ensure their sustainability. As we implement these reforms, my department remains open to all suggestions from the professions as to further steps we can take to make change easier to manage.

These reforms are challenging but they are necessary. They protect access to justice, and they protect the taxpayer. I believe it is the best outcome we could have achieved in these circumstances, and I am committed to working with the professions as we move forward.

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

Chris Grayling
Lord Chancellor and Secretary of State for Justice

Introduction

1. When the Government took office in 2010 it committed to a fundamental review of the legal aid scheme to make it work more efficiently. As the scale of the challenge to eliminate the deficit began to emerge, the need to bear down on the cost of legal aid was only emphasised, as it is a major area of spending for the Ministry of Justice and it simply could not escape the difficult and sometimes painful decisions to which the rest of public spending has been subject.
2. The Government began, in particular, with examining which areas of civil law should be prioritised for funding through the legal aid scheme. Our objective then, as now, was to ensure that limited public funds are targeted at the cases and people most in need of assistance, where funding is truly justified. This objective not only ensures fairness – both to recipients of legal aid and the taxpayers who fund the scheme – but helps to protect public confidence in the scheme by ensuring that those who pay for it can see that their money is being put to good use.
3. The result of this early review was the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which targeted legal aid at the most serious cases with sufficient priority to justify the use of public funds whilst simplifying and strengthening the structure of the scheme. These reforms, together with changes to fees paid to civil and criminal legal aid providers which were made in October 2011, should deliver savings of some £320m per annum in 2014–15.
4. These reforms, though significant, were not enough to keep pace with the continuing pressure on public finances and we were clear in the Legal Aid Reform consultation that the Government's long term vision for criminal legal aid was to consult on a model of competitive tendering. Further savings had to be sought from prisons, probation and the courts – as they were from across Government as a whole – and once again the legal aid scheme could not be immune. While the principal focus of the LASPO reforms was the civil legal aid scheme, our primary focus this time has been on the criminal legal aid scheme which costs around £1bn annually. Our April 2013 consultation focused 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 sustainable cost effective way through more efficient business and fee structures.
5. The challenge in reforming criminal legal aid has been to reduce the costs to the taxpayer so that we can live within our means and to a level that is sustainable in the long term, while ensuring that nobody accused of criminal conduct goes without a good quality representative at the police station or at court.
6. We do not pretend that the changes in procuring criminal legal aid are welcomed by criminal legal aid providers but in developing our proposals having listened to what they say and with the benefit of over 18,000 consultation responses in total, we have arrived at decisions that we believe are fair, workable and financially sustainable.
7. The Government has published two consultations before arriving at the decisions set out in this document – a mark of our commitment to getting those decisions right – and has listened hard to the views of the professions which make the system work.

8. Evidence of this is clear from our final proposals on procurement of criminal litigation services. We have moved a long way from our original model presented in April, making important, necessary changes suggested by respondents to both consultation exercises and through the constructive engagement by the Law Society. Yet, we have maintained our principal objective, to deliver a sustainable service through encouraging consolidation of the provider base.
9. In responding to requests made by consultees in response to the modified model set out in *Next Steps*, we have made further modifications to the remuneration mechanisms for police station, magistrates' court and Crown Court work; and made further modifications to the proposed procurement areas. Having worked extensively with the Law Society since September, we have also relaxed the restrictions on the types of the business structure acceptable for procurement to create more flexibility for those wishing to participate in the tender. Yet we have maintained some key benefits of the modified model, offering an unlimited number of Own Client Work contracts whilst ensuring a sustainable Duty Provider service by running a non-price based competitive tender for a restricted number of Duty Provider Work contracts. The number of duty contracts being offered has been informed by the independent research jointly commissioned with the Law Society.
10. On Crown Court advocacy fees we are proceeding to implement option 2, which was based on the proposal suggested to us by the Bar Council. Option 2 is a modified version of the current Crown Prosecution Service (CPS) scheme and will simplify the scheme for the benefit of both advocates and the Legal Aid Agency (LAA).
11. We are also restoring the cracked trial fees for elected either way cases which crack because the prosecution offers no evidence on all counts. This means that defence advocates will no longer lose out when a case cracks for this reason, in circumstances beyond their control.
12. Our latest estimates are that the result of these reforms, and the reforms set out in September's *Next Steps* document, will be a saving of £215m per annum by 2018/19, bringing the total cost of the legal aid scheme down to around £1.5bn. This estimate has changed from the £220m previously presented due to the remuneration increases to the either-way cases which do not proceed because the prosecution offer no evidence, and the rise of the enhanced basic fee for led juniors. It has also reduced as a result of updating the analysis of the AGFS changes to reflect the most recent case data. The revised estimates are based on payments made between October 2012 and September 2013, rather than April 2012 and March 2013 as before. Overall, by 2015/16, the Ministry of Justice budget will have reduced by around a third in real terms since 2010, and our reforms to the legal aid scheme will see that particular budget fall by broadly the same amount.

Response to consultation

13. This chapter sets out the Government's response to *Next Steps*. We estimate that the proposals set out in this consultation, once fully implemented, would deliver savings of around £130m per year by 2018/19. Along with the reforms set out in September's *Next Steps* document, this will mean a total saving of £215m per annum by 2018/2019.
14. A summary of the key issues raised by respondents during this consultation and the Government response on each question are set out in Annex B.

Procurement of Criminal Legal Aid Services

15. In Chapter 3 of *Next Steps* we sought views on a modified model of competitive tendering for criminal legal aid contracts in England and Wales. As with the original model set out in the consultation paper published in April, the modified model was designed to achieve best value for money by offering providers increased opportunities to scale up. In doing so, they would achieve economies of scale, and provide a more efficient service. This would be in the knowledge they would be in receipt of larger and more certain returns, giving them the confidence to invest in the business restructuring required.
16. Our work with the Law Society over the summer helped to produce a model which we believe addressed a number of very valid concerns raised by practitioners and representative bodies. Two of the most obvious modifications were the retention of the same level of choice for clients seeking criminal legal aid as now; and the setting of the rates of pay on offer under the contract administratively rather than through using price as an award criterion. There were of course a number of other changes which were described in detail in *Next Steps*.
17. We have continued to engage with the Law Society, specialist associations and individual practitioners throughout the consultation period and in light of those responses we have decided to make a number of further changes to create the final model design for the procurement of criminal legal aid services. We intend to implement this model through a tendering process we anticipate commencing in April 2014 with Own Client Work contracts awarded in mid 2014 and Duty Provider Work contracts awarded in early 2015 and anticipate services commencing in June 2015. We also intend to implement an initial 8.75% reduction in all fees under the current 2010 Standard Crime Contract (except for those rates applicable to Associated Civil Work) on 20 March 2014, ahead of the second 8.75% reduction with the start of the new contracts.
18. We have also been working with the Law Society since September to explore ways in which we might ease the transition for providers and make available as much support and guidance as possible.

Further modifications to the model

Number of contracts

19. Under the modified model set out in Next Steps, we proposed that we offer an unlimited number of contracts to deliver Own Client Work. Any applicant capable of satisfying the Requirements of the Tender Process¹ (including the required quality standards) would be eligible to be awarded an Own Client Work contract. However, those wishing to deliver criminal legal aid services to those clients choosing the Duty Provider would need to apply for one of a limited number of Duty Provider Work contracts in one or more procurement areas.

20. In Next Steps (paragraph 3.31) we set out a number of factors which we proposed to consider in determining the number of Duty Provider Work contracts for the final model. In summary, we have determined that any future criminal legal aid scheme must have:
 - A sufficient supply of providers to deal with potential conflicts of interest;
 - A sufficient case volume to allow fixed fee schemes to work on a ‘swings and roundabouts’ principle for providers;
 - Market agility – the extent to which existing providers in each procurement area would need to scale up in order to take on increased volumes of work; and
 - Sustainable procurement – the need to ensure the market is competitive in future tendering rounds.

21. In addition to these factors, our intention was to ensure that the contracts to deliver Duty Provider Work were 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 possible.

22. In order to inform our consideration of the factors above, our assessment of the market and in turn to assist us in determining the number of Duty Provider Work contracts to offer, we commissioned, jointly with the Law Society, two consultants (Otterburn Legal Consulting LLP and KPMG LLP). Both reports are available at: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view. We would encourage those interested in this area of work to read and consider those reports alongside this response to consultation.

23. Otterburn Legal Consulting LLP was asked to collect information from current criminal legal aid providers through both quantitative and qualitative research methods and provide anonymised datasets to KPMG LLP in order to inform the financial modelling required. The survey undertaken by Otterburn explored:
 - 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; and
 - the impact of the proposals on firms that just have an Own Client contract.

¹ The reference to “Requirements of the Tender Process” throughout this document means the requirements of the tender process as set out in the tender documents including the “Pre-Qualification Questionnaire” and “Information for Applicants” documentation (including terms and conditions of the tender process) and “Invitation to Tender” as applicable.

24. Otterburn also included in the report a number of comments from practitioners and personal observations of the criminal legal aid market.
25. KPMG LLP was asked to use the survey data from Otterburn Legal Consulting LLP and, combined with claim data from the LAA, construct a financial model to advise the Ministry of Justice on the appropriate number of Duty Provider Work contracts in each procurement area. The three questions KPMG LLP asked were:
 - Sufficient capacity: Are there sufficient providers capable of delivering the required volume of work under the new contracts?
 - Competition: For this and at least one further competition is there competitive tension in the market?
 - Viability: Do winning bidders have a business model that results in a financial performance that enables them to continue to trade in a sustainable way?
26. Both reports recognise that the current providers are chasing too little work and identify a dilemma faced by the current criminal legal aid provider base in trying to cope with reducing case volume pressures, and a demand to reduce expenditure whilst working in an environment where the market is extremely fragmented. However, they also highlight that there are opportunities for the current market to explore different ways of working, in structure and in day-to-day practice, in order to exploit economies of scale where they exist.
27. One key departure in the final modelling compared with our intention set out in Next Steps is a change to the assumption that the Duty Provider Work contracts must be large enough in value for them to be sustainable in their own right after the proposed cumulative reduction in fees by 17.5%.
28. Following discussions with the Law Society, we acknowledged that in practice providers may wish to retain some of their Own Client Work, although these decisions will vary widely between different providers. Therefore, in order to maximise the number of Duty Provider Work contracts on offer and thereby reduce the consolidation challenge, we asked KPMG to model based on providers giving up no more than 50% of their Own Client Work. We think this departure from the intention set out in Next Steps is justified, as it assumes providers will retain some of their Own Client Work and we think best represents how providers are most likely to react in the new market.
29. London presented a different challenge as the market is extensively fragmented and the growth challenge is significant. In Next Steps we proposed to split London into nine procurement areas using the Local Justice System areas. KPMG, in applying their tests, determined that under the modified model, nine procurement areas in London would have posed a significant challenge to existing providers in terms of the need to grow their business to be of sufficient scale.
30. We asked KPMG to look at breaking London into 32 smaller zones, aligning procurement areas to the current police station duty scheme areas or boroughs. This approach would still require a significant amount of consolidation of the market but it is more manageable for some providers to grow to deliver smaller contract sizes and it offers flexibility and choice for both large and small firms to remain in the market. We believe for instance that a number of firms would choose to bid across more than one procurement area or join with others to operate across more than one procurement area without having to formally merge or grow a single business.

31. KPMG therefore present two options in their report that they suggest would deliver a sustainable Duty Provider Work market:

Table 1: Options presented by KPMG on range of Duty Provider Work contracts

	Non-London	London	Total contracts
Option 1 (London 9 areas)	285–315	70–90	355–405
Option 2 (London 32 areas)		147–210	432–525

32. It is important to note that whilst we describe the model in terms of the number of Duty Provider Work contracts offered, the number of potential providers remaining in this market could be considerably more, either because providers will seek to use each other as agents or because they will make use of the more flexible contracting arrangements described at paragraphs 60 to 72 below enabling them to form partnering agreements. Alternatively, the total number of providers might be less as single firms might grow and bid across more than one procurement area. It all depends on how providers re-structure their businesses to meet the size of Duty Provider Contracts on offer. This approach gives providers of all sizes the opportunity to explore different business structures that are suitable for them and continue to deliver both Own Client and Duty Provider services.
33. The independent research provided an important evidence base for determining an appropriate range of Duty Provider Work contracts to offer in each procurement area. The modelling itself took account of some of the other factors set out in paragraph 20 above in coming to its recommendations. However it made a number of suggestions (at page 12 of KPMG’s report) on further issues MoJ should consider in order to inform our final decision.
34. Therefore, in consideration of the reports from Otterburn and KPMG (including the areas where the report suggested further work should be undertaken) we conducted our own further internal analysis of the four factors listed in Next Steps as 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 Criminal Justice System (CJS) area to provide advice and assistance and representation to clients where there may be a conflict with another defendant. We have determined that a minimum of four contractors in each area would address this factor. We stand by our analysis set out in Next Steps that less than 1% of police station cases and less than 0.1% of Crown Court cases involve more than four defendants. 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 for each procurement area will therefore allow for at least four, and in the majority of cases more than 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. A series of fee schemes that are largely based on fixed fees mean that providers might make a profit on the fixed fee in some cases because relatively little work was required on the case. However, in other cases which require more work, they could make a loss. In order to manage the level of risk of financial loss faced by providers under the final fixed fee scheme, contracts to deliver Duty Provider Work need to offer sufficient volume of duty slots in order for providers to have a varied case mix. 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 confident² 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. 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%³. 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.

(iii) Market agility

The independent research from Otterburn and KPMG address 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. For example, the KPMG report states those challenges in percentage terms against the value of the work in the remainder of the market. In order to assess the extent to which these figures are realistic we have therefore explored what this means in terms of how many extra fee earners a firm would need to employ. Table 2 below draws on the following assumptions made by KPMG in their report:

- 1) The number of bidders required to maintain competitive tension in the market;
- 2) An existing growth capacity within firms' existing structures of on average 15%; and
- 3) Firms will be willing to forego up to half of their Own Client Work in order to meet a duty contract.

Ensuring consistency with the KPMG analysis, we have estimated the average growth requirement of all contract bidders - in terms of fee earners - across England and Wales and within Rural, Urban or London procurement regions⁴. In effect, this takes the largest firms in an area and assesses how many extra staff they would need

² At the 95% level.

³ 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.

⁴ The classification of procurement regions into London, Urban and Rural is consistent with the published KPMG report

in that area to service the duty contracts and half of their current Own Client Work in that area. We used data from the Otterburn research to estimate that an average fee earner generates £83k in revenue.⁵

Table 2: Mean fee earner growth requirements of bidding firms

	Mean	Min	Max
England and Wales	1.0	0.0	5.1
All Urban areas	1.2	0.0	5.1
All Rural areas	0.5	0.0	5.1
All London areas	1.4	0.0	4.9

This indicates that on average across all bidders in England and Wales, firms will need to grow by on average one staff member to meet their 'in area' duty contract work. If firms bid in more than one area then their growth requirement may increase.

Based on the Otterburn and KPMG reports and our consideration of the consultation responses, 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 contractor and delivery partners, there is scope for those delivery partners 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.

Public Defender Service (PDS)

35. 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 and in the development of quality standards for criminal defence work.
36. In the April consultation paper we set out the areas in which the PDS currently operate and proposed that under the model they would be allocated an equal share of work in that area. In Next Steps, we stated our intention to give the PDS an equal share of duty work in all of the areas they are already established. The PDS also operates in Northallerton, a neighbouring duty scheme to Durham (in the North Yorkshire 1 procurement area). We will therefore retain this provision under the final model and allocate an equal share of work to the PDS in North Yorkshire 1, Gloucestershire, Durham and South Wales.

⁵ Based on table 5.4 of the Otterburn report, where total crime fee incomes of £137m is split by 157 firms is £874k of fees per firm. In table 4.4 it is suggested the average number of fee earners in a firm is 21, with around half of those fees being received in crime. Therefore, we have assumed an average of 10.5 crime fee earners per firm, meaning we estimate the average crime fee earner to be receiving £83k

Conclusion

37. Having weighed up all of the analysis, the independent research, the consultation responses and key risks, we have decided to proceed with the implementation of a model of procurement whereby the maximum number of Duty Provider Work contracts, as suggested by KPMG, is offered. This maximises opportunities for the current provider market to continue to deliver criminal legal aid services and provide greater opportunity for more flexible business structures. Within this model London will also be divided into 32 procurement areas. Therefore, we have decided to offer 525 Duty Provider Work contracts in total and an unlimited number of Own Client Work contracts.
38. Table C2 in Annex C sets out the number of Duty Provider Work contracts to be offered in each procurement area. Please note that we have decided, having considered the responses to consultation, to modify a number of the procurement areas. See paragraphs 54 to 56 below for more information.

Remuneration

39. We maintain the view that the current remuneration mechanism is unnecessarily complex and that the introduction of fixed fees would simplify administrative processes and help cut costs for both providers and the LAA.
40. However, in light of some helpful responses in this area, particularly from the Law Society, we have amended the remuneration mechanism further.
41. For the avoidance of doubt, the following paragraphs apply to both Own Client and Duty Provider Work.

Police station attendance

42. Currently we pay providers a different rate for work in the police station depending on which area of the country they deliver that work. This means there are currently 245 different rates for police station work. The proposal in Next Steps was to create one national fixed fee by calculating the average fee across all areas and reducing that by 17.5%. In practice this would mean that areas such as London that are currently remunerated at a higher rate would experience a reduction far greater than 17.5% compared to their current rate.
43. Having considered the responses to consultation raising this particular concern about the disproportionate impact on London, we have modified the remuneration mechanism for police station attendance work to distinguish between those cases originating in London and those originating outside of London. In light of the concerns of respondents that the same fee would be paid no matter how long the provider's attendance, we have also amended the mechanism to retain the hourly rate scheme for cases where the Escape Fee Case Threshold has been reached.
44. Therefore, we intend to implement the remuneration mechanism for police station attendance work as follows:
 - Create a fixed fee for cases originating from a London police station scheme;
 - Create a fixed fee for cases originating in schemes outside of London; and

- Retain the current hourly rate scheme for those cases where the Escape Fee Case Threshold (equal to three times the fixed fee for that area) has been reached, albeit with the hourly rate reduced by 17.5% below current rates.

45. Table C3 in Annex C sets out the fixed fees and Escape Fee Case Thresholds for police station attendance work.

Magistrates' court representation

46. Currently we pay providers a different rate for work in the magistrates' court (non-duty) based on three factors:
- whether the provider (or in some circumstances the court) is located in a designated or undesignated area;
 - the case type (guilty plea summary offence, guilty plea either way offence etc); and
 - the length of time spent in preparation for the case and representing the client in court.
47. As proposed in *Next Steps*, we intend to simplify the fee scheme for magistrates' court representation. However, having considered responses to the consultation raising concerns about the proposal to harmonise fees for guilty and cracked trials and the modifications suggested by the Law Society, we have decided to still remove the distinction between designated and undesignated areas and the Lower and Higher Standard Fees, but to retain the distinction between case types. As proposed, we also intend to retain the current magistrates' court duty hourly rate scheme and the non-standard fee escape mechanism, with hourly rates for such work reduced by 17.5% below current rates.
48. Table C4 in Annex C sets out the fixed fees and Non Standard Fee Thresholds for magistrates' court representation work.

Crown Court litigation

49. Currently we pay providers for their work on Crown Court cases under the Litigators Graduated Fee Scheme whereby the fee paid is calculated by applying a number of elements (pages of prosecution evidence (PPE), trial length, class of offence etc).
50. Under the modified model, we proposed to introduce a series of fixed fees for Crown Court litigation (cases with less than 500 PPE) based on offence type and bands of PPE. Some respondents, including the Law Society, suggested that this would mean that representatives may not receive adequate remuneration for those cases which ordinarily take longer to prepare and which require extensive litigation services.
51. We have therefore amended the remuneration mechanism for Crown Court litigation (cases with less than 500 PPE) to introduce 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.
52. Table C5 in Annex C sets out the fixed fees for Crown Court litigation work on cases with less than 500 PPE.
53. As proposed, we also intend to retain the current Litigators Graduated Fee Scheme for those cases with 500 PPE or greater, with rates set administratively at 17.5% below current rates.

Geographical areas for the procurement and delivery of services

54. The Government maintains the view that providers wishing to deliver Own Client Work should be able to do so anywhere in England and Wales provided they meet the necessary criteria.
55. However, for Duty Provider Work, applicants would need to apply for a Duty Provider Work contract to deliver services in a particular procurement area. We proposed that these be set primarily by CJS areas but in some areas we would subdivide into smaller procurement areas. This created 62 distinct procurement areas. In light of responses to consultation and the financial modelling work by KPMG (described at paragraphs 22 to 33 above), we have decided to make some further changes to the procurement areas as follows:

Table 3: Amendments to procurement areas

Procurement area	Police Station Duty Schemes	
	Next Steps proposal	Final Decision
Dyfed-Powys 1	Amman Valley, Llanelli, Pembrokeshire	Amman Valley, Llanelli, Carmarthen
Dyfed-Powys 2	Carmarthen, Brecon, Mid Wales, North Ceredigion	Pembrokeshire, Brecon, Mid Wales, North Ceredigion
Norfolk 1	Cromer, Great Yarmouth, Norwich, Thetford, Dereham	Cromer, Great Yarmouth, Norwich, Lowestoft, Dereham
Northumbria 1	S. E. Northumbria, Newcastle-Upon-Tyne, Gateshead, N.Tyneside, S.Tyneside, Sunderland, Tyndale	Gateshead, S.Tyneside, Sunderland
Northumbria 2	Berwick and Alnwick	Berwick and Alnwick, S. E. Northumberland, Newcastle-Upon-Tyne, N.Tyneside, Tyndale
Suffolk 1	Felixstowe / Ipswich & District / Woodbridge, Lowestoft	Bury St Edmunds (including Sudbury and Thetford)
Suffolk 2	Sudbury	Felixstowe / Ipswich & District / Woodbridge
Sussex 1	Brighton, Hastings, Worthing, Eastbourne	Brighton, Hastings, Eastbourne
Sussex 2	Chichester, Crawley	Chichester, Crawley, Worthing

56. As described at paragraphs 29 to 32 above, we have also decided to proceed with a model based on 32 procurement areas in London, aligned to the current police station duty scheme areas or boroughs. This brings the total number of procurement areas to 97 (65 outside London and 32 for London).

More flexible business structures

57. A number of respondents to the consultation, both in April and September, argued that any model of procurement should offer the best chance of success for providers by being as flexible as possible when it comes to defining what is an acceptable business structure to bid for a Duty Provider Work contract.
58. During the consultation period we have been in discussion with the Law Society to explore the most flexible approach for applicants in terms of the types of business structure the LAA would accept as contracting entities. We have now reached a shared view with the Law Society that a model which sits between very loose consortia arrangements and a strict merger/joint venture approach would be achievable. Therefore, in addition to allowing applicants to bid as 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 areas⁶) would also be permissible, provided the lead contractor can demonstrate it meets the Requirements of the Tender Process and have a formal agreement between them that covers certain key aspects of service delivery. In addition contractors will be able to instruct agents to deliver up to 25% of the contract value under both Own Client Work and Duty Provider Work contracts. The LAA will set out the key contractual requirements at the start of the procurement process for Own Client Work contracts which we anticipate will commence in April 2014.
59. Such an approach means we will offer the entire current provider base the opportunity to not only bid for an Own Client Work contract, but also to bid as part of a partnering arrangement for a Duty Provider Work contract should they be successful in their bid for an Own Client Work contract (albeit, if successful, they may not themselves hold the contract with the LAA). This way forward provides an incentive and an opportunity for providers to grow their business to achieve greater efficiencies, while at the same time offering providers the flexibility to enter into partnerships and contracting relationships to help them remain in the market. Such providers would still need to explore how they might make efficiency savings in order to cope with the reduced rates of pay. We anticipate that this flexibility would give providers the opportunity to join with others in order to secure a contract and that they would, over time, but most likely immediately after contract award, look to find ways to make efficiency savings. For example, they might explore consolidation of their back office functions, deploying duty solicitors more efficiently across areas, aggregating procurement activity between providers etc.

Transitional support package

60. 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 specialist support to help firms invest in their infrastructure.
61. This is an argument made very robustly by the Law Society and we are pleased to announce that through our joint working, we and the Law Society have a package of support measures to help businesses cope with the challenges ahead.

⁶ Those areas labelled as 'urban' in Table C2 of Annex C

62. Between now and the start of the tender process (anticipated to start in April 2014), we will make available an information pack for those interested in applying for a new contract. The pack will include details of volume and value data from the LAA of the work in each procurement area and the details of any police station and court estate changes that are envisaged during the life of the contracts that we are aware of at the point of publishing. Also, to help firms identify others in their area to perhaps explore a delivery partnership or joint venture, the packs will also include details of all providers currently in each area and the amount of legal aid expenditure for each provider.
63. We also intend to establish a business partnering support network, operated by a team of business support experts in the LAA to offer information and guidance to practitioners seeking help with regard to restructuring their business, how to go about seeking financial support etc. The network will be established by the start of the tender process and will continue to operate well beyond the start of the new contracts. We believe this is important to provide ongoing support to businesses during the first two years of the new market structure.
64. Whilst the team cannot provide financial advice, it will be able to point firms to where to find the necessary information regarding funding. We have also opened up specific legal aid market discussions with the British Business Bank (BBB), an Arms Length Body reporting to the Department for Business, Innovation and Skills. The BBB is an economic development bank which looks to focus on a number of commercial solutions where there are known market weaknesses or issues in accessing investment and funding.⁷ The BBB focuses on the SME market. We are developing guidance specifically for the legal aid market in conjunction with the BBB on which Government-backed financial products are available to the legal aid market, and will tailor information to specific known working capital and investment funding issues in the sector.
65. One such financial product backed by the BBB is the Enterprise Finance Guarantee (EFG). The EFG is a loan guarantee scheme to facilitate lending to viable businesses that have been turned down for a normal commercial loan due to a lack of security or a proven track record. In instances such as this, EFG may be an option, but will only be considered when the lender is satisfied your business can afford the loan repayments.
66. The delivery of EFG, including all lending decisions is fully delegated to participating commercial lenders. They will decide whether EFG is appropriate and confirm whether your business is eligible. EFG is open to viable businesses that:
 - operate in the UK
 - have a turnover of less than £41 million
 - are seeking finance between £1,000 and £1 million
 - want repayment terms from 3 months to 10 years (less for overdraft and invoice finance facilities)

⁷ The BBB does not directly assess the financial health of any organisations and it purely works with commercial lenders who participate in the schemes available. Practitioners need to prepare as they would for any commercial investment decision.

67. While the Government provides a guarantee to the lender, the BBB has no role in the decision making process. For further information on EFG please visit: <https://www.gov.uk/understanding-the-enterprise-finance-guarantee>
68. We have also heard strong views from practitioners, most recently at the roundtable event held by the Law Society, that whilst they recognise the need to work digitally and the benefits of doing so, they simply do not have the access to funding they would need to invest in the digital infrastructure required. We are actively exploring ways of addressing issues faced by legal aid practitioners in funding digital investment.
69. We of course also have to do our part and make the systems, processes and buildings in the CJS estate more accessible with regard to digital working. We are committed to providing access to Wi-Fi and power sockets in all courts as part of investment in the infrastructure of the court estate. The CJS Efficiency Programme is making significant steps to get us in the right place.
70. This package of support measures will go some way to help providers cope with the challenges ahead. We do not underestimate the changes this market has to undergo to ensure it's sustainability. We believe the final model of procurement will deliver that opportunity for those interested in continuing to deliver criminal legal aid services and for those new entrants that wish to join.
71. Following good practice, we intend to keep the condition of the market under continual review and the LAA contract management teams will monitor the effect of the changes as part of their usual auditing procedures and regular meetings and discussions with providers.
72. In addition however, we will conduct a review, starting no earlier than summer 2016, to evaluate the delivery of litigation services, including the effect of the fixed fee mechanisms as an appropriate measure of ongoing remuneration of the work.

Phased fee reduction

73. Throughout both consultation exercises we have made clear in published documents and at various public forums (Justice Select Committee, consultation roadshows, Law Society roundtable events etc) that there is a continuing need 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. We have also been clear that the Department faces a significant financial challenge in reducing its expenditure, as are all Government departments.
74. In the modified model set out in Next Steps, we proposed to mitigate the impact of the fee reductions by introducing a phased fee reduction. The change in fees will begin on 20 March 2014, followed by a further 8.75% reduction (relative to current fee levels and against the proposed remuneration arrangements discussed at paragraphs 39 to 53 above) upon commencement of the new contracts in spring 2015.
75. This enables us to begin realising necessary savings to meet the financial imperative to reduce expenditure while the delay to the implementation of the new contracts by extending the procurement process gives likely applicants more time to prepare for the impact of the full fee cut. We stand by the view that phasing in the 17.5%

reduction in fees by applying two successive reductions of 8.75% will encourage current providers to explore opportunities early for the level of market consolidation necessary to ensure sustainable services in the longer term whilst ensuring that the criminal legal aid system provides effective representation.

76. It is important to note that the fee reduction will only apply to new cases starting on or after 20 March 2014 and will take a period of time to take effect and to have any significant impact on claiming levels for providers. This is because the proposed new fee scheme will only apply to new cases, which means moving from one fee scheme to another will be a gradual process. We believe this gives those providers who have not already taken steps sufficient opportunity to make the necessary efficiency improvements to be able to cope with the fee reduction. Our analysis suggests that after five months of the introduction of the interim fee cut, on average, around half of the legal aid fee revenue paid will still be on the existing higher remunerated scheme.

Advocates Graduated Fees

77. In September, we set out two alternative models for reforming the Advocates Graduated Fees Scheme (AGFS) in order to bear down on the costs of legal aid and ensure best value for the taxpayer. Both achieve further simplification of the fee structure while taking account of the amount of preparation generally needed in different types of case.
78. Option 1 was based on our original proposal for advocacy fees set out in April 2013 but with some adjustments to structure, rates and the operation of the taper. The revised option proposed the harmonisation of the basic fees for guilty pleas and cracked trials, and to leave the basic fees for trials unchanged from their current level. Under this option there would still be a reduction in Daily Attendance Fees (DAFs) and a taper in DAF rates from day three of the trial. However, the revised taper was less steep than the original proposition and also ensured that DAFs would not drop below the current minimum daily rates.
79. Option 2 was adapted from the fee structure operated by the CPS as suggested by the Bar Council but with a reduction in the rates that they proposed to make the same level of overall savings as option 1. The model provided for a 'standard' basic fee and an 'enhanced' basic fee for trials. For each offence type, the level of fees would be varied by the type of advocate instructed.
80. Like the CPS scheme a standard basic fee would be payable for all cases where the page count is equal to or falls below a particular threshold (as set out in Annex E), and would be the same regardless of the precise page count. The Bar Council modelled the scheme so that the standard basic fee would apply in the majority of cases in any particular offence type. The enhanced basic fee would be payable for all 'evidence heavy' cases where the page count exceeds the threshold, and again would be the same for all such cases regardless of the precise page count. The enhanced basic fee would capture the most complicated cases in any particular offence type in terms of PPE. This approach would reduce the need to precisely count the number of pages of prosecution evidence in most cases because the page count is only used to determine whether the threshold between the standard and enhanced basic fee has been exceeded. Fixed fees for special preparation would continue to be available for cases with over 10,000 pages of evidence.

81. Cracked trials would be paid at 80% of the trial rate and guilty pleas at 45% of the trial rate. In addition, this option simplifies the rates in cases where a QC or multiple counsel are instructed. In these cases, the respective standard and enhanced basic fees and DAFs for day 41 onwards for QCs, leading juniors and led juniors are harmonised across all offence groups.
82. Having carefully considered all the responses to consultation (our analysis of which is set out in Annex B) and in light of the continuing need to reduce public spending, we intend to implement option 2. In order to ensure the legal aid fund delivers the best value for the taxpayer and that services are delivered as efficiently as possible, we intend to adopt the revised structure and rates as set out in Annex E. In our view a rate reduction is sustainable for advocates given the oversupply in the market (set out in Annex B). If the market reduced in size and advocates were more fully occupied then they would receive a reasonable level of fee income. However, as part of our ongoing monitoring of the impact of reforms and the sustainability of the scheme generally we are making a binding commitment to review the new framework one year after implementation. This review will also take place in the context of a number of anticipated potential influences on the provision of criminal advocacy services such as:
- the Lord Chief Justice has initiated a review to identify ways to reduce to the minimum the number of pre-trial hearings that necessitate advocates attending court and to identify ways to reduce and streamline the length of criminal proceedings;
 - criminal justice reforms, such as digitisation, which will increase efficiency and affect how advocates work;
 - Sir Bill Jeffrey is undertaking an independent review of criminal advocacy. Government and the professions will need to consider his report and any recommendations in due course.
 - any impacts on legal aid spend from falling crime rates;
 - our future work with the Bar Council to support barristers and reduce overhead costs by sharing good practice.
83. There were few objections to the principle of the model, which was devised by the Bar Council, which simplifies and reduces the administrative burden of the current AGFS for the benefit of both advocates and the LAA. However, we will modify the enhanced basic fees payable to led juniors to correct an unintended error in the model as proposed in the consultation document (as set out in the table in Annex I of the September 2013 consultation document). The correction produces enhanced basic fees for led juniors which will be higher than the level proposed, as they will be paid at 50% of the equivalent QC rate (rather than at 50% of the leading junior rate as was proposed). The corrected revised rates are set out in Annex E. We also intend (as set out in Annex E) to vary one aspect of the model to exclude witness numbers from the formula for calculating the fee for cracked trials and guilty pleas, in line with how the defence scheme currently operates in order not to create a new burden on advocates who would be required to provide evidence of the number of witnesses.
84. It is intended that the revised framework and rates will be implemented, subject to Parliamentary approval, by way of secondary legislation in the summer.

85. In June 2013 the Government published “Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System”. It set out a comprehensive programme of work to drive system wide improvement in the delivery of criminal justice. In addition, we are continuing to work with representative bodies from the legal professions; a virtual defence advisory group comprising 18 members from the defence community was set up in summer 2013 to engage on the policy commitments within the Strategy and Action Plan, as well as in particular providing advice on making the system more efficient for advocates and making best use of their time. Achieving change from these ideas would support hard working defence practitioners and bring benefits to all those working and participating in the criminal justice system.
86. In addition, the Lord Chief Justice has asked ask Sir Brian Leveson, President of the Queen's Bench Division to conduct a review to identify ways to reduce to the minimum the number of pre-trial hearings that necessitate defendants in custody and advocates attending court; and to identify ways to reduce and streamline the length of criminal proceedings. He has indicated that this will, in particular, examine the extent to which better use could be made of technological solutions, for example holding short hearings by telephone or internet based video solutions; and will also make recommendations for changes to the Criminal Procedure Rules to maximise efficiency and support the implementation of any changes proposed.

Other Issues

87. There were a number of other issues raised by consultees that we have considered and, as a result, propose to make the following changes to support practitioners.
88. Consultees highlighted the perceived particular unfairness of the fixed fee, introduced in 2011, for elected either way cases that crack due to the prosecution offering no evidence at a late stage. For the reasons set out in Annex B, we plan to reintroduce graduated cracked trial fees for both litigators and advocates for those elected either way cases that currently attract a fixed fee in the Crown Court where the judge directs acquittal following the prosecution offering no evidence on all counts against an individual.
89. As set out in Transforming Legal Aid: Next Steps, in response to calls from the profession we have worked with the professions to devise an enhanced system of interim payments for long running cases, i.e. trials of 10 days or more, to help with the cashflow of legal firms and self-employed advocates and to cushion the impact of the fee reductions. Litigators will also be able to claim an interim payment after an effective⁸ Plea and Case Management Hearing (PCMH), ahead of a trial of any length, reflecting the fact that litigators work generally begins earlier than an advocate’s in the life of a criminal case that is expected to go to trial.
90. We intend to introduce interim payments (in addition to the current provisions for staged payments for Crown Court advocacy, hardship payments and interim payments for disbursements currently allowed under the relevant regulations⁹):

⁸ Where a not guilty plea is entered.

⁹ Criminal Legal Aid (Remuneration) Regulations 2013 (No 435).

- for litigators, which allows a payment to be claimed and made at either or both of two trigger points during the life of a case. The first is the point at which there has been an effective PCMH and the second being after the start of a trial where the trial is listed for 10 days or more; and
 - for advocates, which allows a payment to be claimed and made after the start of the trial in any case that is listed for 10 days or more.
91. For these purposes the interim payment would be the lowest graduated fee payment that might be payable at the end of a case. For example for cases with more than 500 pages of prosecution evidence the fee payable to litigators after an effective PCMH would therefore be the cracked trial graduated fee. The fee payable after a trial has commenced (which is listed for 10 days or more) would be the minimum basic fee for a trial of that type (less any payment made after PCMH). This means that it will not be possible for the interim payment to be greater than the final payment due at the end of a case. The final payment will therefore be for any additional sum due. As suggested by the Law Society, we will also introduce provision for interim payment for litigators for disbursements for litigators where the value of the disbursement is £500 or more in magistrates' courts cases. This will be done through the 2015 contract.
92. There were some further suggestions made by the professions to improve cashflow for advocates beyond interim payments. We are not implementing these at present, but will continue to work with the professions to explore such possibilities further.
93. Full details of the new interim payment provisions are set out in Annex F.
94. It is intended that the revised framework and rates and Crown Court interim payment provisions allowing advocates and litigators to make a claim for an interim payment at the start of the trial (where trials are listed for 10 days or more) will be implemented, subject to Parliamentary approval, by way of secondary legislation later this year. The second interim payment for litigators, allowing litigators to make a claim for payment following an effective PCMH will be implemented by way of secondary legislation in summer 2015.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

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.
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 at the police station or magistrates court).

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.
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.
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 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.
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.
Queen's Bench Division	One of three divisions of the High Court dealing mainly with claims for damages (see http://www.justice.gov.uk/courts/rcj-rolls-building/queens-bench)

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: 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)	<p>A civil or family case where the costs are likely to exceed £25,000. The Legal Aid Agency manages these under individual case contracts.</p>

Procurement of criminal defence services model terms:

Agent	This refers to the persons or organisations who deliver the service on behalf of the provider.
Associated Civil Work	Legal advice and representation for matters concerning public law challenges arising from any in scope criminal matter.
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
Duty scheme areas	Boundary areas attached to police stations or magistrates' courts where solicitors deliver criminal legal aid services
Joint venture	This refers to groups or individuals forming new legal entities to achieve their optimum size to enable them to tender.
Local justice area	These determine which magistrates court hears a particular case, with certain exceptions (e.g. extradition).
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
ABS	Alternative Business Structures
BAME	Black, Asian Minority Ethnic
BBB	British Business Bank
BSB	Bar Standards Board
CBA	Criminal Bar Association
CDS	Criminal Defence Service
CFA	Conditional Fee Agreement/Conditional Fee Arrangement
CJS	Criminal Justice System
CLSA	Criminal Law Solicitors' Association
CPS	Crown Prosecution Service
DAF	Daily Attendance Fee
DSCC	Defence Solicitor Call Centre
ECHR	European Convention on Human Rights
ECF	Enterprise Finance Guarantee
HCA	Higher Courts Advocates (includes solicitor advocates)
HMCTS	Her Majesty's Courts and Tribunals Service
ITT	Invitation to Tender
LAA	Legal Aid Agency
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LCCSA	London Criminal Courts Solicitors Association
LGFS	Litigators' Graduated Fees Scheme
LSC	Legal Services Commission
LSRC	Legal Services Research Centre
LSRC	Legal Services Research Centre
MoJ	Ministry of Justice
PCMH	Plea and Case Management Hearing
PDS	Public Defender Service

PPE	Pages of Prosecution Evidence
PQQ	Pre Qualification Questionnaire
QC	Queen’s Counsel
SME	Small or Medium Sized Enterprise
SRA	Solicitors Regulation Authority
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
VAT	Value Added Tax
VHCC	Very High Cost Cases (could be criminal, civil or family cases)

Annex B – Summary of responses

Introduction

1. This Annex sets out the analysis of responses to *Transforming legal aid: Next Steps*.
2. We estimate that the proposals set out in this consultation, once fully implemented, will deliver savings of around £130m per year by 2018/19.

General comments on the modified procurement model

3. In *Next Steps* we proposed a new model modified from the original proposal set out in the April consultation), for the procurement of criminal legal aid services. The consultation asked:

**Question 1: Do you agree with the modified model described in Chapter 3?
Please give reasons.**

Key issues raised

4. A majority of respondents welcomed the modified model as an improvement on the previous model. In particular, they welcomed the removal of price as an award criterion and the retention of client choice. However, respondents continued to have a number of concerns about various aspects of the model and some suggested how to make improvements.

Fee reductions

5. Most respondents, especially representative bodies such as the Law Society, strongly expressed their continued opposition to the reduction in fees both in terms of the phased fee reduction and the proposed reduction alongside the introduction of the new contracts. They highlighted the potential impact on firms, including the high risk of closure.
6. Some respondents felt that the effects of previous cuts that have been made to the legal sector had not been properly acknowledged, and that the Secretary of State should have more strongly objected to budget decreases from the Treasury on the grounds that legal aid had already taken its fair share.
7. Many respondents highlighted the fragility of the current market as a result of these previous cuts, as well as below-inflation increases and falling crime rates. Respondents warned that this fragility may cause the supplier base to contract quite rapidly and unpredictably if the proposals go ahead.
8. Many respondents argued that the Government should instead wait to evaluate savings from previous cuts, as well as from the fall in crime volumes, before making further changes to the market.
9. The Law Society also argued that a fee reduction for prison law and appeals and reviews would have a significant impact on the viability of such work, given its already

relatively low legal aid rates and its complexity. They asked that cuts to this area be reconsidered, given the dwindling number of firms willing to take on such work.

10. The Legal Aid Practitioners Group (LAPG) also argued that the cumulative effect of cuts would mean the loss of many good quality and specialist providers. The Bar Council argued that, even with mergers, many firms would not survive the fee reductions.

Government response

11. The Government recognises the continued concern regarding both the phased fee reductions and the reduction alongside the introduction of the new contracts.
12. However, the case remains that in the current economic climate, when almost every other area of Government spending is being further reduced, legal aid cannot be immune. The Government has a duty to ensure the legal aid services we procure are achieving value for money for the taxpayer.

Need for consolidation/economies of scale

13. Some respondents were specifically concerned that the reduced fees they would receive for Duty Provider Work meant that there was not a big enough incentive to scale up or merge in order to bid for a contract.
14. There was concern from some respondents that the market may see further fragmentation, suggesting that sole practitioners or providers with only two partners had the lowest overheads and therefore the best chance of sustaining the cuts.
15. Other respondents, such as the LAPG, questioned whether consolidation of the criminal legal aid market was needed at all.

Government response

16. The Government continues to believe that consolidation is needed to ensure a sustainable legal aid services market, and that this consolidation will not take place without Government intervention.

Impact on quality

17. The Bar Council, the Law Society, and the London Criminal Courts Solicitors Association (LCCSA) were amongst those who argued that, even with economies of scale, the proposed fee reductions cannot be absorbed by firms without diminishing the quality of service. Respondents argued that firms will have to save money by hiring fewer and less qualified staff, and that there will be less time, care and attention spent on each case.
18. The Criminal Law Solicitors Association (CLSA) also suggested that firms may be tempted to avoid the serious and complex cases and deal with the quick and simple ones instead, resulting in a two tier quality system. The Chartered Institute of Legal Executives (CILEx), the Bar Council, and some individual respondents held similar views believing the proposals would lead to unintended costs, especially market instability or the impact of reduced quality of services on the courts, which would offset any savings.

19. The Criminal Bar Association (CBA) argued that the proposals will create a race to the bottom in terms of quality because profit-seeking firms will not outsource to the Bar, but keep lucrative work, even if it is done by poor quality staff. Respondents suggested that as a result there would be an increasing gulf in equality of arms between the individual and the State. The CBA argued that if the Government proceeds with the proposals, they should first run a pilot in order to test the effect of the proposals on the level of quality before making any decision to roll-out across the country.
20. Respondents believed that the competition of Duty Provider Work contracts would favour larger firms whilst destroying high street firms. Many of these respondents believed that if this happened, this would negatively affect the quality of services (a view voiced by the Bar Council and the CBA).

Government response

21. The Government remains committed to ensuring firms are delivering quality legal aid services to their clients. We do not believe that these changes would diminish the level of quality our legal aid providers currently offer. In addition, all contractors will be the subject of independent peer reviews and are required to employ suitable qualified supervisors. Providers must receive a peer review rating of 3 or above to maintain their contracts. As is the position under current contracts; providers will not be required to reimburse the standard costs that are charged to the LAA by those conducting the peer review if the peer review rating is 3 or above.

Impact on the Bar

22. Individual respondents expressed concerns that larger firms are less likely to outsource to the junior Bar, and the potential impact this could have on the future of the Bar. The Bar Council also had concerns that larger firms would exert increased economic pressure on the self-employed Bar by retaining tied (rather than employed) advocates, by paying barristers reduced fees for lower crime, by ensuring that a portion of Crown Court advocacy fees is retained, or by demanding referral fees.

Government response

23. Regarding the impact of these proposals on the Bar, we do not accept that the model would necessarily mean that providers would retain advocacy work. In 2012/13, approximately 70% of Crown Court work was undertaken by barristers.¹⁰ We believe that providers would continue to instruct the self-employed Bar where it is appropriate to do so.

Scope of the new contract(s)

24. Regarding the proposed scope of the contract, most respondents disagreed with the proposal to offer separate Own Client Work contracts and Duty Provider Work contracts. This was mainly due to the belief that neither should be limited in number, amid fears that those firms with an Own Client Work contract but not a Duty Provider Work contract would not be able to survive. The LCCSA also expressed concern that

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/238115/legal-aid-statistics-090913.pdf

the model would deepen the mistrust between own client firms and duty firms, the latter of which they believe will be seen as ‘factories’.

25. Respondents, including CILEX, stated their support for the decision to allow providers to conduct only prison law and/or appeals and reviews services.

Government response

26. We believe that tendering separate Own Client Work and Duty Provider Work contracts allows us to strike the right balance between helping the market to explore opportunities to consolidate, and the retention of client choice.

Contract length

27. Most respondents welcomed the contract length as an improvement from the original proposal. However, some respondents expressed that they would prefer it to be longer, in order to mitigate financial risk and give firms time to raise funds and invest. The Bar Council recommended a five year contract length (which was also suggested by some individual respondents), but notes that there is a tension between this and allowing new entrants into the market.
28. The LCCSA, the CLSA, and a number of individual respondents suggested that contracts (especially Own Client Work contracts) should not be retendered every three/four years, but instead should be let on a rolling basis and subject to recurring compliance requirements. They believe that the continual need to re-contract is an unnecessary cost for firms and the Legal Aid Agency (LAA).

Government response

29. We welcome respondents’ positive feedback on the modified contract length, and understand some respondents’ preference for a longer contract duration. However, after the responses we have received to this consultation, the Government is satisfied that four years is long enough to give providers the financial certainty needed to invest in their business, whilst not binding providers and locking out new entrants for too long a period.

Types of provider

30. Regarding types of provider, respondents generally requested that, as far as possible, flexible solutions to consolidation are allowed. The Law Society in particular highlighted that the need for maximum flexibility with respect to the types of business arrangements permitted is crucial.
31. Some respondents were concerned about whether the contracts may have certain requirements, such as retaining a high percentage of work in-house as opposed to using agents, which might hinder flexible solutions to managing the fee reductions.
32. Many respondents expressed support for the idea of allowing consortia.

Government response

33. The Government understands respondents’ request that we are as flexible as possible with the types of provider we allow, so that firms are able to utilise innovative

solutions to this consolidation. We have been investigating what options would be possible. 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 meet the Requirements of the Tender Process and have a formal agreement between them that covers certain key aspects of service delivery. In addition contractors will be able to instruct agents to deliver up to 25% of the contract value under both Own Client Work and Duty Provider Work contracts.

Contract value

34. In terms of contract value, some respondents, for example the CLSA, were concerned that those providers who are awarded a Duty Provider Work contract may not receive a sufficient volume of work.
35. Some respondents were concerned that allocating an equal share of the work would mean large firms would have to downsize, and preferred an allocation of slots based on the firm's historical volume.
36. Some respondents welcomed the removal of the link between number of duty solicitors and number of duty slots. However, other respondents were concerned that the proposal would reduce the incentive for firms to have more than one Duty Solicitor.
37. A small number of respondents suggested that there should be controls restricting the ability to switch solicitor between investigation (pre charge) and proceedings stage (post stage) to prevent duty work solicitors giving good quality advice, only to lose the work to an own client firm, thus reducing the value of the Duty Provider Work contract.

Government response

38. It is very important that firms who are awarded a Duty Provider Work contract have access to a sufficient volume of work, in order to allow a viable contract size in light of the reduced fees. The Government believes that the number of Duty Provider Work contracts determined for each of the procurement areas will mean that access to an equal share of duty slots in each area will provide a sufficient contract value. Contract value in relation to Own Client Work will of course depend on the volume of business generated by individual firms.

Case allocation

39. The Bar Council, and some individual respondents, stated their agreement with the proposal to retain the current system of case allocation by duty rota.
40. A number of respondents highlighted the issue of 'ghost' solicitors. These are solicitors that no longer practise or who do not reside in the country, yet whose names are used by firms to apply for a greater share of duty slots. Although concerns remained regarding how to ensure firms still use appropriately qualified duty solicitors, respondents expressed a preference for this method of allocation due to the removal of the incentive to use 'ghost' solicitors.

Government response

41. The Government is pleased that the approach for allocating cases has been welcomed by a number of respondents and acknowledged that the modified model addresses the concerns raised with regard to ‘ghost’ solicitors. The modified model allocates to firms, not individual solicitors, and therefore breaks the link between a firm’s number of solicitors and the amount of work they receive.

Procurement process

42. Regarding the procurement process, respondents expressed concern that Duty Provider Work contracts would be tendered by capacity rather than merit, as they believed this would mean a reduction in the quality of services. The Bar Council welcomed the inclusion of the applicant’s sector experience in the tender criteria, but argued that this does not go far enough to ensure good quality services. Some respondents suggested that all firms should be peer reviewed before submitting bids.
43. The Bar Council expressed concern that the requirement to hold either Specialist Quality Mark (SQM) or Lexcel, which are both not Bar quality marks, would be an obstacle that may prevent chambers from bidding.

Government response

44. The Government has taken into consideration the suggestions made by respondents in designing the procurement process.
45. We also do not accept that the Bar would be at a disadvantage in the procurement process by requiring applicants to gain either the Specialist Quality Mark or Lexcel. Both the Own Client Work and Duty Provider Work contracts are for criminal litigation services and both the SQM and Lexcel measure an organisation’s ability to manage and deliver those services. We stand by the view 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.

Geographical areas for the procurement and delivery of services

46. In *Next Steps* we proposed a number of modifications to the originally proposed procurement areas, for reasons of specific local geography. In summary those changes included splitting a number of CJS areas into two by grouping police station duty scheme areas. In doing so, we ensured that providers would only be required to travel up to 1.5 hours between delivery points (e.g. police station, magistrates’ court etc). In addition, we proposed to divide London into nine procurement areas rather than the original three procurement areas. The nine areas would align to the Local Justice Areas in London. In total, this created 62 procurement areas across England and Wales.
47. The consultation asked:

Question 2: Do you agree with the proposed procurement areas under the modified model (described at paragraphs 3.20 to 3.24)? Please give reasons.

Key issues raised

48. A majority of respondents welcomed the modifications made to the originally proposed procurement areas, and were pleased that the commission of further financial modelling research would also be considering the viability of different areas. However, many correspondents made clear that they would prefer no change from the existing procurement areas.
49. Most respondents wanted to see detailed consideration of local needs in ensuring these proposed areas were appropriate, as well as a tailored approach to urban/rural areas, and a completely separate approach for London.
50. Some respondents were concerned about the rationale used in the design of CJS areas but, now that they exist, many respondents agreed that it was logical to use them as the basis for setting procurement areas.
51. A majority of respondents generally felt the proposed areas were too large. Although the modifications made to some of the originally proposed procurement areas were seen as an improvement, many respondents felt we had not gone far enough.
52. Most respondents expressed a number of concerns about the increase in travel times to a maximum of 1.5 hours travelling distance between two points of delivery.
53. The LCSSA had concerns about the hidden costs to providers of such a travel time. Many individual respondents also believed the costs involved (unpaid time, mileage, parking etc.) meant the proposals were not cost effective, even at the current fee levels, and therefore unsustainable in conjunction with the fee reductions. Most respondents also expressed concern that the travel times estimated by online mapping tools do not take into consideration potential traffic, roadwork, and weather issues and therefore do not reflect reality.
54. Many respondents expressed concern about the impact on clients. The proposals could potentially increase the waiting time for the client at the police station, and respondents were concerned that this may be used by investigating officers to discourage a vulnerable client from requesting to have a lawyer present. The LCCSA, and many individual respondents, were also concerned about the difficulties the increased travel time presents for clients travelling to appointments at their lawyer's office. Respondents believed this journey could potentially take far longer than 1.5 hours by public transport and could be too expensive for the level of income of many clients. They were concerned that this could result in clients not being able to attend appointments, and the consequential impact this might have on access to justice, as well as the efficiency of the court service.
55. Some respondents set out concerns about specific procurement areas. These included, but were not limited to:
 - The LCCSA raised concerns about the procurement areas for London.
 - A number of respondents were of the opinion that Northumbria 2 has insufficient work to make it viable.
 - A number of respondents were concerned about the size of covering Greater Manchester.

- Some areas have distances between locations that exceed the 1.5 hours travel time limit. For example, between Barnstable and Torquay/Plymouth in the Devon procurement area, between Aberystwyth and Brecon in Dyfed-Powys 2, or between Berwick and Sunderland in the Northumbria area.
- Respondents believed having an Isle of Wight procurement area was a good idea, but expressed concern that sometimes cases are sent to mainland courts, and they believed the fixed fee rate is insufficient for the travel cost.

Government response

56. The Government appreciates that, even though respondents welcomed the modifications already made to some areas, a number of concerns still remain about other procurement areas.
57. The main concern respondents had was that the areas were too large. However, we continue to believe that 1.5 hours travelling time between the two most geographically extreme service delivery points is an appropriate limit. It is 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, we will be retaining separate payment for travel and subsistence disbursements.
58. In addition to the size of the areas, we have also considered the geographic appropriateness of the areas in detail. We have had input from the LAA on this matter, as well as input from the responses to the consultations we have conducted, to provide local knowledge of the areas. We have already made modifications to some of the areas, which were well received by respondents. However, after considering the responses to this consultation, and the research conducted by Otterburn Legal Consulting LLP and KPMG LLP, we have decided to make further modifications to some of the procurement areas.
59. A number of respondents suggested that some of the proposed procurement areas are not appropriate because the way in which the CJS areas have been divided does not align with how the system operates within that area. Having examined this in more detail in the light of those responses, we recognise that some of the split CJS areas presented in the consultation paper would be better balanced if we regrouped some of the duty scheme areas in a different way.
60. In light in particular of the KPMG analysis and our own internal analysis, we have also considered a different way of dividing London into smaller procurement areas, giving more flexibility to providers in delivering services. See paragraphs 29 and 30 in the Response to Consultation section above for more details.

Number of contracts

61. The consultation paper proposed an unlimited number of contracts for Own Client Work, but a limited number of Duty Provider Work contracts varying by procurement area.

62. The consultation asked:

Question 3: 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.

Key issues raised

63. Most respondents welcomed the proposal to have an unlimited number of Own Client Work contracts available. However, many respondents were concerned that the proposals may, in effect, limit the number of own client firms (and therefore client choice) anyway. This is because they believed few firms with an Own Client Work contract only would be able to survive without the new clients from Duty Provider Work to replenish their client base for Own Client Work later down the line. Respondents believed that small firms would not be large enough to bid successfully for a Duty Provider Work contract, and therefore would be particularly affected by this issue. The LCCSA also believed this issue would particularly affect firms in London.
64. Most respondents were concerned by the proposal to limit the number of Duty Provider Work contracts. Respondents welcomed the commission of further research to help inform our final decision as to the appropriate number of Duty Provider Work contracts to allow a viable and sustainable market in each procurement area. However, they expressed a preference for as many contracts as possible (within the constraints of financial viability). Some of the reasons for this included: to support the widest possible client choice; to ensure good competition in the market; to reduce the level of consolidation needed; and to reduce the risk of conflict of interest.
65. A small number of respondents believed that the proposed minimum of four Duty Provider Work contracts in each procurement area was not high enough to avoid conflicts of interest. They formed this view on the basis that conflicts do not just arise from multiple defendants, but from other factors such as past representation of witnesses.
66. Many respondents were critical of the proposal to automatically give the PDS a share of duty solicitor slots. The Law Society cited issues around the ability of the PDS to scale up to the capacity required. The LCCSA expressed concern that the PDS has an unfair advantage in the market.
67. Many respondents believed that by the next round of bids for Duty Provider Work contracts, a monopoly of large providers would be the only firms left with the capacity (or potential capacity) to deliver the contracts, and were concerned about what issues this lack of competition in the market might bring.
68. Some respondents suggested that contract numbers for Duty Provider Work should remain variable for subsequent tenders.

Government response

69. The Government welcomes respondents' positive feedback on the model's provision for an unlimited number of Own Client Work contracts. We recognise that some firms are concerned about the potential impact on their volume of work if they are unsuccessful in securing a Duty Provider Work contract. The volume of Own Client Work will of course depend on how much work a firm generates.

70. In order to help inform our final decision on the number of contracts for Duty Provider Work, we jointly commissioned a piece of further research with the Law Society. This research was carried out by Otterburn Legal Consulting LLP and KPMG LLP. Otterburn Legal Consulting LLP surveyed and interviewed current providers in order to collect information about the legal aid services market at the moment. KPMG LLP then used this information and the most recent data available from the LAA to construct a financial model that could be used to explore the appropriate number of Duty Provider Work contracts, and recommended a range within which the contract number was both viable and sustainable for each procurement area.
71. The independent research provided an important evidence base for determining the appropriate range of Duty Provider Work contracts to offer in each procurement area. However, we also considered all of the responses to the consultation, and conducted our own internal analysis of the four factors listed in Next Steps (sufficient supply to deal with potential conflicts of interest; sufficient case numbers to allow fixed fee schemes to work; market agility; and sustainable procurement) to inform our final decision. Both reports are available at: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view; and our internal analysis is set out at Annex F.
72. Having weighed up all of the analysis, the independent research, the consultation responses and key risks, we have decided to proceed with the implementation of a model of procurement whereby the maximum number of Duty Provider Work contracts are offered. This will give maximum opportunities to the current provider market to continue to deliver criminal legal aid services. Within this model London will also be divided into 32 procurement areas. This therefore means that the LAA will offer a total of 525 Duty Provider Work contracts in England and Wales with a specific number of contracts in each procurement area. Table C2 in Annex C sets out the number of Duty Provider Work contracts in each area.
73. The Government recognises respondents' concerns about the fairness of the proposal to automatically assign the PDS an equal share of Duty Provider slots in the areas in which it is already established. However, 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 and in the development of quality standards for criminal defence work. We will therefore retain this provision under the final model.

Remuneration mechanisms

74. The consultation paper proposed:
- Fixed fee schemes for police station attendance, magistrates' court representation and Crown Court litigation (cases with less than 500 pages of prosecution evidence (PPE)).
 - For Crown Court litigation, cases with more than 500 PPE would be remunerated under the Litigators Graduated Fee Scheme (reduced by 17.5%).
 - All other remuneration mechanisms would remain unchanged, albeit rates of pay would be reduced.

75. The consultation asked:

Question 4: Do you agree with the proposed remuneration mechanisms under the modified model (as described at paragraphs 3.52 to 3.73)? Please give reasons.

Key issues raised

76. Some respondents expressed support for the principle of fixed fees, both for reasons of simplicity, and for reasons of fairness across different areas. However, many respondents were concerned that the reasons for varied fees nationally had not gone away. Local factors highlighted by respondents included: travel and waiting times; office overheads; crime patterns; variation in the number of complex cases; and the need for interpreters.
77. Some respondents argued that the switch from varied fees to one national fee in the police station would see losses far greater than 17.5% for some firms, especially in London, where it was suggested that the police station fixed fee will mean a cut of closer to 35%. Some respondents were also dubious about the benefits for simplicity, as firms would need to rewrite their computer systems.
78. Specifically on the police station fixed fee proposal, many respondents expressed concern that providers would be paid the same amount no matter how long their attendance at the police station. As the more complex cases usually require longer attendance, respondents were concerned that a fixed fee would have the effect of paying the lowest hourly rate for the most serious crimes. Some respondents expressed concerns about the effect that this might have on quality, arguing that the payment structure (especially the removal of an escape clause) discourages firms from sending their most experienced advisers to the police station, even for extremely serious and complex cases. The LCCSA argued that this effect on quality would outweigh any potential benefits for simplicity. It was strongly expressed by a majority of individual respondents, as well as the Law Society and CILEX, that there should be an escape threshold for high value police station work, for example where clients are detained for lengthy periods of time.
79. A majority of respondents disagreed with the proposal to harmonise guilty plea and cracked trial fees for magistrates' court work and wanted the fee to continue to vary depending on the case category (guilty plea, cracked trial, or full trial). The main concern was the risk of creating a perverse incentive for lawyers to recommend a guilty plea.
80. Respondents also pointed out that pleas are often now made before full evidence, and the proposal could increase the incentive for lawyers to be risk-adverse and recommend a guilty plea before having all the relevant information.
81. Many respondents believed that a lawyer's professional duty would win out in any conflict of interest, but that the proposal would still create a *perception* that there was a conflict between the priorities of the lawyer and priorities of the client. Respondents were concerned that this may lead to clients distrusting their lawyer's advice and choosing to ignore a recommendation to plead guilty, even when it would be the best option for them.
82. Other concerns centred around the difference in time spent on guilty pleas and cracked trials. Respondents believed it would be unfair to punish providers for factors

outside their control that could lead to cracked trials. These factors included CPS inefficiencies, which respondents believed can cause the last minute acceptance of an alternative plea or withdrawal of a case, and the client's final decision, which is ultimately their own to make.

83. Respondents were also concerned that the proposal rewards providers who do little to prepare for trial, because those who work hard to undermine the prosecution case are punished if the case is dropped as a result.
84. Some respondents, including the CLSA, expressed support for the retention of the escape fee for magistrates' court work but argued that the threshold is too high.
85. Overall, respondents believed that the harmonisation of guilty plea and cracked trial fees was not necessary to achieve savings, and a simple cut could instead be made to both fees within the existing system.
86. Similarly, most individual respondents objected to the Crown Court fixed fee because they believed it would create an incentive, or perception of an incentive, for providers to advise against a defendant electing trial by jury.
87. They also believed that Crown Court fees cannot sustain another reduction, and that there would be a significant impact on the quality of representation if the proposal went ahead.

Government response

88. The Government recognises respondents' concerns about the continued existence of local factors which may affect differences in costs for providers nationally. However, as highlighted by the Law Society (and agreed with by many respondents), there remains a need to simplify the current remuneration mechanisms for criminal legal aid services. Introducing fixed fees as far as reasonably practicable would make the system more straightforward, which will be advantageous in terms of administration for both providers and the LAA.

Police station attendance

89. In light of respondents' particular concerns about the disproportionate effect that introducing a police station attendance fixed fee would have on London, as well as the research carried out by Otterburn Legal Consulting LLP and KPMG LLP, we have decided to modify the police station attendance fixed fee. Instead of one national fixed fee for police station attendance, there will be one fixed fee for work conducted in London and a lower fixed fee for work conducted outside of London.
90. The Government also understands respondents' concerns about paying the same fee, no matter the length of the police station attendance, and the effect this may have on the most serious or complex cases. We have considered the strong request by respondents to include measures in the model for those cases where the provider has to undertake a disproportionate amount of time advising the client. We have decided, therefore, to retain the current police station hourly rate for those where the Exceptional Threshold (equal to three times the fixed fee for that area) has been reached, albeit with the hourly rate reduced by 17.5% below current rates.

Magistrates' Court

91. The Government recognises the strong concerns expressed regarding the proposal to harmonise fees for guilty pleas and cracked trials in the magistrates' court. In light of the responses, we have decided to replace the proposed remuneration mechanism for the magistrates' court with different fixed fees for different case types. We therefore intend to introduce a fixed fee mechanism for the magistrates' court that removes the distinction between designated and non-designated areas and removes the distinction between lower and higher standard fees, but maintains the distinction between different case types. We believe that this will help the fixed fees more accurately reflect the amount of work undertaken for each case, whilst still allowing simplification.

Crown Court

92. The Government also recognises the concerns regarding fixed fees in the Crown Court, including the perceived incentive to advise clients to elect to stay in the magistrates' court on an either way matter; and the potential impact of a fee reduction on quality. We have therefore amended the proposed fixed fee scheme for the Crown Court to introduce a third variable: case type. Under the final model, the appropriate fee for Crown Court work will be determined by a combination of offence type, prosecution evidence pages, and whether the case is a guilty plea, cracked trial, or full trial.

Phased fee reduction

93. The consultation paper proposed a phased implementation of the proposed fee reduction, beginning with an 8.75% interim fee reduction in early 2014 across all criminal litigation services (including all advisory services under the 2010 Standard Crime Contract) 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.
94. The consultation asked:

Question 5: 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.

Key issues raised

95. A majority of respondents reiterated their opposition to any fee reduction at all.
96. Respondents expressed mixed views on the proposal to have a phased implementation. Some believed, if a reduction has to happen, a phased approach would be preferential. Some even suggested that this would give the Government an opportunity to assess the impact on firm closures and stop the further cut in 2015 from going ahead if the impact was too damaging.
97. However, others argued that two successive reductions would not help particularly if, as proposed, the first cut comes before the new model for Duty Provider Work contracts comes into effect. Respondents were concerned that with no increase in a firm's volume of work, there would be nothing to offset the reduction in fees. The

CLSA argued that firms will never increase their client base quickly enough to compensate for the loss of income resulting from the fee reductions.

98. Respondents were concerned that the inability to sustain this first cut (due to no increase in volume) would leave too few firms left to bid for Duty Provider Work contracts in 2015. Respondents also argued that, even if a firm did survive, with no increase in volume there would be no incentive to scale up. Furthermore, respondents argued that even if a firm did survive and did wish to scale up, without a guarantee of a Duty Provider Work contract (and therefore an increase in volume at some point), it would be difficult to secure the capital from banks to do so.
99. In terms of the proposed timetable, CLSA and LAPG express concern that not enough time is being allowed for firms, especially small ones, to adapt and reorganise, especially in time for the interim reduction.

Government response

100. The Government appreciates respondents' views that a phased approach is, in principle, preferential.
101. We recognise that respondents have concerns about the timetable of the reductions, especially the first 8.75% reduction. We understand that, without an increase in the volume of work, this first reduction may present a challenge for firms. However, we continue to believe that opportunities exist for consolidation and efficiency savings if providers are willing to explore them.
102. We believe the timescale, although challenging for some, is nonetheless achievable. It is also important to note that the fee reduction will take a period of time before it begins to have any significant impact on claiming levels for providers. Our analysis shows that after five months, on average, half of the legal aid fee revenue paid will still be on the existing higher remunerated scheme. This gives providers time to explore any efficiency savings necessary. This is because the new fee scheme will only apply to new cases, which means moving from one fee scheme to another will be a gradual process. We recognise however the extent to which providers can rely on this will depend on the case mix for each individual provider and their approach to claiming.
103. We continue to believe that implementing the fee reduction in two stages will help encourage providers to begin the process of consolidation as early as possible, before the full effect of the changes come into force. We intend to implement the first 8.75% reduction on 20 March 2014 and the second in June 2015 alongside the introduction of the new contracts.

Advocates Graduated Fees

104. In *Next Steps* we proposed two alternative models for reforming advocates fees in the Crown Court. The first was an adaptation of the original proposal which has been amended to address specific concerns raised by respondents and the second was a variation of the model put forward by the Bar Council which is based on the new CPS payment scheme.

105. The consultation asked:

Question 6. 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.

Key issues raised

106. Most respondents, including representative bodies, did not support either option, but a clear majority felt that option 2 was better than option 1. Respondents argued that it was unreasonable to reduce further advocacy fees in the light of previous reductions since 2007 and falling demand for criminal legal aid. Respondents suggested that the reduction in fees would mean that the quality of advocacy would fall as talented advocates would move away from criminal advocacy. It was also suggested that the reduction in quality would have an adverse impact on the CJS as a whole and cases would be run less effectively and the risk of miscarriages of justice would be greater. A number of responses suggested that the Government should delay changes in advocacy fees until Sir Bill Jeffrey's review of the provision of independent criminal advocacy is completed.
107. The Law Society preferred a modified version of option 1, if cuts had to be made, which apportioned cuts equally between guilty pleas, cracked trials and trials. The Bar Council said that the harmful effects of option 1 would be greater than option 2. The Bar Council also proposed that option 2 be adopted (if at all) with revised rates on a cost neutral basis given the administrative savings that they say would flow from a significant reduction in the need to provide evidence of the number of pages of prosecution evidence.
108. Broadly speaking, of those who expressed a preference, many individual solicitors favoured option 1 and a few highlighted that it supported their case mix (which includes a greater proportion of guilty pleas) or the objectives of the Early Guilty Plea scheme¹¹, whereas most individual barristers broadly favoured option 2. Some solicitors preferred option 2 as a fairer model because it apportioned cuts equally between guilty pleas, cracked trials and trials and did not harmonise rates for guilty pleas and cracked trials. Barristers argued that option 1 significantly increased fees for guilty pleas, which solicitors might "cherry pick", whereas trials, which barristers tend to undertake in greater proportion, would be more fairly remunerated under option 2 as it differentiates between guilty pleas, cracked trials and trials, which would be paid more. It was also argued that option 1 would punish defence advocates when cases cracked late due to prosecution failings.
109. There were principled objections widely raised to both elements of option 1. As suggested in response to the initial consultation, the harmonisation of fees for guilty pleas and cracked trials was said to provide a perverse incentive for advocates to induce clients to plead guilty improperly. The introduction of a taper on DAFs was

¹¹ The Early Guilty Plea Scheme is an initiative of the Senior Presiding Judge which aims to reduce delays and unnecessary paper work and increases productivity for all Criminal Justice partners. The principle of the Early Guilty Plea Scheme is to identify those cases where a defendant is likely to plead guilty and to expedite those cases to an early guilty plea hearing.

said to penalise advocates for delays in proceedings which are outside their control. On the other hand, while many disagreed with the need for and level of reduction in fees, there were few objections on points of principle to option 2.

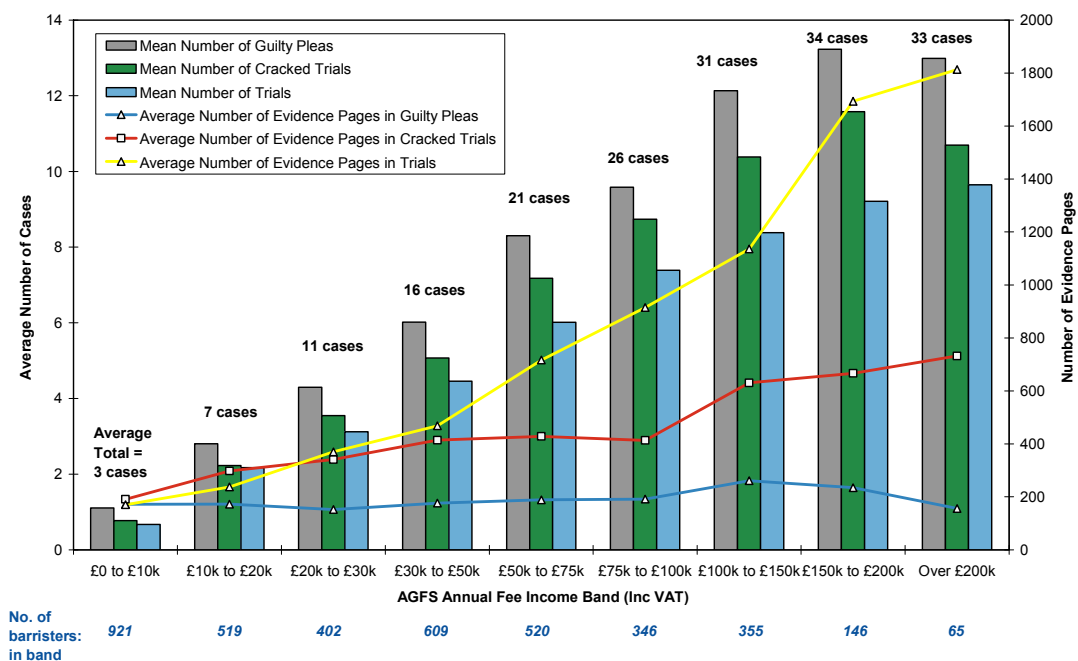
110. Some respondents favoured the option 2 model as it was simpler and easier to understand. It was also suggested that as it spread reductions more evenly across guilty pleas, cracked trials and trials that it was a fairer model. Respondents also commented that the model was more sensitive to the features of a case that affect the time and effort involved. Treasury Counsel to The Crown at the Central Criminal Court suggested that the page threshold ought to mirror the CPS scheme as a higher threshold would mean that enhanced payments would rarely be paid.
111. Consultees suggested that the proposed changes would adversely impact on the availability of publicly funded legal advice with fewer advocates willing to work at legal aid rates and fewer good quality candidates willing to pursue publicly funded work.
112. Some respondents said that both options would have a disproportionate impact on female and BAME advocates. The Bar Council said that exit surveys showed that women and people of BAME origin were more likely than men to cite financial reasons when leaving the Bar.

Government response

113. The proposals we consulted on were designed to meet our objective of bearing down on costs and ensuring services are delivered as efficiently as possible in order to achieve best value for the taxpayer. In addition, both options simplify the existing criminal advocacy fee scheme while taking account of the amount of preparation generally required in different types of cases. We accept that there have been previous savings measures that have reduced fees payable for criminal legal aid advocacy work, but no area can be immune from scrutiny given the need to make savings in MoJ expenditure. Both options result in the same reduction to current AGFS rates. The impact on individuals will depend on the volume of work undertaken and the mix of cases, and could be more or less than the average of 5% reduction to AGFS fees, across all advocates.
114. As we said at the time of the Government's Response to consultation on the Reform of Legal Aid in England and Wales in June 2011, while the Government accepts that the sustainability of the market needs to be monitored, it takes the view that claims that providers will leave the market are not a new phenomenon. Whilst legal aid provides a source of guaranteed work for advocates, and there will be a small proportion of cases that require very experienced advocates, a lot of the work is more straightforward and able to be handled effectively and competently by relatively junior advocates. As long as that legal aid work continues to be performed to the required standard, some suppliers leaving the market is not necessarily a concern.
115. We consider that a reduction in fees of this order is sustainable. It is not the role of Government to ensure that legal aid provides a particular level of earnings for an increasing number of advocates but to ensure the sustainable provision of effective representation. We believe there is an issue of oversupply amongst self-employed criminal barristers. The chart below shows the number of guilty pleas, cracked trials and trials undertaken by barristers in the AGFS in 2012/13, split by their AGFS fee

income for that year (including VAT).¹² It can be seen that the 921 criminal barristers that received fee income of less than £10k from the AGFS did just three of these cases on average, based on closed case data in 2012/13. This group also had the lowest average evidence page count per case, suggesting they were undertaking the least complex cases. Whilst increasing, the average number of cases being undertaken remains relatively modest for those receiving up to £50k in fees. Many of these barristers may be undertaking work outside of the AGFS, but this illustrates that lower AGFS fee income is linked with lower AGFS workloads.

Chart B1: Number and Complexity of AGFS Cases undertaken by Barristers in 2012/13, split by AGFS fee income bands (Inc. VAT)



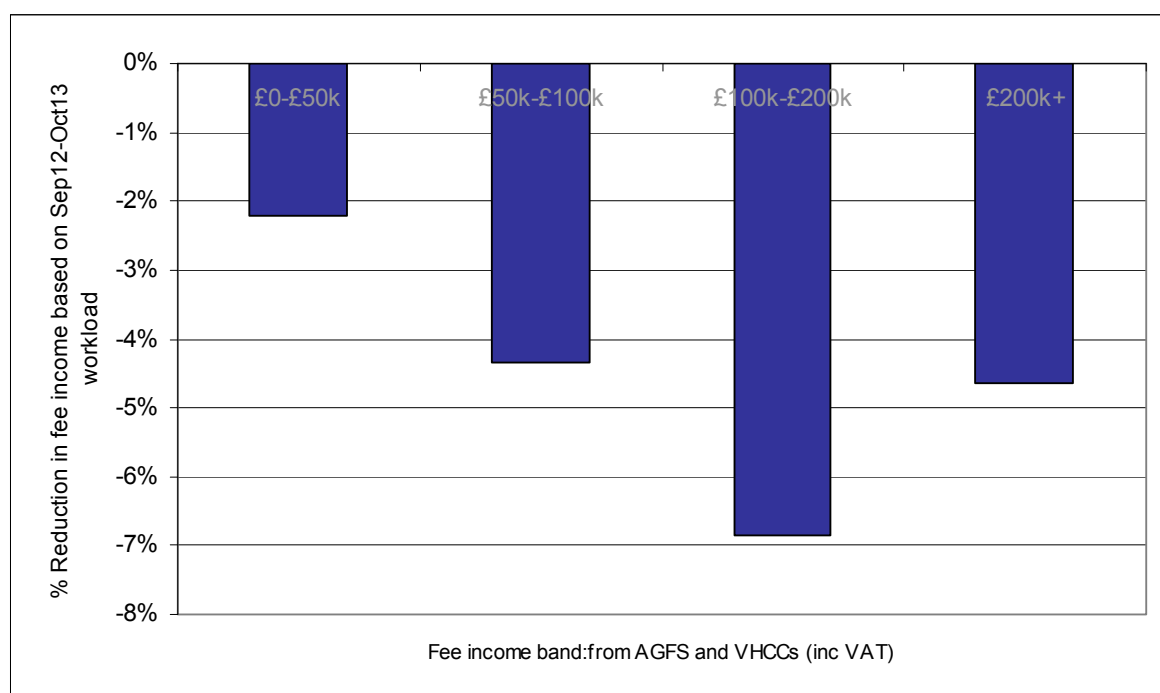
116. Some advocates may decide to leave criminal legal aid work as a result of reform but, given the evidence of oversupply set out above, this may make the remaining market more sustainable for service providers if a greater proportion of them were more fully occupied and service provision would not be compromised. It is difficult to predict which advocates might leave the market. This is likely to depend on alternative options open to advocates and more junior advocates may be more likely to have alternative career options open to them. We would not accept that this means talented people capable of delivering quality advocacy would no longer be attracted to the criminal Bar. Indeed a market where advocates have the opportunity of undertaking more work may increase the likelihood of drawing talented individuals to the criminal Bar.

117. While previous reductions in AGFS and changes in civil rates in both 2011 and 2013, and the recent change in VHCC rates and restrictions on multiple advocates are likely to have had some impact on advocates, the Government does not believe that the combined effect will have a significant impact on the sustainability of advocacy. Only

¹² Note, the graph does not include “other” types of work such as appeals and committals for sentence, but these are still included in the fee income.

one in 10 barristers do VHCCs so most are not impacted by the reduced rates for those cases and the average reduction in AGFS fees is 5% (though the impact is less for lower earners – see chart b2 below). There is, even after the previous 2011 reductions, still a sufficient supply of suitably qualified barristers willing to work at the AGFS rates currently paid. The number of practicing barristers has increased by almost 4%¹³ from 2007 to 2011. The recent publication of criminal barristers fee income statistics shows there were 4,931 receiving income from public sources in 2012/13., whilst between 2007 and 2012, Crown Court receipts fell by 2%. Moreover, the Crown Prosecution Service (CPS) reports no current problems securing the services of appropriately qualified members of the Bar, even though the CPS graduated fees for advocacy can be lower than current defence fees in some cases. The Government therefore believes that the supply of barristers and Higher Court Advocates (HCAs) is sufficient to meet demand should some advocates move away from criminal work as a result of these further reductions in fees.

Chart B2: Impact on Annual Fee Income (inc VAT) of Criminal Barristers from AGFS change



118. Overall, therefore, the Government is satisfied that the proposed reforms to criminal fees are sustainable, and that, although individual providers may leave the scheme, there will be sufficient supply of providers of sufficient quality to provide an appropriate level of service.

119. We do not accept that option 1 would create inappropriate incentives to advise clients to plead guilty, or that it is wrong in principle to harmonise the payments for cracked trials with those for guilty pleas. Decisions on the question of plea are ultimately for

¹³ https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf

the defendant; in developing policy we can only assume that lawyers will act in compliance with their legal and professional obligations and therefore would not act contrary to their clients' best interests. Option 1 would have the benefit of promoting early consideration of the question of plea and the earliest possible resolution of contested matters, for the benefit of the CJS as a whole.

120. We do not agree with the Bar Council suggestion that option 2 could be introduced on a cost neutral basis due to administrative savings. We do not accept that option 2 produces any significant cashable¹⁴ savings for the LAA. While the LAA does spend some time validating page counts, the requirement to validate PPE for all cases is estimated to occupy the equivalent of half of one full-time caseworker's time. Even if this casework efficiency saving were a cashable saving it would not realise savings of anywhere near the savings made by option 2 as proposed.
121. The page threshold for determining whether or not an enhanced basic fee would be payable was calculated by the Bar Council on the same basis as the CPS scheme. It is intended to achieve the payment of the enhanced basic fee to the most complicated cases that are most paper heavy.
122. We note that respondents, including the Bar Council, suggested that both options would have a disproportionate impact on female and BAME advocates in part because those groups cite financial considerations as a reason for leaving the Bar more frequently than other groups. There is no indication whether this is due to the particular level of fees or whether it is related to the inability to secure enough work due to the over-supply of advocates seeking to do criminal work.
123. Option 2 simplifies the AGFS for the benefit of both advocates and the LAA as precise page counts will no longer need to be established in almost all cases. Some also felt that the model was more sensitive to the features of a case that affect the time and effort involved. In light of those benefits, and the fact that there were no principled objections (notwithstanding the general objections to making savings) we have decided to implement option 2, but undertake to conduct a review of the operation of the framework in the longer term, taking into account changes in the advocacy market and the CJS.
124. In implementing option 2 we will also set the enhanced basic fees payable to led juniors at a higher rate than proposed in order to correct an unintended error in the Bar Council's model that was carried through to our model as proposed in the consultation document (table at Annex I). As a result enhanced basic fees for led juniors will be paid at 50% of the equivalent QC rate (rather than at 50% of the leading junior rate as was proposed in error).
125. We have decided to amend one aspect of the model, the inclusion of witness numbers in the formula for calculating the fee for cracked trials and guilty pleas, in line with how the defence scheme currently operates in order not to create a new burden on advocates who would be required to provide evidence of the number of witnesses. This is particularly so in early guilty plea scheme cases when the CPS might not serve all the usual material. The impact on advocates of excluding witnesses from the formula for cracked trials and guilty pleas is negligible as costings

¹⁴ Efficiency savings only produce cashable savings if we can reduce the resources supplied to the LAA to administer the legal aid scheme.

were based on data that only recorded witnesses in a very small proportion of cracked trials and guilty pleas (where the number of witnesses was recorded in error). The reduction in bureaucracy achieved by eliminating the need to evidence precise page count in most cases would be undone if advocates were required to provide evidence of witness numbers instead.

126. The remainder of the structure of the existing defence scheme will be retained, meaning 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. All fixed fees that are set out in part 5 of Schedule 1 and defendant and/or case uplifts payable under part 6 of Schedule 1 of the Criminal Legal Aid (Remuneration) Regulations 2013 that are currently paid in addition to the graduated basic fee remain unchanged. If we are able to achieve greater efficiency in the CJS, eg a reduction in court hearings, that would require less input from advocates for the same new fees.

Other Issues

127. In 2011 we introduced a fixed fee for all elected either way cases that resulted in a guilty plea or cracked trial. At that time we concluded that for this narrow group of cases the fixed fee represented adequate remuneration, including in circumstances where the defendant changes plea or the prosecution decide to offer no evidence at a late stage in the proceedings. The Government took the view, in 2011, that the then system of fees did not sufficiently support the aim of speedy and efficient justice and could have discouraged the defence team from giving early consideration of plea. In cases that were considered by the magistrates' court to be of a level of complexity and seriousness suitable for trial by the magistrates, it is not appropriate for the taxpayer to pay significantly more for a guilty plea by reason of the venue in which the proceedings take place. Consultees have, however, highlighted the perceived particular unfairness of the fixed fee for elected either way cases that crack due to the prosecution offering no evidence at a late stage.
128. We remain of the view that a fixed fee is appropriate in most instances, when it may or may not be clear whether the reason for the cracked trial is down to the defence or the prosecution. For example, where counts on an indictment are ordered to lie on the file this might be because:
- the defendant has pleaded guilty or has been convicted of other counts in the same or on another indictment; or
 - continuation of proceedings on remaining matters was no longer needed in the public interest.
129. However, there is a small proportion of cases where it is clear that the prosecution offer no evidence on all counts. Given the particular circumstances of those cases are beyond the control of the defence, we consider that the graduated fee for a cracked trial is more appropriate so we intend to revert to the pre-2011 position. We are therefore reintroducing graduated cracked trial fees, for both litigators and advocates, for those elected either way cases that currently attract a fixed fee where the judge directs acquittal following the prosecution offering no evidence on all counts against an individual.

130. Having considered and given due weight to the responses to the consultation the Government has decided to proceed with implementation of option 2. We will review the operation of the advocacy framework in light of anticipated influences on the provision of criminal advocacy services, as set out above. We also intend to introduce interim payment for Crown Court cases and magistrates' court disbursements (set out in Annex F) and to pay a graduated cracked trial fee for elected either way cases where the judge orders acquittal on all counts (as set out above).
131. It is intended that the AGFS provisions will be introduced by way of amendments to secondary legislation later this year. It is intended that the revised framework and rates and Crown Court interim payment provisions allowing advocates and litigators to make a claim for an interim payment at the start of the trial (where trials are listed for 10 days or more) will be implemented, subject to Parliamentary approval, by way of secondary legislation later this year. The second interim payment for litigators, allowing litigators to make a claim for payment following an effective PCMH will be implemented by way of secondary legislation in summer 2015. Interim payment of disbursements in magistrates' court proceedings will be introduced through the new 2015 contract.

Impact Assessment

132. The consultation asked:

Question 7. 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 8. Do you agree that we have correctly identified the extent of impacts under these proposals? Please give reasons.

Question 9. Are there forms of mitigation in relation to impacts that we have not considered?

133. We considered respondents views on the range of impacts identified and the forms of appropriate mitigation. Our analysis of the issues raised is set out in Annex G and in the impact assessments published alongside this document.

Annex C – Summary of final model of procurement

1. We have set out in Table C1 below the key elements of the final model. Each element is discussed in detail in the paragraphs that follow.

Table C1: Key elements of final model

(i) Scope of the new contracts	<p>The structure of the new contracts will be as follows:</p> <ol style="list-style-type: none"> 1. Own Client Work: Providers will be able to apply to deliver the following services to only clients who choose their own provider (Own Client Work) at the first point of request: <ul style="list-style-type: none"> • Investigations, Proceedings, Associated Civil Work, Crown Court (non VHCC) litigation and higher court representation;¹⁵ 2. Duty Provider Work: Providers will be able 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). Only Providers who are successful in obtaining an Own Client Contract will be invited to apply for a Duty Provider Work contract; 3. Providers wishing to apply to conduct prison law and/or appeals and reviews classes of criminal legal aid services will be able to do so, whether they deliver other criminal legal aid services or not. They will be able to: <ol style="list-style-type: none"> a) apply for an Own Client Work contract and select to also apply to be able to undertake prison law and/or appeals and reviews classes of criminal legal aid service under this contract; or b) apply separately to only undertake prison law and/or appeals and reviews classes of criminal legal aid service.
(ii) Contract length	<p>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.</p>
(iii) Geographical areas for the procurement and delivery of services	<p>For Own Client Work, the procurement area will be England and Wales.</p> <p>For Duty Provider Work, the procurement areas will be based on a mixture of Criminal Justice System (CJS) areas and police station duty scheme areas.</p>

¹⁵ Representation before the Court of Appeal or Supreme Court.

(iv) Number of contracts	<p>For Own Client Work, there will be no restriction on the number of contracts across England and Wales.</p> <p>For Duty Provider Work, applicants will be able to compete to deliver services in one or more procurement areas. The number of contracts will be limited and vary by procurement area, but the minimum will be 4.</p>
(v) Types of provider	<p>Providers can be individual organisations, a joint venture or an Alternative Business Structure. For Duty Provider Work contracts only, partnering arrangements with a lead contractor and up to 3 delivery partners (restricted to 2 delivery partners in urban procurement areas¹⁶) would also be permissible provided they can demonstrate they meet the Requirements of the Tender Process and have a formal agreement between them that covers certain key aspects of service delivery. In addition contactors will be able to instruct agents to deliver up to 25% of the contract value under both Own Client Work and Duty Provider Work contracts.</p>
(vi) Contract value	<p>There will be no limitation on the amount of Own Client Work a successful applicant can deliver.</p> <p>For Duty Provider Work, providers will be contracted to deliver an equal share of police station and magistrates' court duty slots in their procurement area. Contract value will depend on the volume of work that flows from these duty slots.</p>
(vii) Client Choice	<p>Clients will 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>
(viii) Case allocation	<p>As now, there will be no system of case allocation for those clients seeking to instruct their own provider. Duty Provider Work will be allocated on a duty slot rota basis or, where applicable, on a panel basis.</p>
(ix) Remuneration	<p>There will be 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 will be remunerated under the Litigators Graduated Fee Scheme (reduced by 17.5%).</p> <p>All other remuneration mechanisms will remain unchanged, albeit rates of pay will be reduced.</p>

¹⁶ Those areas labelled as 'urban' in Table C2 below

<p>(x) Procurement process</p>	<p>Applicants can:</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; and if awarded a Own Client Work contract: • 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 and/or Appeals and Reviews will be able to:</p> <ol style="list-style-type: none"> a) apply for an Own Client Work contract, and choose to also apply to be able to undertake prison law and/or appeals and reviews classes of criminal legal aid service under this contract; or b) apply under a separate process that will have specific criteria reflecting the quality requirements of the service. <p>The application process for Own Client Work will 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 will take place after Own Client Work contracts have been awarded. Only organisations that are awarded an Own Client Work contract will be invited to apply for a Duty Provider Work contract. Organisations will submit a single application containing responses to selection and award criteria.</p> <p>Assessment of responses will be a two stage process to evaluate the Requirements of the Tender Process:</p> <ul style="list-style-type: none"> • Stage 1 – assessment of selection criteria responses to shortlist applicants to the next stage; and • Stage 2 – assessment of award criteria responses.
<p>(xi) Contract Award / Implementation</p>	<p>It is anticipated that the tendering process will start in all procurement areas in April 2014 for Own Client Work and July 2014 for Duty Provider Work.</p> <p>Our current intention is for the service to commence in June 2015 for Own Client Work and Duty Provider Work.</p>

2. **The description of the procurement process and the assessment process as set out above are strictly indicative of current intentions only. We make no express commitment regarding the final procurement method and applicants must rely solely on the tender documents issued by us at the time of the procurement process.**

(i) Scope of the new contracts¹⁷

3. Under the final model the new contracts will only apply to new cases starting on or after the service commencement date. Providers will be able to:
 - Apply to deliver Own Client Work only – all classes of criminal legal aid listed in Table D1 of Annex D 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.

4. A provider wishing to conduct prison law and/or appeals and reviews¹⁸ classes of work will be able to do so whether they wish to conduct only those services or in addition to other criminal legal aid services. They will be able to:
 - a) apply for an Own Client Work contract and select to also apply to be able to undertake prison law and/or appeals and reviews classes of criminal legal aid service under this contract; or
 - b) apply separately to only undertake prison law and/or appeals and reviews classes of criminal legal aid service.
5. At present, the 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.
6. We will maintain such a service under the final model, but only those awarded contracts to deliver Duty Provider Work will be eligible to provide court duty provider coverage in their procurement area (paragraph 42 below sets out proposals on how this work will be remunerated).

¹⁷ The new Crime Contract(s) will also be tailored to the services required under the final model and procurement process. They will 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.

¹⁸ 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).

7. The following three areas of criminal legal aid will be excluded from the scope of the new contracts entirely:

- Crown Court Advocacy;
- Very High Cost Cases (Crime);
- Defence Solicitor Call Centre and Criminal Defence Direct services.

(ii) Contract length

8. The new contracts will 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).
9. Any new criminal legal aid contract for Duty Provider Work will include a no fault termination clause exercisable by the Lord Chancellor, which will include provision for compensation in certain circumstances.
10. Duty Provider Work contract providers will be expected to meet their contractual obligation for the entire term of the contract and, therefore, there will not be a no fault termination clause exercisable by the provider.

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

11. Providers delivering Own Client Work will be able to deliver services anywhere in England and Wales.
12. In relation to Duty Provider Work, the procurement areas under the final model are set out in Table C2 below. A majority of the procurement areas are based on CJS areas, although some have been split, including all of London, which has been divided into 32 procurement areas based on Police Station Duty Schemes.
13. MoD, HMRC and BTP cases will be dealt with using the same system as under the existing scheme. The procurement area is either dependent on which station the client is interviewed at or, if the client is not interviewed at a station, the station closest to the interview/scheme within which the interview took place.

Exclusivity

14. A contract to deliver Duty Provider Work in one procurement area will not permit that provider to deliver Duty Provider Work in another procurement area except where a case crosses procurement area boundaries. Where a case crosses the procurement area boundary (for example, where a case is transferred to a court in a different procurement area) the Duty Provider will be contractually obliged to follow that client to the other procurement area.
15. However, there will be some restrictions on the number of bids that any bidder can submit either as lead contractor or as delivery partner in any single procurement area. Full details will be provided by the LAA in the tender documents.

(iv) Number of contracts

16. Under the final model, the number of contracts for Own Client Work will be unlimited. Any provider that is capable of meeting the Requirements of the Tender Process (including the required quality standards) will 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.

17. A total of 525 Duty Provider Work contracts will be offered across 97 procurement areas. The procurement areas, and the number of contracts that will be offered in each, are shown in the table below.

Table C2: Procurement areas under the final model

Procurement area	Police Station Duty Schemes	Classification	Number of contracts
Avon and Somerset 1	Mendip, Weston Super Mare, Sedgemoor	Rural	5
Avon and Somerset 2	Avon North, Bath, Bristol	Urban	5
Barking	Barking police station duty scheme	Urban	5
Bedfordshire	All police station duty schemes currently within CJS area	Rural	5
Bexley	Bexley police station duty scheme	Urban	5
Bishopsgate	Bishopsgate police station duty scheme	Urban	5
Brent	Brent police station duty scheme	Urban	11
Brentford	Brentford police station duty scheme	Urban	5
Bromley	Bromley police station duty scheme	Urban	8
Camberwell Green	Camberwell Green police station duty scheme	Urban	5
Cambridgeshire	All police station duty schemes currently within CJS area	Rural	7
Central London	Central London police station duty scheme	Urban	15
Cheshire	All police station duty schemes currently within CJS area	Rural	7
Clerkenwell/Hampstead	Clerkenwell/Hampstead police station duty scheme	Urban	9
Cleveland	All police station duty schemes currently within CJS area	Urban	4
Croydon	Croydon police station duty scheme	Urban	7
Cumbria 1	Barrow in Furness, Whitehaven	Rural	4
Cumbria 2	Kendal, Penrith	Rural	4
Derbyshire	All police station duty schemes currently within CJS area	Rural	5
Devon and Cornwall 1	Barnstable, Exeter, Plymouth, Teignbridge	Rural	8
Devon and Cornwall 2	East Cornwall, Carrick	Rural	4
Dorset	All police station duty schemes currently within CJS area	Rural	5

Procurement area	Police Station Duty Schemes	Classification	Number of contracts
Durham	All police station duty schemes currently within CJS area	Rural	7
Dyfed-Powys 1	Amman Valley, Llanelli, Carmarthen	Rural	4
Dyfed-Powys 2	Pembrokeshire, Mid Wales, North Ceredigion, Brecon	Rural	4
Ealing	Ealing police station duty scheme	Urban	5
Enfield	Enfield police station duty scheme	Urban	4
Essex	All police station duty schemes currently within CJS area	Rural	7
Gloucestershire	All police station duty schemes currently within CJS area	Rural	4
Greater Manchester	All police station duty schemes currently within CJS area	Urban	17
Greenwich/Woolwich	Greenwich/Woolwich police station duty scheme	Urban	7
Gwent	All police station duty schemes currently within CJS area	Rural	5
Hampshire 1	Aldershot, Andover, Portsmouth, Gosport, Southampton	Urban	7
Hampshire 2	Isle of Wight	Rural	4
Haringey	Haringey police station duty scheme	Urban	9
Harrow	Harrow police station duty scheme	Urban	5
Havering	Havering police station duty scheme	Urban	4
Heathrow	Heathrow police station duty scheme	Urban	4
Hendon/Barnet	Hendon/Barnet police station duty scheme	Urban	5
Hertfordshire	All police station duty schemes currently within CJS area	Urban	5
Highbury Corner	Highbury Corner police station duty scheme	Urban	9
Humberside	All police station duty schemes currently within CJS area	Rural	5
Kent	All police station duty schemes currently within CJS area	Urban	7
Kingston-upon-Thames	Kingston-upon-Thames police station duty scheme	Urban	4
Lancashire	All police station duty schemes currently within CJS area	Urban	13

Procurement area	Police Station Duty Schemes	Classification	Number of contracts
Leicestershire	All police station duty schemes currently within CJS area	Rural	4
Lincolnshire	All police station duty schemes currently within CJS area	Rural	5
Merseyside	All police station duty schemes currently within CJS area	Urban	8
Newham	Newham police station duty scheme	Urban	9
Norfolk 1	Cromer, Great Yarmouth, Norwich, Lowestoft, Dereham	Rural	4
Norfolk 2	Kings Lynn	Rural	4
North Wales 1	Colwyn Bay, Denbighshire, Mold, Wrexham	Rural	4
North Wales 2	Bangor, Dolgellau, North Anglesey, Pwllheli	Rural	4
North Yorkshire 1	Northallerton, Harrogate, Skipton	Rural	4
North Yorkshire 2	Scarborough, Malton, York	Rural	4
Northamptonshire	All police station duty schemes currently within CJS area	Rural	5
Northumbria 1	Gateshead, S.Tyneside, Sunderland	Rural	5
Northumbria 2	Berwick and Alnwick, S. E. Northumberland, Newcastle Upon Tyne, N.Tyneside, Tyndale	Rural	7
Nottinghamshire	All police station duty schemes currently within CJS area	Rural	4
Old Street	Old Street police station duty scheme	Urban	9
Redbridge	Redbridge police station duty scheme	Urban	5
Richmond-upon-Thames	Richmond-upon-Thames police station duty scheme	Urban	4
South London	South London police station duty scheme	Urban	5
South Wales	All police station duty schemes currently within CJS area	Rural	9
South Yorkshire	All police station duty schemes currently within CJS area	Urban	7
Staffordshire	All police station duty schemes currently within CJS area	Rural	6
Suffolk 1	Bury St Edmunds (including Sudbury and Thetford)	Rural	4
Suffolk 2	Felixstowe / Ipswich & District / Woodbridge,	Rural	4

Procurement area	Police Station Duty Schemes	Classification	Number of contracts
Surrey	All police station duty schemes currently within CJS area	Urban	4
Sutton	Sutton police station duty scheme	Urban	5
Sussex 1	Brighton, Hastings, Eastbourne	Urban	5
Sussex 2	Chichester, Crawley, Worthing	Urban	5
Thames	Thames police station duty scheme	Urban	7
Thames Valley	All police station duty schemes currently within CJS area	Urban	9
Tower Bridge	Tower Bridge police station duty scheme	Urban	9
Uxbridge	Uxbridge police station duty scheme	Urban	5
Waltham Forest	Waltham Forest police station duty scheme	Urban	9
Warwickshire	All police station duty schemes currently within CJS area	Rural	4
West London	West London police station duty scheme	Urban	5
West Mercia 1	Hereford, Kidderminster, Worcester	Rural	5
West Mercia 2	Shrewsbury, Telford	Rural	4
West Midlands	All police station duty schemes currently within CJS area	Urban	13
West Yorkshire	All police station duty schemes currently within CJS area	Urban	17
Wiltshire	All police station duty schemes currently within CJS area	Rural	5
Wimbledon	Wimbledon police station duty scheme	Urban	7

Public Defender Service (PDS)

18. The PDS will be assigned an equal share of duty slots in the areas in which it is already established. These are Gloucestershire, Durham, South Wales and North Yorkshire 1. As now, the PDS will also be eligible to conduct Own Client Work anywhere in England and Wales.

(v) Types of provider

19. We will not limit the types of organisation that may bid for either contract provided that they meet the applicable Requirements of the Tender Process (including the required quality standards) in this regard. 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. Applicants will need to check with their regulatory body with regard to what is required in order to apply for regulation and how long this

process will take (which may be a number of months). For Duty Provider Work applicants will need to be a legal entity and have applied for appropriate regulation by the close of the Invitation to Tender (currently anticipated to be September 2014).

20. Under the final model applicants for either contract can be individual organisations, a joint venture or an Alternative Business Structure. For Duty Provider Work, a partnering arrangement 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 that they meet the Requirements of the Tender Process and have a formal agreement between them that covers certain key aspects of service delivery. The model will not preclude any new entrant to the market, provided they were appropriately regulated.
21. Under the model, applicants can choose to deliver the service themselves (or with delivery partners in the case of Duty Provider Work) or through the use of agents who will be permitted to be deliver up to 25% of contract value under both the Own Client Work or Duty Provider Work contracts.

(vi) Contract value

22. Contract value in relation to Own Client Work will depend on the volume of business generated by individual firms and the changes to the fees available.
23. Providers undertaking just Own Client Work will have access to the subsequent criminal proceedings in the magistrates' court, and where applicable, the Crown Court and higher courts.
24. In relation to Duty Provider Work, the overall value of the contract to successful providers will depend on the number of contracts in that area. Providers will 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 will have access to the subsequent criminal proceedings in the magistrates' court, and where applicable, the Crown Court and higher courts.
25. For clarity, we cannot guarantee a specific number of cases for each provider awarded an Own Client Work or Duty Provider Work contract; simply that providers will have access to such work available that flowed through their procurement area either, in reference to Own Client Work contract, by the client choosing the provider or, in reference to a Duty Provider Work contract, by means of an allocation of an equal share of Duty Provider slots.

(vii) Client choice

26. Clients will retain the opportunity to choose between:
 - a provider they know and/or with whom they have a pre-existing relationship, so long as that provider holds an Own Client Work contract with the Lord Chancellor to conduct criminal legal aid services; or
 - a provider who is on duty at the time that client needs such advice.
27. This maintains the same level of choice as is available under the current scheme.
28. Once a provider has been chosen (Own Client Work) or allocated (Duty Provider Work), the provider will, in general, be obliged to deliver the full range of advice, litigation and magistrates' court representation services. However, a client wishing to change their legal representative will still be able to do so. As is currently the case,

any change in provider after the grant of a representation order will be determined by a court, subject to the same criteria set out currently in regulations.¹⁹

29. Where a provider considers it appropriate, in line with their professional Code of Conduct, to withdraw their services, they will be able to do so. Therefore the same criteria as apply now for withdrawals/transfers following the grant of a representation order will continue to apply under the final model.²⁰ 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 will measure the extent to which providers withdraw their services or clients transfer their instructions through a Key Performance Indicator in both the Own Client Work and Duty Provider Work contracts.

(viii) Case allocation

30. Under the final model, if the client chooses the Duty Provider the client will be allocated to whichever provider is on duty at the relevant time or, where currently applicable (due to the very small amount of duty work), cases will continue to be allocated on a panel basis. This maintains the current case allocation method (including the current rules on managing conflicts of interest), except that cases are allocated to a firm rather than to an individual.
31. As now, clients choosing their own solicitor will be directed by the Defence Solicitor Call Centre to the provider they choose provided that the provider holds an Own Client Work contract. In the event the client chooses a provider that does not hold an Own Client Work 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

32. Under the final model, clients seeking advice from a provider for matters outside the police station will seek such advice from any provider holding an Own Client Work contract. As now, there will be no allocation process for this work, the client will simply contact a provider directly.

(ix) Remuneration

Phased fee reduction

33. The final model includes a total reduction in fees of 17.5% by June 2015, the intended service commencement date of the new criminal legal aid contracts. It is important to note that the impact of this 17.5% fee reduction may in effect vary depending on the area, due to the introduction of the new remuneration mechanisms.
34. Rather than making a one step reduction of 17.5% in June 2015, we will make two successive reductions: a 8.75% fee reduction on new cases starting on or after 20 March 2014 across all criminal litigation services²¹ (with the exception of VHCCs) and magistrates' court advocacy fees, followed by a second reduction of 8.75% across the

¹⁹ See Regulation 14 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013.

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

²¹ References to 'litigation services' throughout this chapter means all services currently in scope of the 2010 Standard Crime Contract.

same range of fees in June 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 remuneration arrangements discussed below).

35. The rates for the litigation services from 20 March 2014 are set out in Criminal Legal Aid (Remuneration) (Amendment) Regulations 2014.

Fixed fees

36. No matter whether the client chooses their own provider or the Duty Provider, the payment mechanism (i.e. a fixed fee scheme) will be the same.

37. We now intend the following for each stage in the CJS process:

a) Police station attendance fixed fee

38. We will introduce a fixed fee approach to remuneration for police station attendance. There will be two fixed fees: a fixed fee for cases originating in a police station in London and a fixed fee for cases originating outside of London. For both in London and outside of London we will maintain a mechanism, similar to the current escape fee mechanism for police station attendance, whereby providers will be able to claim a higher fee provided they can demonstrate that their hours worked exceed a specified threshold (which will be equal to three times the fixed fee for that area). The hourly rates for such work will be reduced by 17.5% below current rates, which are already fixed according to whether the case originated in London or outside of London.²²

39. For police station attendance work the following fixed fees and Escape Fee Case Thresholds will apply:

Table C3: Police station attendance fixed fees and escape fee case thresholds

	Fixed Fee	Escape Fee Case Threshold
Cases originating in London	£200.93	£602.79
Cases originating outside London	£156.19	£468.57

These fixed fees have been estimated using the mean payment from LAA billing data for the year October 2012 to September 2013 (inclusive). These fees are exclusive of VAT and travel and subsistence disbursements.

b) Representation in the magistrates' court fixed fee

40. The fixed fee for representation in the magistrates' court will not apply to those cases dealt with by the court duty provider (see paragraph 42 below). For all other magistrates' court representation work, under both the Own Client Work and Duty Provider Work contracts, we will replace the Standard Fee scheme in the magistrates' court with fixed fees. This will remove the distinction between a Lower Standard Fee and a Higher Standard Fee and the distinction between designated and non-designated areas. Instead, the fixed fee will just be based on case type.
41. Under both the Own Client Work and Duty Provider Work contracts, we will maintain a mechanism, similar to the current non-standard fee mechanism for magistrates' court representation work (excluding court duty provider work), whereby providers will 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

²² *ibid.*

specified threshold. For ease, we will continue to refer to this as a Non-Standard Fee. The hourly rates for such work will be reduced by 17.5% below current rates.²³

42. We will maintain the magistrates' court duty provider scheme under this model. This work will continue to be remunerated by way of hourly rates and providers will be paid based on the number of hours in attendance at the magistrates' court. However, this work will only be conducted by those providers awarded a Duty Provider Work contract and they will be remunerated for this work at the current rates²⁴ reduced by 17.5%.
43. For magistrates' court representation work the following fixed fees and Non-Standard Fee Thresholds will apply

Table C4: Magistrates' court representation fixed fees and non-standard fee thresholds

	Fixed fee	Non-Standard Fee Threshold
Category 1a	£235.56	£426.61
Category 1b	£196.28	£426.61
Category 2	£449.45	£704.88
Category 3	£336.01	£651.34

These fixed fees have been estimated using the mean payment on LAA billing data for the year October 2012 to September 2013 (inclusive) and include the travel and waiting costs. These fees are exclusive of VAT and travel and subsistence disbursements.

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

44. For both Own Client Work and Duty Provider Work in the Crown Court there will be a fixed fee scheme based on three variables (offence type, pages of prosecution evidence (PPE), and case type) to mitigate the financial risk for providers. There will be a series of these fixed fees for each case type (guilty plea, cracked trial, trial). Each case outcome will have 55 fixed fees: five fixed fees associated with different levels of PPE, for each of the eleven offence types. In total across the three case types, there will be 165 fixed fees, covering cases with less than 500 pages of PPE. This we believe will help to reduce the risk of a provider substantially gaining or losing financially from any one case.
45. As under the original proposal, we will 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 will be equivalent to that received if the case had remained in the magistrates' court. Please also see paragraphs 127 to 129 of the Response to Consultation section above for an explanation of a further change to the

²³ *ibid.*

²⁴ 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% will be the total reduction in fees which will include the proposed 8.75% reduction across the same rates on 20 March 2014.

Litigator Graduated Fee Scheme, specifically concerning elected either way cases where the prosecution drop all charges against an individual.

46. Those cases with over 500 PPE will be remunerated by the graduated fee scheme.
47. For both Own Client Work and Duty Provider Work, no matter where services are delivered, the same national fixed fees scheme for Crown Court litigation will apply for cases with 500 PPE or less.

48. For Crown Court litigation work on cases with less than 500 PPE, the following fixed fee scheme will apply:

Table C5: Crown Court litigation fixed fees for cases with less than 500 PPE

Offence Type	Pages of Prosecution Evidence				
	0-100	101-200	201-300	301-400	401-500
GUILTY PLEA					
A	£623.91	£925.20	£1,575.67	£2,023.92	£2,427.49
B	£516.13	£801.00	£1,240.29	£1,665.08	£1,999.57
C	£425.29	£644.20	£893.93	£1,129.42	£1,378.01
D	£590.12	£853.18	£1,331.85	£1,799.25	£2,200.34
E	£189.13	£421.99	£718.95	£1,028.40	£1,200.46
F	£190.64	£429.52	£678.95	£952.71	£1,138.20
G	£205.08	£446.81	£709.66	£960.68	£1,155.19
H	£190.70	£437.67	£691.12	£963.60	£1,132.31
I	£176.11	£435.09	£759.08	£986.10	£1,275.73
J	£624.97	£917.17	£1,436.04	£1,980.90	£2,364.54
K	£579.60	£733.21	£1,247.57	£1,624.66	£2,049.27
CRACKED TRIAL					
A	£884.72	£1,589.64	£2,557.47	£3,244.09	£3,780.71
B	£680.29	£1,192.92	£1,942.55	£2,384.90	£2,730.63
C	£536.57	£858.74	£1,249.88	£1,498.44	£1,732.05
D	£801.88	£1,375.58	£2,295.35	£3,078.19	£3,446.49
E	£272.47	£626.97	£1,054.91	£1,274.47	£1,515.07
F	£248.74	£613.58	£1,034.89	£1,257.60	£1,408.53
G	£263.02	£726.87	£1,110.93	£1,407.21	£1,546.48
H	£254.11	£631.57	£1,055.00	£1,230.60	£1,396.22
I	£296.15	£780.97	£1,296.09	£1,776.55	£1,836.80
J	£854.51	£1,481.89	£2,452.13	£3,221.82	£3,890.95
K	£702.75	£935.17	£1,551.61	£2,150.74	£2,586.46
TRIAL					
A	£1,697.67	£2,741.76	£3,881.81	£4,914.81	£5,888.45
B	£1,405.67	£2,181.36	£3,234.00	£4,253.51	£5,351.27
C	£1,068.79	£1,824.09	£2,702.69	£3,615.76	£4,718.64
D	£1,645.35	£2,398.90	£3,626.39	£4,734.08	£6,066.88
E	£690.59	£1,179.17	£2,040.21	£2,665.58	£3,559.33
F	£607.98	£1,052.92	£1,717.22	£2,222.19	£2,998.04
G	£569.27	£1,054.06	£1,854.79	£2,366.91	£2,976.55
H	£661.89	£1,443.80	£2,179.28	£2,685.84	£3,349.84
I	£1,006.88	£1,779.70	£2,490.00	£3,171.49	£3,988.44
J	£2,080.59	£2,700.87	£3,876.63	£4,907.84	£6,071.07
K	£1,438.74	£1,957.11	£2,315.27	£2,931.67	£3,560.93

These fees are exclusive of VAT and travel and subsistence disbursements.

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

49. As outlined above, we will 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 will be set administratively at 17.5% below current rates.²⁵

Rates of pay for other classes of criminal legal aid

50. The rates of pay for all other classes of work will be set administratively and reduced by 17.5% below current rates. For clarity, this includes rates of pay for prison law and appeals and reviews work, however it does not include any associated civil work. 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. The current rates of pay for each of the classes of work with administratively set rates are set out in regulations.²⁶

Disbursements

51. We recognise the importance of separate disbursement payments and therefore the cost of any travel and subsistence and experts' disbursements under each category above will be remunerated separately.

(x) Procurement Process

52. The purpose of this section is to explain how we currently intend to run the procurement process to procure new crime contracts under the final model.

53. However, as confirmed in the consultation, we make no express commitment in this section with regard to the final version of the procurement process (including the terms and conditions that will govern the process, the final criteria, any method for evaluating tenders and/or any scoring mechanism applied).

54. The procurement process will allow applicants to:

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

55. Organisations that wish to undertake Prison Law and/or Appeals and Reviews work will be able to apply under the Own Client Contract or under a separate process. This will have specific criteria reflecting the quality requirements of the service. These criteria will include the requirement to employ a Prison Law Supervisor. There will 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 will be made available in advance of the tender process opening.

²⁵ 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% will be the total reduction in fees which will include the proposed 8.75% reduction across the same rates in March 2014.

²⁶ Criminal Legal Aid (Remuneration) Regulations 2013.

Contract for Own Client Work

56. This application process will 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.
57. Applicants will 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

58. The PQQ for Own Client Work will consist of mandatory and discretionary criteria.
- Mandatory and Discretionary Criteria
59. The mandatory and discretionary criteria will test an applicant's suitability to contract with a public body.
60. The PQQ will, as far as possible, follow Cabinet Office guidance. The PQQ will 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 will also include LAA specific considerations (for example, whether the applicant has had previous contract termination).
61. Responses to grounds for mandatory rejection will be absolute and where an applicant indicated that it was unable to meet the requirement, it will fail the PQQ.
62. Under the PQQ questions relating to discretionary grounds for rejection, applicants will have the opportunity to present information that should be taken into account in evaluating why requirements were not met outright. This information will be assessed by the LAA as part of its evaluation of PQQ responses.

Core obligations under the Contract for Own Client Work

63. As part of the tender process, applicants will 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 supervisor and to introduce a supervisor to caseworker ratio of 1 to 4.
64. 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 and have approval by the contract start date
 - Applicants will be subject to a Peer Review audit during the term of the contract and must receive a Peer Review Rating of 3 or above to maintain its 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 have an office in England and Wales that meets the requirements set out in the contract.

65. Organisations must be awarded an Own Client Work contract to be invited to apply for a Duty Provider Work contract.

Contract to deliver Duty Provider Work

66. For Duty Provider Work, we 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). Only organisations that are awarded an Own Client Work contract will be invited to apply for a Duty Provider Work contract. Organisations will submit a single application containing responses to selection and award criteria. Assessment of responses will be a two stage process to evaluate the Requirements of the Tender Process:

- Stage 1 – assessment of selection criteria responses to shortlist applicants to the next stage and
- Stage 2 – assessment of award criteria responses.

Duty Provider Work Selection Criteria

67. We are in the process of developing selection criteria to shortlist applicants bidding to deliver Duty Provider Work. The Law Society suggested it should be a requirement that applicants have an office meeting the contract requirements in the specific procurement area in which they are tendering. We intend to adopt this approach in all areas except London. In view of the geography of London we intend to make it a requirement that an organisation must have an office (meeting the contract definition) in the procurement area in which it is bidding or in an immediately adjacent procurement area. This essentially replicates the current requirements for access to duty solicitor work in London.

68. We were interested in the Law Society's suggestion that we should be testing the experience of applicants, and as a result the selection criteria will evaluate an applicant's experience as well as their capability of delivering services of similar type or volume. Applicants will 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; and
- Experience of having delivered comparable volumes of work.

69. The number of shortlisted applicants at the selection criteria stage will be determined relative to the number of Duty Provider Work contracts required in each procurement area.

Award Criteria for Duty Provider Work

70. We will only consider responses to award criteria for applicants that are shortlisted at the selection criteria stage.

71. It is our intention to require applicants to set out how they intended to deliver the service against defined areas such as ensuring quality of service delivery, staffing and recruitment, premises and other aspects of mobilisation.

72. The LAA will evaluate these responses to ensure applicants have 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.
73. Applicants will then be scored and ranked in order of highest score.
74. We will aim to award a specified number of equal sized Duty Provider Work contracts in each procurement area to the highest scoring applicants.

Allocation of duty slots

75. Successful bidders will be allocated equal numbers of police station and magistrates' court duty slots.
76. For example, if ten contracts were to be awarded in a procurement area, we would look to award to those applicants with the ten highest scoring bids. Each of whom would be awarded equal sized allocations of duty slots (i.e. each provider will get 10% of the available duty slots).

Contract mobilisation for Duty Provider Work

77. In order to have assurance that successful applicants for Duty Provider Work were making satisfactory progress towards being in a position to deliver the services, the LAA will 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 will have the right to terminate the contract.

TUPE

78. It will 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) applies.

(xi) Implementation

79. We anticipate we will commence the procurement process for criminal legal aid services in April 2014 with a view to contracts being awarded in February 2015. The service will commence in June 2015.

Annex D – Classes of criminal legal aid work

The information set out in the following tables is provided in support of the final model of procurement of criminal legal aid services described in Annex C.

Table D1: 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

Class of criminal legal aid work	In scope of Own Client Work Contract	In scope of Duty Provider Work Contract
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

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

Annex E – Advocates Graduated Fees

The fees shown below relate to a trial. Guilty pleas are paid at 45% of the trial rate and cracked trials are paid at 80% of the trial rate (excluding witness uplift).

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

Option 2	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	£7,900	£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	£7,900	£2.96	£338	£175	£187
C – Less serious violence or drugs	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£7,900	£2.96	£322	£175	£187
D – Sexual offences	1,500	£5,925	£11,850	£4.42	£483	£261	£281	1,500	£3,950	£7,900	£2.96	£322	£175	£187
E – Burglary	1,500	£5,925	£11,850	£4.42	£363	£261	£281	1,500	£3,950	£7,900	£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	£7,900	£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	£7,900	£2.96	£242	£175	£187
H – Miscellaneous	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£7,900	£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	£7,900	£2.96	£322	£175	£187
J – Serious Sexual Offences	1,500	£5,925	£11,850	£4.42	£580	£261	£281	1,500	£3,950	£7,900	£2.96	£387	£175	£187
K – Dishonest (value £100k+)	5,000	£5,925	£11,850	£4.42	£580	£261	£281	5,000	£3,950	£7,900	£2.96	£387	£175	£187

74 The amount of the graduated fee for a single trial advocate representing one assisted person being tried on one indictment in the Crown Court is calculated in accordance with the following formula:

$$G = c(B + (w \times W)).$$

Where the trial exceeds 2 days a daily attendance fee, as set out in the table above, must also be paid.

The amount of the graduated fee for a single trial advocate representing one assisted person in a guilty plea or cracked trial is calculated in accordance with the following formula:

$$G = c \times B.$$

G is the amount of the graduated fee;

c is the case multiplier

B is the basic fee (either standard fee or enhanced fee if page count exceeds the cut off point in the table above)

w is the number of prosecution witnesses excluding the first 10

W is the witness uplift

The case multiplier is:

1 for a trial;

0.80 for a cracked trial;

0.45 for a guilty plea.

Annex F – Interim Payments

Background

1. In “Transforming Legal Aid: Next Steps” we said that the Government had “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”.
2. The LAA and MoJ convened the Interim Payments Working Group (IPWG) with representatives from the Law Society, Bar Council, Criminal Bar Association, Young Barristers Committee, and the Bar Council Remuneration Committee.
3. The IPWG put forwards several proposals.

Proposals

4. We intend to implement the following:

Litigators Interim Payments (Crown Court):

5. This would introduce an interim payment mechanism for litigators by providing an opportunity for litigators to claim part-payment of a case at two trigger points during the life of the case – trigger 1 being an effective plea and case management hearing (‘PCMH’) and trigger 2 being the point at which the trial, listed for 10 days or more, commences.
6. The Litigator Graduated Fee Scheme (LGFS) currently requires litigators to submit their final claim once the case has concluded – for example, after the defendant has been sentenced where the case goes to trial. This means that firms undertaking these lengthy cases are required to carry a significant burden of work-in-progress.
7. Under the interim payment mechanism, litigators would be able to claim up to 2 interim payments in a case. The amount payable would vary by offence class and would also be dependant on the number of Pages of Prosecution Evidence (‘PPE’) served at the time. For the first trigger point, for example for cases with more than 500 pages of prosecution evidence, the fee will range from approximately £1,300 to £4,300 and for the second trigger point the fee will range from approx £5,000 to £10,500.
8. Interim payments for litigators are being introduced through phased implementation. Trigger 1 (effective PCMH) will be implemented by way of secondary legislation in summer 2015 whilst Trigger 2 (start of trial where the trial is listed 10 days or more) will be implemented later this year.

Advocates Interim Payments (Crown Court):

9. This would introduce an interim payment mechanism for advocates by providing an opportunity for advocates to claim part-payment at the start of a trial in all cases that are listed for 10 days or more.

10. The interim fee paid to advocates at the start of the trial will vary dependent on the level of the advocate and the number of witnesses and PPE that are served at the start of the trial. The average fee paid will range from £1,300 to £2,300 for junior advocates and £2,600 to £4,000 for QCs.
11. Interim payments for advocates will be implemented later this year.

Early Payments for some disbursements in Magistrates' Court Cases

12. This would amend the rules covering payments on account for disbursements to allow providers to request early payment of disbursements in magistrates' court cases where the value of the disbursement exceeds £500.
13. With the exception of a very small number of cases where the disbursement exceeds the value of a firm's monthly payment, the current scheme requires criminal legal aid providers to claim payment for disbursements at the end of a trial when they submit their final claim. In most cases, a firm will be required to fund the disbursement (e.g. expert report) in advance, thereby adding to the firm's work-in-progress costs. We propose implementing this proposal under the 2015 crime contract.

Further consideration

14. The following proposals, though relevant to cashflow, have wider policy issues that need to be considered, potentially through further consultation. Therefore, we propose to consider these suggestions further in longer time and work through any wider policy implications.

Instructed Advocate:

15. It was suggested that we could amend the definition of Instructed Advocate in the Criminal Legal Aid (Remuneration) Regulations 2013 ('the Regulations') so that the Instructed Advocate is the advocate that conducts the main hearing, rather than as under the current arrangements, the advocate who attends the first hearing in the case (unless another advocate was nominated as the Instructed Advocate prior to PCMH). This would ensure that the advocate that does the bulk of the work will be paid directly by the LAA, rather than having to await payment from the Instructed Advocate.

Bench Warrants

16. It was suggested that we could amend the Regulations so that advocates are able to be paid when a bench warrant remained unexecuted for three months. This would bring the advocates' scheme into line with the litigators scheme, and closer to CPS funding arrangements.
17. However, the CPS scheme works by making a payment based on the actual work an advocate had done (such as attending hearings, conferences etc.) prior to the issue of the bench warrant. No final fee is paid unless and until the defendant is arrested and dealt with, or the warrant is withdrawn. The LGFS allows for payment of a guilty plea fee if the warrant is issued at or before the PCMH, or a cracked trial fee if the warrant is issued after the PCMH. This reflects the likely amount of work that had been done, so a case with an early bench warrant will be paid less than a case where the individual absconds just before trial.

18. Following a Costs Judge's decision that there should be payment to advocates after 12 months, the LAA has been making payments in line with that decision in other cases. Given this, we also plan to consider this in longer time and work through the policy implications.

Staged Payments for Magistrates' Court Cases:

19. It was suggested that we could introduce a staged payment mechanism for magistrates' court cases that allows providers to claim a guaranteed payment when a not guilty plea has been entered and a trial date has been set in the magistrates' court.
20. The LAA currently has an existing mechanism under which providers are paid monthly payments this is intended to ease cash flow and an interim payment may not always trigger a larger monthly payment. On considering the impacts of this proposal the LAA have identified a number of financial stewardship concerns including instances where a client changes their plea and a payment has already been made. We have therefore decided not to continue with this proposal at this time but instead to focus on Crown Court cases.

Annex G – Equality Statement

Introduction

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.
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.
3. In this Annex we set out our final analysis of the equalities impacts of reform of the procurement of criminal litigation services and restructuring the advocates graduated fee scheme.
4. This Annex builds on our initial equality analysis included in the April 2013 consultation, *Transforming Legal Aid* (Annex K: Equalities Impact) and that published alongside the subsequent *Transforming Legal Aid: Next Steps* document (Annex G: Equalities Statement). It considers the general equality themes for the criminal litigation procurement and advocacy fees proposals in relation to our responsibilities under the Equality Act 2010. We also consider the specific equality issues raised by respondents to the two consultations.

Legal duties

5. 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.
6. The relevant protected characteristics for those purposes are: age, disability, gender reassignment, marriage and civil partnership (section 149(1)(a) only), pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
7. Consistent with that duty, and with the statutory objectives of s.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.
8. The provisions of the Act currently in force contain, in Chapter 2, several forms of prohibited conduct, namely:
 - direct discrimination (s.13)
 - discrimination arising from disability (s.15)

- pregnancy and maternity discrimination (s.17 and s.18)
 - indirect discrimination (s.19)
 - failure to comply with a duty to make reasonable adjustments (s.20 and s.21)
 - harassment (s.26)
 - victimisation (s.27)
 - breach of a non-discrimination clause (s.61)
9. Those forms of prohibited conduct are considered, where relevant, in more detail in the analysis that follows.
10. In relation to the second and third statutory objectives – advancement of equality of opportunity and fostering good relations – to which, under s.149, the Ministry is obliged to have due regard, guidance is provided in s. 149(3) to (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

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons’ disabilities.’

‘(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.’

11. 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 s.149(3) to (5) in mind. Where relevant, we address the second and third limbs of the duty in more detail in the analysis that follows.

Data Sources

12. We have identified the following data sources as providing the most relevant information on potential equality impacts:
- Legal Aid Agency data on clients collected through provider billing information
 - Legal Aid Agency data on providers with legal aid contracts.
 - 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.
13. 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 more open to inaccuracy compared to 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.
14. In both consultations we asked respondents to identify additional evidence or sources of data. However, none of the available data, whether initially held by the Department or suggested by respondents, cover all of the protected characteristics.
15. Where respondents suggested additional data, or sources of data, as to the protected characteristics of affected persons 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. The Bar Council has published exit surveys indicating female or BAME barristers are more likely to leave because of financial considerations. However, it is not clear if this is a result of legal aid rates. We do not, therefore, consider it a reliable source on which to rely in considering the impact of our reforms.
16. 2011/12 data has been used on crime contract holders in order to be consistent with analysis carried out for the consultation. This dataset includes all providers remunerated for Crime Higher or Crime Lower work in 2011/12.²⁷ As there has not been a new contract round since this analysis was carried out, we still consider this to provide an accurate picture of the protected characteristics of providers affected by the proposals. Where relevant, however, we have used more up-to-date data and this is flagged throughout the document.

Methodology

17. 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

²⁷ This dataset does not include crime providers only doing VHCC work as they are not affected by the proposals.

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 broad equality impacts of this.

18. Some respondents to the April 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:

- 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.
- 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.
- 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.

19. In seeking wider views we also asked three equalities-related questions in the consultation as follows:

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?

20. Whilst some respondents answered these questions directly, many raised other equality issues which have been considered in this updated Equality Statement.

Conclusions

21. 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.

22. A large number of responses were received to the April consultation which related to equality impacts. A smaller number of representations was also received in response to the September consultation. 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 the response to consultation section.

23. 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 LAA, and support our wider efforts to transform the justice system.
24. 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.
25. 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.
26. Proceeding on the basis that the proposals amount to provisions, criterion or practices, we have identified the likelihood 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 our proposals are likely to affect those with a particular protected characteristic, we do not consider that they necessarily amount to a particular or substantial disadvantage.
27. 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.
28. 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.
29. 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. 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 evidence is when drawing conclusions about the impacts the proposals are likely to have.
30. 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, our conclusion – that the changes are justified in pursuit of our stated objectives and that it would not be proportionate or practicable to further amend our policies to address them – remain the same.

31. We do not consider that our proposals are likely to disadvantage 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, however we believe this is unlikely, as set out in the accompanying Impact Assessments and addressed in the foregoing chapters. Potential impacts on clients are likely to depend upon the provider response to the changes and we will continue to monitor the impact. There may be changes which affect the user experience, for example if the identity of the provider of services changes or preferred representatives move firms or change their business structures. But we do not consider that this would amount to a disadvantage. Were any disadvantage or disproportionate effect to materialise, we consider it to be justified for the reasons set out.
32. 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.
33. 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.
34. 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. While we have taken into account points made by respondents about the potential effect of these reforms on providers and the junior Bar, the specific levels of representation within given practice areas at the Bar and solicitors profession are primarily the responsibility of the BSB and SRA.
35. 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.
36. Throughout, we have considered how potential adverse impacts could be mitigated and the revised proposals on criminal litigation procurement and advocacy fees published in Next Steps were designed to address issues raised in response to the original Transforming Legal Aid consultation. We have further considered responses to Next Steps as well as changes to the final policy as presented in Transforming Legal Aid – Next Steps: Government Response in arriving at final conclusions as to the impact of our proposals.

Types of Impact

37. For both sets of proposals we recognise that there are likely to be adverse impacts on some of those affected. These may include lower earnings for individuals and businesses and in some cases may mean continuing to operate within the market could, without adaptation, become unviable.
38. We have sought to mitigate these risks as far as possible, e.g. through reintroducing client choice to the criminal litigation procurement model, allowing an unlimited number of own client contracts and introducing interim payments at the PCMH stage (for an effective PCMH) and for trials of 10 days or more. As part of our reform of advocacy fees we have introduced interim payments for trials of 10 days or more and have reinstated the graduated fee for cracked trials in elected either way cases in which the prosecution offers no evidence on all counts (for both advocates and litigators).

Criminal Litigation Procurement

Key Issues and Response

Key Issues Raised – Transforming Legal Aid

39. Amongst those responses which addressed equalities impacts, there was significant support for the view expressed in response to the earlier, April consultation that the proposals would have a negative 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 the perceived impacts of a reduction on fees and the contraction of the criminal legal aid market.
40. Several respondents argued that a reduction in the number of providers either led by, or primarily serving, individuals with protected characteristics may put at risk the possibility of an effective defence as required by article 6 ECHR for the clients concerned. 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.
41. There were particular concerns raised about the number of solicitors who would be willing or able to deliver services at the proposed rates. A number of respondents asserted that the proposals would risk the survival of smaller specialist practices in particular (which they argued 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 consortia to bid for contracts as may be required to deliver services in a substantially smaller market. 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.
42. Concerns about the impact on the diversity of the legal professions, which in turn may have ramifications for the future diversity of the judiciary, were also consistent with responses to the April consultation. This potential outcome, they suggested, fails to promote equality of opportunity.

43. Some respondents argued that BAME and female solicitors practise disproportionately in small firms, so any proposals that impact adversely on small firms will impact disproportionately on these groups. They stated that the visible and active presence of BAME and female solicitors and barristers in the CJS is essential to retaining public confidence and to ensuring clients are able to access services provided by these groups.
44. A significant number of responses raised the issue of increased travelling distances due to larger procurement areas. While some saw this as primarily a cost to be incurred by providers, others suggested that clients would have to travel greater distances, at extra cost, to solicitors' offices. This, they argued, would be problematic for older and disabled people, those on low incomes and with mental health issues.
45. 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 language skills.
46. A number of responses from barristers and chambers repeated concerns that the smaller number of solicitors' firms which 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.

Key Issues Raised – Transforming Legal Aid: Next Steps

47. Responses setting out the views summarised above were submitted to both consultations. However, some additional points were made in relation to Next Steps which were not made in relation to the original consultation.
48. The April consultation proposed 400 contracts for criminal litigation providers. Whilst we did not set out the proposed number of Duty Provider Work contracts in Next Steps we did explain that based on the data provided by Otterburn Legal Consulting, following his survey undertaken in summer 2013, and the estimated expenditure after the proposed fee reduction, this would suggest that 570 contracts would be the maximum. Whilst this number was not the proposed number of Duty Provider Work contracts, it was criticised on the same basis – that it was too steep a reduction from the present 1600 contracts and would have a particular impact on BAME owned and managed firms, as these are overrepresented in the affected group.
49. The suggestion was made that BAME advocates rely on referrals from BAME solicitors and therefore any impact on the number of BAME led/managed firms might have an impact on the work available to BAME advocates.
50. The assertion was made that BAME clients may have cultural and linguistic needs which cannot be served well by large contracting organisations and that a reduction in the number of BAME managed firms could leave BAME communities feeling disenfranchised. It was also suggested that the police in some cases rely upon BAME solicitors and advocates to act as intermediaries with BAME communities and a reduction in the number of the former might impact on community cohesion.

Government Response

51. In order to address concerns raised in respect of the April consultation about market sustainability, we jointly commissioned 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. The independent research provided an important evidence base for determining an appropriate range of Duty Provider Work contracts to offer in each procurement area. We concluded, based on our internal analysis and the independent research that 525 Duty Provider Work contracts would allow for both a sustainable market and for services to be provided at the lower remuneration rates set out in the Next Steps document.

52. We have also explored options for varying the size of procurement areas in which respondents stated it would be potentially challenging to deliver services. In doing so, based on our analysis as set out in the Response to Consultation section, a provider would not have to travel more than 1.5 hours between two places of service delivery (police stations, courts).
53. We do not accept that the original April model, the modified model set out in Next Steps in September, or that finally published in this document would necessarily mean that providers would retain advocacy work and not choose to instruct a self-employed barrister. Nor do we accept therefore that either model would have a disproportionate impact on female, young or BAME barristers. While female barristers are over represented in the junior bar when compared to the Bar as a whole, they are not over-represented when compared to the general public. 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. 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 and female persons. However, were such impact to materialise, we consider any such impact would be justified for the reasons set out in the Response to Consultation section,
54. In developing the modified model set out in Next Steps, we explored modifications to the fixed fee scheme to minimise the reduction in contract numbers. We also proposed to offer an unlimited number of Own Client Work contracts to those providers capable of delivering those services. We set out our view that this would mitigate the impact on smaller organisations delivering criminal legal aid services while allowing those that wish to consolidate and expand to do so.
55. We do not accept the additional equalities points made in response to the Next Steps consultation. We do not accept that solicitors' firms allocate work to advocates on the basis of ethnicity. No evidence has been provided to support the assertion that solicitors act in this way; in developing policy we can only assume that lawyers will act in compliance with their legal and professional obligations and therefore contract with whichever advocate is in the best interest of the clients. Likewise, no evidence has been offered in support of the premise that organisations of a particular size are less able to respond positively to particular cultural or linguistic needs. Finally, we do not believe that the Police are dependent on solicitors and barristers for engagement with communities of a particular ethnicity, given their significant investment in building strong relationships with minority communities, e.g. through the Safer Neighbourhoods programme.

Analysis of Final Model

56. Under the modified model set out in Transforming Legal Aid – Next Steps: Government Response 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. As set out in, 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. On average nationally, currently 60% of clients seeking criminal legal aid services choose their own solicitor, 40% choose the duty solicitor.
57. Under the modified model, the rates of pay for both Own Client Work and Duty Provider Work will 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 capability and capacity alone.

Impact on Individuals

58. 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 final 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 contracts has been determined on the basis of the four factors set out in Next Steps (sufficient supply to deal with conflict of interest, sufficient case volume to allow fixed fee schemes to work, market agility and sustainable procurement) as well as outcomes of the independent research commissioned jointly with the Law Society. The number of providers the client can choose to instruct may be fewer than at present; 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 to enable individuals to choose a provider which best meets his or her needs, including those requiring specialist services.
59. 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. As now, providers will have contractual obligations to comply with the Equality Act 2010.
60. 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.

61. Data on the protected characteristics of clients receiving criminal legal aid shows that men are over-represented compared with the general population.²⁸ While the proposals are not expected to impact on clients, any risk to sustainability (were it to materialise) would therefore have a disproportionate impact on men’s ability to access legal representation. We consider any such impact to be justified, however, for the reasons set out below.

Impact on providers

62. As with the previous model, all criminal legal aid providers will be affected by the changes in Criminal Litigation Procurement. The proposals do not directly discriminate against a group sharing a protected characteristic, since the proposal will apply to all crime providers irrespective of protected characteristics.

63. However, if a group sharing a protected characteristic is over-represented amongst crime providers compared with the general population, then there is the possibility for the proposal to disproportionately impact that group. Table G1 therefore gives the protected characteristics of crime providers in order to allow a comparison with the general population. This is based on the number of providers that held a crime contract following the last bidding round which took place in 2011/12.

64. The race, sex and illness/disability information of providers shown in table G1 is based on the majority ownership or majority control (OMC) of the firm. The table shows that providers with majority BAME and male managerial control are over represented amongst criminal legal aid providers compared with the population as a whole. While all providers would be treated equally, the proposals therefore may have a disproportionate impact on providers with BAME or Male managerial control. We consider any such impact to be justified, however, for the reasons set out below.

Table G1: Legal Aid Agency Criminal Law contract holders by demographics of majority managerial control; 11/12 crime contract holders

Demographics of ownership/managerial control (OMC)		CDS Providers (n=1,808)*	General Population
Majority Ethnic OMC	White British	74%	86%
	BAME	20%	14%
	Split	6%	
Majority Gender OMC	Male	71%	49%
	Female	12%	51%
	Split	17%	
Any ill/disabled OMC	No	95%	82%
	Yes	5%	18%

**Data on protected characteristics was matched to 69% of criminal law contract holders.*

²⁸ Legal Aid Statistics in England and Wales 2012–13.

65. While all providers will be affected, providers in certain regions will experience greater losses than others due to the variation in current Police Station and Magistrates Court fees by region compared to the amounts which will be paid under the new scheme. In order to look at whether groups sharing a protected characteristic could be disproportionately impacted, Table G2 splits crime providers into quintiles according to their expected loss as a proportion of the total crime fund take, and then looks at whether a group sharing a particular characteristic is over-represented in one quintile compared with the others.
66. Table G2 shows that providers seeing the highest losses, those in the top two quintiles, are more likely to have BAME managerial control compared with providers seeing smaller losses. 26% of firms in the top quintile (the fifth of firms experiencing the highest proportional losses) and 30% of firms in the 4th quintile have BAME managerial control compared with between 6-22% for the other quintiles. We consider any such impact to be justified, however, for the reasons set out below.

Table G2: Legal Aid Agency Criminal Law contract holders by demographics of majority managerial control; split by expected proportional loss (Oct 2012 – September 2013)

Demographics of ownership/managerial control (OMC)		Providers				
		Bottom Quintile	Second Quintile	Third Quintile	Fourth Quintile	Top Quintile
Majority Ethnic OMC	White British	93%	75%	71%	62%	69%
	BME	6%	18%	22%	30%	26%
	Split	2%	7%	7%	9%	6%
Majority Gender OMC	Male	77%	70%	72%	71%	66%
	Female	9%	11%	15%	13%	15%
	Split	13%	19%	13%	16%	20%
Any ill/disabled OMC	No	95%	94%	96%	97%	94%
	Yes	5%	6%	4%	3%	6%

Justification

67. In light of the modifications which have been made to arrive at the final model we believe the final model is a proportionate means of achieving the legitimate aims set out in the Response to Consultation section. 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 final 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.
68. With regard to the impact on clients and providers in terms of the travelling time between police stations and courts, we believe the new procurement areas 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 final model we will retain separate payment for travel and subsistence disbursements.

69. 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).

Restructuring the Advocates Graduated Fee Scheme

Key Issues and Response

Key Issues Raised – Transforming Legal Aid

70. A number of responses repeated concerns expressed in response to the April consultation that the combination of our reforms to criminal litigation procurement, and those to the AGFS, would have a particular impact on the junior Bar as more senior advocates would select the most profitable cases. Consultees also suggested that solicitors would seek to do as much magistrates' courts advocacy and non-trial Crown Court work in-house as possible, squeezing the junior Bar further. It was suggested this would drive people away from advocacy and adversely affect clients, victims and witnesses if there were insufficient quality advocates available.
71. It was suggested that these potential effects would impact disproportionately on female and BAME barristers, who are disproportionately represented among the junior Bar, and that this would have a subsequent effect on the future diversity of the judiciary.

Key Issues Raised – Transforming Legal Aid: Next Steps

72. Responses to the Next Steps consultation made, in many cases, the same points as those raised in relation to the earlier consultation. However, in addition, the suggestion was made that the level of fees being proposed would not be sufficient to allow those who are not financially independent to take up a career in the criminal Bar. As such, it was suggested that the proposals might harm equality of opportunity.

Government Response

73. 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.
74. 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, though the proportion of Crown Court work conducted by HCAs has increased in recent years. 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. 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.

75. Nor do we accept that the proposals would have had a disproportionate impact on female, BAME or young barristers or that the levels of remuneration are not sufficient to allow those who are not financially independent to enter the profession. 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 of individuals with particular protected characteristics within given practice areas at the Bar and solicitors' profession are primarily the responsibility of the BSB and SRA.
76. Although MoJ is mindful of the need to encourage those with one or more protected characteristics 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 nor effective policy instrument by which to achieve diversity in the professions or judiciary.

Analysis of Final Model

Impact on Barristers

77. Survey data shows that Men, those of White ethnicity, and those without a disability are over-represented amongst all Barristers compared with the population as a whole. There is, however, a greater proportion of women amongst the junior Bar compared with the senior Bar, although men are still over-represented at all levels of seniority. For example, 46% of new entrants to the Bar are female but this proportion falls as seniority increases so that women represent just 22% of senior Barristers (22+ years call).²⁹
78. Younger Barristers are also more likely to be of BAME ethnicity compared with older Barristers. For example, 12% of Barristers under age 40 are of BAME origin compared with 6% of those aged 60+. Assuming that age is a reasonable proxy for seniority, this suggests that junior Barristers are more likely to be of BAME origin compared with senior Bar.³⁰ However those of white ethnicity are still over-represented at all levels of seniority compared with the population as a whole.
79. The Impact Assessment accompanying the consultation response document shows that the highest paid Barristers, those receiving over £100,000 p.a. in fees, are expected to see the biggest losses from the final proposal for reforming the AGFS.

²⁹ Barrister's Working Lives: A Biennial Survey of the Bar 2011.

³⁰ *ibid.*

This is due to the fee reductions in more complex cases, bought about by the reduction in Daily Attendance Fees. As longer and more complex cases are more likely to be undertaken by experienced barristers, these more experienced Barristers are likely to be disproportionately impacted by the proposals.

80. As those with white ethnicity at 15 years' call are overrepresented both when compared with 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 therefore be disproportionately impacted. In addition, as we would expect there to be a positive correlation between age and experience, older barristers may be over-represented amongst those undertaking longer, more complex trials, and may therefore be disproportionately impacted by the AGFS changes.
81. As all Barristers will be affected by the proposals, it is also relevant to consider the composition of the Bar compared to the population as a whole. As Men and those of White ethnicity are over-represented amongst all practising Barristers compared to the population as a whole, this indicates that these groups are likely to be disproportionately impacted by the proposals. We consider any such impacts to be justified, however, for the reasons set out below.

Impact on Solicitor Advocates

82. Solicitor Advocates are more likely to work on less complex cases and are therefore less likely to be affected by the proposals compared with the highest paid Barristers. However, data is not available on the protected characteristics of Solicitor Advocates and it is not therefore possible to assess the equality impacts of the proposal on Solicitor Advocates using statistical analysis.
83. Assuming that Solicitor Advocates have similar characteristics to Barristers, then male, non-disabled Solicitor Advocates of white ethnicity could be disproportionately impacted by this proposal. This is because, as with Barristers, it is assumed that these groups are over-represented compared with the population as a whole.
84. However, the lack of data means it is not possible to draw strong conclusions as to the impact on Solicitor Advocates sharing a protected characteristic. We consider any such impacts to be justified, however, for the reasons set out below.

Impact on clients

85. We do not anticipate any indirect impact on clients for the reasons set out 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 (were any disadvantage to result) on the basis of the impacts which may be reasonably anticipated. As men 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

86. 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. We have sought to mitigate this impact as far as practicable while achieving the policy objectives, e.g. through introducing interim payments for trials of 10 days or more and reinstating the graduated fee for cracked trials in elected either way cases in which the prosecution offers no evidence on all counts.
87. 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 above. The final proposal 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).

Cumulative Impact of Our Proposals

Providers

88. We have considered the cumulative impact of the reforms to be implemented when looked at in conjunction with decisions already taken under LAT (see Transforming Legal Aid: Next Steps). We consider that providers carrying out VHCC work are likely to see a higher loss in revenue from the legal aid fund, compared to crime providers that do not do this work. This is because firms carrying out VHCC work will see a 30% fee reduction in this area of work, in addition to the 17.5% fee reduction proposed in crime.
89. Firms carrying out both civil and crime work may also be impacted by a combination of both the crime proposals and decisions already taken under LAT. However, as the civil fee reductions are lower than the fee reductions proposed in crime, these firms should actually experience a smaller proportional reduction in income compared with those just doing crime work. For example, providers doing family litigation will see a 10% fee cut on this work but this is lower than the 17.5% cut to crime work and so providers doing both family and crime work will see a proportionately lower loss in income compared to providers just doing crime work under the LAT proposals. For this reason, the cumulative analysis is focused on the protected characteristics of firms carrying out both crime and VHCC work, although the protected characteristics of crime providers also holding a civil contract has been shown and the impacts considered.
90. Table G3 shows the race, sex and illness/disability characteristics of providers just doing crime work, compared with those doing both civil and/or VHCC work. This information is based on the majority ownership or majority control (OMC) of the firm. The table is ranked in order of the extent to which firms will be impacted by the reforms with firms doing crime and civil the least affected, and those doing crime and VHCC work likely to experience the greatest loss in fee income.
91. Table G3 shows that there is a higher proportion of BAME managed firms doing both VHCC and crime work, and doing civil, crime and VHCC work compared to just those doing crime work. The table also shows a slightly higher proportion of male managed firms doing both crime and VHCC work, compared with those doing just crime. The

table does show that a slightly higher proportion of firms doing civil, crime and VHCC work have a member of the management that is ill or disabled compared with the other groupings; however, as this is a small group the difference should be treated with caution. BAME and male majority-led firms could therefore be disproportionately impacted by the cumulative impact of the crime proposals along with previous decisions already taken under LAT. We consider any such impact to be justified, however, for the reasons set out below.

Table G3: Cumulative impact on Legal Aid Agency suppliers by demographics of majority managerial control based on the latest contract data; 2011/12 for crime and 2013/14 for civil

Demographics of ownership/managerial control (OMC)		Providers			
		CDS Providers doing crime and civil (n=614)*	CDS Providers just doing crime (n=961)*	CDS Providers doing crime, civil and VHCC work (n=79)*	CDS Providers doing crime and VHCC work (n=154)*
Majority Ethnic OMC	White British	83%	71%	67%	62%
	BAME	14%	22%	27%	30%
	Split	4%	7%	6%	8%
Majority Gender OMC	Male	71%	70%	75%	77%
	Female	11%	13%	13%	12%
	Split	18%	17%	12%	11%
Any ill/disabled OMC	No	96%	95%	88%	95%
	Yes	4%	5%	12%	5%

* Data on protected characteristics was matched to 69% of criminal law contract holders.

92. Crime providers also carrying out in-house advocacy work will be affected by both the crime competitions proposal and changes to the AGFS. However, it is not possible to identify these firms from the data and to assess the protected characteristics of Solicitor Advocates working in such firms.

Barristers

93. Barristers undertaking both AGFS and VHCC work are more likely to receive higher fee incomes than those that deliver just AGFS work will see a cumulative effect from the proposals. 2012/13 data shows that 11% of Barristers doing work under the AGFS also carried out VHCC work in that period. These Barristers are likely to see the biggest loss in income from the proposals as they will see a reduction in both their income from the AGFS and the VHCC work. Data is not held on the protected characteristics of barristers undertaking work under the AGFS or those undertaking VHCC work and it is therefore not possible to draw firm conclusions on which groups, if any, will be disproportionately affected. However, in assessing the cumulative impact of the AGFS and VHCC proposals we have assumed that white, male barristers will be more affected than barristers with other protected characteristics on the grounds that they are overrepresented in the senior Bar and it is considered likely that it is more

senior barristers who predominantly undertake VHCC work. Male barristers and those of white ethnicity may therefore be disproportionately impacted. We consider any such impact to be justified, however, for the reasons set out below.

Solicitor Advocates

94. We do not hold data on the protected characteristics of solicitor advocates and do not consider it reliable to assume that the distribution of protected characteristics amongst the group as a whole is consistent with the distribution of protected characteristics for the ownership and managerial control of solicitors' firms in general. Some individuals with ownership or managerial control of a solicitors' firm may be solicitor advocates, may employ solicitor advocates, or neither.
95. It is therefore not possible to judge whether solicitor advocates with particular protected characteristics will be disproportionately affected by the cumulative impact of our proposals on criminal litigation procurement and reform of the AGFS using statistical analysis. However, the distribution of protected characteristics among Solicitor Advocates is likely to be similar to barristers. So, as above, male solicitor advocates and those of white ethnicity may therefore be disproportionately impacted. To the extent there were any disproportionate impacts, we consider them to be justified for the reasons set out below.

Clients

96. As set out above, we do not consider that this proposal will have a direct impact on clients as it affects the provider's remuneration, not the grant of legal aid to the client. 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. As a result, there is no cumulative impact on clients.

Justification

97. As set out above, BAME and male majority-led firms and male advocates or those of white ethnicity may be disproportionately impacted by the cumulative effect of the reforms as they may 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 further changes to address the impact and consider the reforms are justified in pursuit of the objective set out above. The introduction of competitive tendering for criminal litigation services and the reform of AGFS ensure limited public resources achieve value for money and are targeted where most necessary and justified to ensure the sustainability and credibility of the legal aid scheme.

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