

IA No: MoJ199

Date: 05/09/2013

Lead department or agency: Ministry of Justice

Stage: Consultation

Other departments or agencies: Legal Aid Agency

Source of intervention: Domestic

Type of measure: Secondary Legislation

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**Summary: Intervention and Options**

**RPC Opinion:** RPC Opinion Status

**Cost of Preferred (or more likely) Option**

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

**What is the problem under consideration? Why is government intervention necessary?**

We currently spend around £1bn per year on criminal legal aid services delivered by over 1600 providers and over 4000 advocates in England and Wales. Against a backdrop of continuing financial pressure on public finances, we need to reduce the cost of the scheme, but to do so in ways which ensure that limited public resources are targeted through improving efficiency and administrative simplification in the criminal legal aid provider market.

**What are the policy objectives and the intended effects?**

The Government's policy objectives are to deliver quality criminal legal aid services at a lower cost to the taxpayer, but achieving this in a way that ensures sustainability of service. We believe the magnitude of reductions required would only be sustainable if the market consolidates, thereby achieving economies of scale. It is the Government's view that this is best achieved through a combination of an initial fee reduction and subsequent procurement process described below.

We are committed to ensuring there is sufficient coverage of service supply across all police stations and magistrates' courts for those individuals who do not have their own provider. Therefore, we propose to maintain a duty provider scheme. However, in order for that scheme to be sustainable at the rates of pay on offer we propose to consolidate the number of contracts to deliver Duty Provider Work by running a competitive tendering process. The modified model presented in chapter 3 of the response to consultation proposes that for Duty Provider Work, the LAA will run a competition for a limited number of contracts in each procurement area where tenders are evaluated against the Requirements of the Tender Process (including the required quality standards). The rates of pay for Duty Provider Work would be set administratively.

However, we recognise that not every provider wishes to join with others or grow their businesses to the extent required to deliver the volume of Duty Provider Work on offer. Therefore, we propose that any provider meeting the Requirements of the Tender Process (including the required quality standards)<sup>1</sup> would be eligible to be awarded a contract to deliver criminal legal aid services to those clients who select their own provider at the point of request (Own Client Work) anywhere in England and Wales. The rates of pay for Own Client Work would be set administratively and there would be an unlimited number of contracts available for this work, so access to this work would not be subject to a competition.

This impact assessment is confined to three design elements of the proposed model, which may require legislative change:

- (i) Initial reduction in fees prior to the competitive tendering
- (ii) Proposed introduction of a series of fixed fees in the Crown Court cases with 500 pages of prosecution evidence or less
- (iii) Proposed reduction in fees for all Own Client Work and Duty Provider Work.

<sup>1</sup> The reference to 'Requirements of the Tender Process' throughout this document means the requirements of the tender process set out in the 'Pre-Qualification Questionnaire', the 'Information for Applicants' documentation (which will include the terms and conditions of tender) and the 'Invitation to Tender' – see Chapter 3 "Transforming Legal Aid: next steps" for further information.

**What policy options have been considered, including any alternatives to regulation?**

Each design element has been assessed against the "do nothing" option.

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

Does implementation go beyond minimum EU requirements?

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

N/A

What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions?  
(Million tonnes CO<sub>2</sub> equivalent)

**Micro**  
Yes/No

**< 20**  
Yes/No

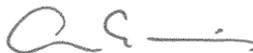
**Small**  
Yes/No

**Medium**  
Yes/No

**Large**  
Yes/No

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

Signed by the responsible Minister:



Date:

05/09/2013

## Summary: Analysis & Evidence

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

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

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

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

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

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

Legal aid providers: Legal aid providers are likely to incur a one-off cost as they reorganise in response to the competitive tender for Duty Provider Work. It may also be necessary for some providers applying to deliver just Own Client Work to restructure their businesses in order to cope with the proposed reduction in fees. Successful applicants would also incur a charge for obtaining the necessary Peer Review rating. This would be in the region of £3,000 for the Peer Review and an additional £2,000 for the reassessment having received a PR4 or PR5 rating.

The Legal Aid Agency will incur a one off cost in making the administration changes. These costs are currently unknown, subject to the final outcome of the consultation.

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

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

Legal Aid Fund: The legal aid fund will have a reduced spend of approximately £120m per annum in the steady state.

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

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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### BUSINESS ASSESSMENT (Design Element 1)

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

# Evidence Base (for summary sheets)

## 1. Introduction

### Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's (MoJ's) consultation on "*Transforming Legal Aid: next steps*". The associated consultation document was published on 5 September 2013 and can be found at: [www.justice.gov.uk](http://www.justice.gov.uk)
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services both for providers and individuals. Expenditure accrued to the Legal Aid Fund was £1.9bn for 2012/13<sup>1</sup>. As part of this, £975m was spent on criminal legal aid services, delivered by over 1600 providers and over 4000 advocates. The Legal Aid Agency (LAA) is responsible for administering the legal aid scheme in England and Wales.
3. Over the last five years the criminal legal aid market has already faced declining fees and volumes of business that has put incumbent providers of criminal legal aid under increasing pressure. However, against a backdrop of continuing financial pressure on public finances, we need to reduce the cost of the scheme, but to do so in ways which ensure that limited public resources are targeted through improving efficiency and administrative simplification in the criminal legal aid provider market.

### Policy Objectives

4. Legal aid is a fundamental part of our criminal justice system (CJS) but resources are not limitless. As part of wider governmental fiscal tightening, we are proposing to procure criminal legal aid services, at a lower cost to the taxpayer, in a way that ensures delivery of a quality assured, sustainable service. We agree with the Law Society and a number of respondents to the previous consultation that the magnitude of reductions required would only be sustainable if the market consolidates, thereby generating economies of scale. It is the Government's view that this is best achieved through a combination of phased fee reductions and the subsequent procurement process described below.

### *Modifications to the model*

5. After considering the responses on the model set out in the consultation in April 2013, we have made a number of amendments. Under the modified model on which we are now re-consulting, clients would be able to choose their own representative from any contracted provider in England and Wales. Applicants would be able (1) apply to deliver Own Client Work, and (2) apply to deliver Duty Provider Work. Under the modified model we would not propose to compete Own Client Work. Therefore there would be no restrictions on the number of providers wishing to undertake Own Client Work and providers could deliver services anywhere in England and Wales. This maintains the current level of choice for clients.
6. However, the Government is convinced that steps are needed to ensure that access to justice is guaranteed through a consistent level of service available to defendants throughout England and Wales. We therefore intend to proceed with plans to compete Duty Provider Work, only giving contracts to firms which are able to demonstrate the capacity and capability to provide this work for the duration of the contract. It will be necessary for the number of contracts for Duty Provider Work to be limited both in terms of number and geography.
7. The modified model presented in chapter 3 of the response to consultation proposes that for Duty Provider Work, the LAA will run a competition for a limited number of contracts in each

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<sup>1</sup> Source: <http://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf>

procurement area where tenders are evaluated against the Requirements of the Tender Process (including the required quality standards). The rates of pay for Duty Provider Work would be set administratively.

8. Duty Providers would be contracted to deliver a specified number of duty slots in both the police stations and magistrates' courts in the procurement area for which they hold a contract. This would be an equal share of duty slots for each successful applicant in each procurement area.
9. Own Client Work and Duty Provider Work would be remunerated at a 17.5% reduction on current rates<sup>2</sup> (albeit through a simplified fee scheme).
10. The proposed modified model would result in an immediate consolidation in the number of contracted organisations delivering Duty Provider Work.
11. Such consolidation would make it easier to access greater volumes of work. By having longer initial term and larger Duty Provider Work contracts with greater certainty of volumes, successful applicants would have increased opportunities to scale up to achieve economies of scale and scope and provide a more efficient service. We propose to offer all contracts for a four year term with an option for the Government to extend by up to one further year though we still propose to include a no fault termination clause (and other rights of early termination). For contracts to deliver Duty Provider Work only we propose to include provision for compensation in certain circumstances for early termination of the contract, for no fault, by the Lord Chancellor. This would give firms the confidence to invest in the restructuring required in the knowledge they could be in receipt of larger and more certain returns over a longer period of time. Whilst encouraging consolidation through expansion or forming joint ventures, the model would allow providers the freedom to develop the most efficient approach in delivering the service (e.g. the extent to which they use agents).
12. We recognise that the proposed modified model would still require the market to undergo a significant restructuring and consolidation in order to sustain the level of fee reduction proposed. This is true both for Duty Provider Work through a managed consolidation; for Own Client Work where providers may choose to explore opportunities for consolidation in order to improve the financial sustainability of their business. It is our view that competition for the Duty Provider Work is the best way to promote innovation and efficiency.
13. Whilst the reduction of Duty Provider Work contracts is not a legislative issue, we acknowledge it will clearly have impacts on providers and Individuals. For more information on the factors we propose to consider in determining the number of Duty Provider Work contracts, see paragraphs 3.27 to 3.35 of "*Transforming Legal Aid: next steps*". In order to help inform our analysis of sustainability and the final decision on the number of contracts for Duty Provider Work, we intend to jointly commission with the Law Society a further piece of research to get more detailed information for this purpose. It would also be necessary for such work to take into account the proposed size of procurement area.
14. The proposed model also looks to use fixed fees where possible, to be more efficient administratively. The original model, which had large contracts and restricted client choice, had one fixed fee in the Crown Court. The modified model allows providers to apply to undertake only Own Client Work if they so choose. This is likely to mean volumes for providers are substantially more varied than under the original model. The modified model, therefore, requires a more granular fixed fee scheme to mitigate the risk of providers not having the volumes needed to make a fixed fee work. The new model also looks at implementing a national fixed fee for police station work, a single national fee for magistrates' court work albeit with an escape mechanism for the more complex cases.

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<sup>2</sup> By current rates we mean those rates of pay for litigation (except VHCCs) and magistrates' court advocacy services as apply at the time of publication. 17.5% would be the total reduction in fees which would include the proposed 8.75% reduction across the same rates in February 2014 (see paragraphs 3.42 to 3.45 of the [insert full title] on a proposed interim fee reduction).

### *Implementation timetable and phased fee reduction*

15. We want to ensure that firms have the time they need to establish new legal entities (mergers or other business relationships) with which they might apply for a new contract. We are therefore proposing an extended timetable for the procurement process. Such an approach would give providers more time to explore opportunities for possible mergers, joint ventures and/or agency relationships with other providers.
16. As well as giving firms the time they need to develop business cases and raise funds for re-structuring, we are also exploring whether a staged approach to the reduction in fees would assist firms to move towards new ways of working. This, we believe, would mitigate the pace and scale of the change while facilitating the longer term efficiencies offered by competition.
17. Under the modified model, we propose to reach a reduction in fees of 17.5% by May 2015, the proposed Service Commencement date of the new criminal legal aid contract. However, rather than making a one step reduction to the 17.5% in May 2015, we propose to make two successive reductions of first a 8.75% fee reduction in early 2014 across all litigation services<sup>3</sup> (with the exception of VHCCs) and magistrates' court advocacy fees; followed by a second reduction to current rates of 8.75% across the same range of fees in May 2015. The second fee reduction would be set administratively for both Own Client Work and for Duty Provider Work.
18. Such an approach would enable us to begin realising necessary savings and help providers to adapt to a more gradual reduction in fees over the course of the extended period. It would have the added benefit of encouraging providers to adjust and adapt to ensure sustainable services in the longer term. We think a more phased implementation of the ultimate fee reduction, beginning with an 8.75% interim cut, strikes the appropriate balance of delivering initial savings and mitigating the risk of a single, substantial drop in prices while incentivising change.

### **Policy**

19. This IA is confined to three elements of the proposed modified model:
  - (iv) Initial reduction in fees prior to the competitive tendering
  - (v) Proposed introduction of a series of fixed fees in the Crown Court cases with 500 pages of prosecution evidence or less
  - (vi) Proposed reduction in fees for all Own Client Work and Duty Provider Work.

### **Main affected groups**

20. Clients would be able to choose between a provider they know and/or already have a relationship with provided that provider holds a criminal legal aid contract for Own Client Work; or the provider on duty at the time they are seeking advice. This maintains the current level of choice for clients. Therefore, we believe future clients for criminal legal aid services will be unaffected by our revised proposals.
21. We focus on the impact on the following key groups:
  - Criminal legal aid service providers - organisations contracted with the LAA to deliver criminal legal aid services.
  - LAA.

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<sup>3</sup> References to 'litigation services' throughout this document means all services currently in scope of the 2010 Standard Crime Contract

22. The original proposal was criticised for not having assessed the wider impact on the CJS. We feel the revised proposal would not have any adverse impact on the CJS, as clients should have access to the same services and levels of choice they currently have. In fact, we believe our proposals should make Legal Aid simpler to administer, whilst continuing to provide quality assured legal services.

## Costs and benefits

23. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales, with the aim of understanding the overall impact on society from implementing these proposed reforms. The costs and benefits of each reform are compared to the “do nothing” option. IAs place strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are some aspects that cannot always be monetised.
24. This IA considers the impact of the design elements proposed when implemented as a package as opposed to in isolation.

## Methodology and Assumptions

25. The following assumptions have been made in the estimation of the costs and benefits:
- (i) Providers will deliver the same level and quality of service as at present.
  - (ii) All savings figures have been rounded to the nearest £1m for estimates below £10m and to the nearest £5m for estimates above £10m. All volume changes have been rounded to the nearest 100 cases.
  - (iii) All estimates are made using 2012-2013 LAA administrative data.
26. The “do nothing” option in each of the design elements below is the base case. This in effect would mean that the current fee remuneration rates and market structure would continue to operate as now. As this option is compared against itself, its costs and benefits are zero, as is its Net Present Value (NPV).

## Element 1: Initial reduction in fees prior to competitive tendering

### Description

27. A large number of respondents argued that the proposed implementation timetable set out in the consultation model was too fast. Similarly, respondents suggested that a one stage reduction in fees of 17.5% was not manageable. Consequently, in response, the modified model extends the introduction of the new criminal legal aid contracts to May 2015 and explores a more gradual reduction in fees. We are proposing an interim reduction to fees of 8.75% in early 2014. A second 8.75% reduction to current rates would be implemented in May 2015.

### Impact

#### *Legal aid service providers*

28. Legal aid providers will see lower revenue due to this policy change. We estimate an 8.75% reduction in the fees paid for criminal litigation would deliver around an estimated £60m per annum reduction in fees paid to legal aid service providers in the steady state.

29. There will be a financial cost to LAA Administration to implement this fee reduction, but this is estimated to be minimal.

### *Risks and Uncertainties*

30. It is possible that the initial 8.75% reduction in rates is difficult for providers to absorb. However, it is important to highlight the work presented by Otterburn in support of the Law Society response<sup>4</sup> which showed that 25% of current providers surveyed said they could sustain a reduction in fees of 17.5% without making any structural changes and without the redistribution of work from those providers that would leave the market. We believe this means an initial 8.75% reduction is unlikely to lead to substantial sustainability issues, particularly if providers are able to restructure their businesses to seek further efficiencies.

## **Design Element 2: Revised fixed fee scheme**

### Description

31. We maintain our view that the current fee schemes for criminal legal aid, specifically the Litigators Graduated Fee Scheme is unnecessarily complex and administratively burdensome both for providers and the LAA. Therefore, the modified model retains the aim of simplifying and streamlining the administration of the scheme, to help drive efficiencies. We have therefore designed a model that uses fixed fees as far as reasonably and economically practicable. Having a fixed fee encourages the swift resolution of a case, as there are no incentives to prolong a case and receive higher revenue.
32. In light of responses to the April 2013 consultation, we have decided to change aspects to the fixed fee scheme. We have made the fee scheme more granular to reduce the risk to providers of losing out in terms of revenue from having low volumes of cases. We are therefore now proposing:
- A single national fixed fee for police station attendance work
  - A single fixed fee for magistrates' court representation work, but with the current escape mechanism for the more complex cases.
  - A number of fixed fees in the Crown Court for cases with 500 pages of prosecution evidence (PPE) or less – 5 fixed fees for each of the 11 offence types. These 5 fixed fees would be broken into brackets of page counts (e.g. 0 to 100, 101 to 200, 201 to 300, 301 to 400, and 401 to 500).
  - Cases over 500 PPE will be remunerated based on the current graduated fee scheme, but at a reduced rate (17.5% reduction on current rates).
  - All other payments will be paid on administratively set rates, but at a reduced rate (17.5% reduction on current rates).
33. A national fixed fee for Police Station work would mean a change in revenue from this work for virtually all proposed procurement areas. Applying a 17.5% reduction to the 2012/13 Police Station billing data and not including disbursements gives a fee of £192.45. The table below shows how each proposed procurement area would gain / lose from a national fee compared to their local rate reduced by 17.5%.

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<sup>4</sup> <http://www.lawsociety.org.uk/representation/policy-discussion/documents/annex-b---otterburn-and-ling-report/>

**Table 2: Indicative change in revenue (per case) from moving to a proposed national fixed fee in the Police Station<sup>5</sup> - Includes VAT.**

Procurement Area	Change in Police Station revenue	Procurement Area	Change in Police Station revenue
Avon and Somerset 1	-£6.52	Norfolk 2	£16.71
Avon and Somerset 2	£17.37	North East London	-£34.96
Bedfordshire	£9.10	North London	-£41.00
Cambridgeshire	£25.76	North Wales 1	£2.83
Central London	-£51.98	North Wales 2	-£10.69
Cheshire	£16.13	North West London	-£36.70
Cleveland	£50.25	North Yorkshire 1	£2.60
Cumbria 1	£35.85	North Yorkshire 2	£31.52
Cumbria 2	£10.11	Northamptonshire	£14.78
Derbyshire	-£0.09	Northumbria 1	£39.48
Devon and Cornwall 1	£12.55	Northumbria 2	£41.01
Devon and Cornwall 2	-£8.58	Nottinghamshire	£4.16
Dorset	£41.65	South East London	-£25.15
Durham	£18.88	South London	-£40.52
Dyfed-Powys 1	£23.94	South Wales	-£0.49
Dyfed-Powys 2	£0.28	South West London	-£44.84
East London	-£29.98	South Yorkshire	£22.02
Essex	-£10.33	Staffordshire	£2.45
Gloucestershire	£24.11	Suffolk 1	£5.86
Greater Manchester	£12.06	Suffolk 2	£14.21
Gwent	£11.66	Surrey	-£13.79
Hampshire 1	-£14.40	Sussex 1	£10.30
Hampshire 2	£9.57	Sussex 2	-£8.08
Hertfordshire	-£44.75	Thames Valley	-£7.14
Humberside	£41.65	Warwickshire	£2.56
Kent	-£18.94	West London	-£39.41
Lancashire	£28.78	West Mercia 1	£0.44
Leicestershire	£7.08	West Mercia 2	£8.86
Lincolnshire	£15.90	West Midlands	£4.87
Merseyside	£14.62	West Yorkshire	£36.37
Norfolk 1	£11.48	Wiltshire	£5.56

34. This fixed fee scheme would apply to both Own Client Work and Duty Provider Work.
35. We propose to have a single fee in the magistrates' court. A 17.5% reduction to all non-escape magistrates' court bills in 2012/13 would give a national fixed fee of £310.45 (which includes travel and waiting time where it is paid, but not disbursements). We propose to maintain the existing escape mechanism in the magistrates' court.

<sup>5</sup> Based on 2012/13 billing data, manipulated for the fee reduction.

36. As mentioned in paragraph 14, the modified model uses a more granular fixed fee scheme compared to the original proposal. We propose for cases with 500 or less Prosecution Pages of Evidence (PPE), there should be a series of fixed fees. Under the new model, there would be 55 fixed fees, 5 for each of the 11 offence types, broken into bands of evidence pages. The average fees are shown below based on 12/13 LAA billing data, with a 17.5% reduction (these do not include disbursements). These average fees do not include “either way” cases that plead guilty in the Crown Court.

**Table 3: Indicative Proposed Crown Court Fixed Fees for cases up to 500 Pages of Prosecution Evidence<sup>6</sup>**

Offence Type	Pages of Prosecution Evidence				
	0-100	101-200	201-300	301-400	401-500
A	£2,159	£3,302	£4,473	£6,234	£7,259
B	£916	£1,687	£2,774	£3,501	£4,522
C	£779	£1,367	£2,076	£2,837	£3,222
D	£1,346	£2,236	£3,656	£4,446	£5,533
E	£378	£847	£1,464	£2,099	£2,270
F	£376	£791	£1,287	£1,560	£2,047
G	£488	£891	£1,268	£1,943	£2,254
H	£378	£907	£1,462	£1,694	£2,174
I	£553	£1,393	£2,003	£2,737	£3,510
J	£1,462	£2,603	£4,006	£5,028	£6,398
K	£1,535	£1,323	£1,874	£2,559	£3,405

*All fees shown are rounded to the nearest pound*

37. We maintain the view that the fees paid to cases with over 500 PPE are too volatile for a fixed fee to be suitable. Every year, there are only small volumes of cases with over 500 PPE in each proposed procurement area, and the current fees paid per case – and amount of work involved – can vary widely. Setting these cases into a fixed fee scheme would heavily penalise a provider who is allocated an extremely complex case. Due to the small volumes, they are unlikely to be able to offset their losses by being allocated other cases in this category. Therefore, it is our conclusion that cases with over 500 PPE should continue to be paid according to the current fee scheme, albeit at a discounted rate. This would apply to both Duty Provider Work and Own Client Work.

## Impact

### *Legal aid service providers*

38. The extent to which there would be a financial impact (positive or negative) on providers from introducing a fixed fee scheme for such cases will depend entirely on the case mix each provider is allocated. However, the size of the impact will be mitigated compared to the April 2013 Model of just having one fixed fee in the Crown Court for cases under 500 PPE. The introduction of more fixed fees in the Crown Court is designed to minimise the gains or losses in revenue from having a fixed fee compared to the current scheme.
39. One of the factors we propose to consider in determining the number of contracts for Duty Provider Work in a procurement area is to limit the potential impact of introducing a fixed fee scheme. A series of fee schemes that are largely based on fixed fees (as proposed in paragraphs

<sup>6</sup> Based on 2012/13 billing data, manipulated for the fee reduction.

4.105-4.119 of the consultation paper) mean that providers might make a profit on the fixed fee because relatively little work was required on the case. However, in other cases which required more work, they could make a loss. In order to manage the level of risk of financial loss faced by providers, contracts to deliver Duty Provider Work need to offer sufficient volume of duty slots in order for providers to have varied case mix.

#### *LAA Administrative Costs*

40. There would be a financial saving to LAA Administrative Costs through the introduction of a fixed fee for Crown Court cases with 500 PPE or less. This saving is likely to be minimal.

#### *Risks and Uncertainties*

41. By proposing a more granular fixed fee scheme, with escape mechanisms for the most complex cases, we are seeking to mitigate the risk that under a fixed fee system, a provider could be allocated a series of complex and consequently “expensive” cases, thereby making substantial losses.

### **Design Element 3: Remuneration level**

#### Description

42. Both Own Client Work and Duty Provider Work will be remunerated at 17.5% below current rates. The proposal is to reduce these rates by 8.75% in early 2014, and then current rates by a further 8.75% in May-2015.

#### Impact

43. With a 17.5% reduction in administratively set rates, providers will receive less fee income from legal aid. However, we believe the proposed model encourages the consolidation of the legal aid market, which will provide opportunities for providers to be more efficient.
44. For criminal legal aid firms to be sustainable after a 17.5% reduction, many are likely to require substantial restructuring, such as:
- achieving economies of scale from rationalising back-office and administrative functions
  - relocating office functions to cheaper premises
  - reducing staff costs and other overheads
  - reviewing how resources are allocated to cases.

#### *Risks and Uncertainties*

45. The revised model is designed to ensure the sustainability of the market, minimising the risk that a 17.5% reduction in administratively set rates is not sustainable. The Law Society in their previous consultation response said approximately 25% of the current market (400 providers) would be able to absorb a 17.5% reduction. In addition, as set out above, it is our intention to ensure that Duty Provider Work contracts are large enough in volume and value to be sustainable in their own right after the fee reduction, so far as is possible. The Government needs to find savings to reduce the budget deficit, and we believe a phased implementation of a fee reduction, with more time to prepare for a competition necessary to deliver the level of consolidation required is a more sustainable way of achieving those savings than through a flat fee cut.

## Costs

### *Legal aid service providers*

46. We estimate the initial cut in early 2014 of 8.75% will reduce revenue to legal aid providers by £60m in steady state, and the later cut in May 2015 will achieve the same £60m. In total, we estimate the steady savings from the 17.5% reduction to be £120m.

### *Future clients eligible for criminal legal aid services*

47. We do not envisage there would be any major impact on future clients eligible for criminal legal aid services by reductions to administratively set rates. A consolidation of the market may mean they have less providers to choose from, however, under the modified model, they will still be able to choose and there are likely to be a large number of providers remaining in the market offering quality legal advice.

## Benefits

### *Legal Aid Fund*

48. There will be a financial saving to the Legal Aid Fund. This equates to the reduced income payable to providers and is estimated to reduce criminal legal aid expenditure by approximately £120m per annum in steady state.

### Wider economic benefits

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

### Enforcement and implementation

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