

## Annex K – Equalities Impact

### 1 Introduction

- 1.1 The Government is mindful of the importance of considering the impact of the legal aid proposals on different groups, with particular reference to users and providers of legally aided services.
- 1.2 In accordance with our duties under the Equality Act 2010 we have considered the impact of the proposals on individuals sharing protected characteristics in order to give due regard to the need to eliminate unlawful conduct, advance equality of opportunity and foster good relations.

### 2 Methodology

- 2.1 Adhering with guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposals has been to identify the individuals whom the proposals would impact (the 'pool'). Looking at the pool, we have then drawn comparisons between the potential impacts of each proposal on those who share particular protected characteristics, with those who do not share those characteristics. We have in addition compared the characteristics of individuals affected by the proposals with the characteristics of the general population (England and Wales) and the appropriate legal aid client or provider population where relevant. Where there are large differences we have considered the broad equality impacts of this.

### 3 Data Sources

- 3.1 We have identified the following data sources as providing the most relevant information on potential equalities impacts:
- Legal Aid Agency (formerly the Legal Services Commission) (LAA) data on clients collected through provider billing for financial year 2011/2012 (LAA Client Data). This includes records of clients' sex, age, race, and illness or disability status.
  - Legal Services Research Centre (LSRC) provider data, collected to support their *Routine Diversity Monitoring of the Supplier Base* reports. The survey was most recently undertaken in 2010 and represents the diversity profile of those managing / controlling legal aid providers' offices.
  - The Bar Council publications *Bar Barometer: Trends in the Profile of the Bar, November 2012*, and *Barristers' Working Lives: A Biennial Survey of the Bar 2011*. These provide information for practising barristers on age, sex, and ethnicity.
  - Published 2011 Census data, to enable comparisons with the general population to be made.

3.2 All of these data sources have some limitations. None of the data cover all of the protected characteristics. Our statistical analysis therefore only considers the available data on age, sex, race and disability. In addition:

- LAA client data is recorded by providers, not legal aid clients themselves, and is therefore unlikely to be as accurate as self defined data, particularly in respect of disability / illness and race.
- As with many administrative datasets, the quality of the LAA client data is affected by the extent of missing data, particularly regarding illness / disability status and race.
- LSRC's provider equality data is based on a survey of providers which collectively have a 69% response rate.

3.3 We are currently unable to assess the extent of impact of the proposals on providers' legal aid income by protected characteristic, as the implementation of scope and fee changes under Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 will alter the 2011/12 baseline that income reduction can be assessed against, and therefore any assessment could potentially be misleading.

## **4 Conclusions**

4.1 We have considered our duty to have due regard to the need to eliminate discrimination, harassment, victimisation and unlawful conduct, and to advance equality of opportunity and foster good relations.

4.2 The primary objective of the proposed reform package is to bear down on the cost of legal aid, ensuring that we are getting the best deal for the taxpayer and that the system commands the confidence of the public. Our aim is to do so in ways that ensure limited public resources are targeted at those cases which justify it and those people who need it, drive greater efficiency in the provider market and for the Legal Aid Agency, and support our wider efforts to transform the justice system.

4.3 These objectives are of critical importance. We believe these to be legitimate aims which we intend to pursue with regard to principles of equality and non-discrimination. These objectives underpin and motivate the package of reforms which we believe represent a proportionate means of achieving these aims.

4.4 We do not consider that the proposals give rise to direct discrimination, discrimination arising from a disability or a failure to comply with a duty to make reasonable adjustments. Nor do we consider that these proposals will have any impact on instances of harassment or victimisation. We have identified the potential for disproportionate impacts on some persons with protected characteristics (assuming for this purpose that the proposals amount to provisions, criteria or practices) and we cannot rule out the possibility of disproportionate impact as a result of the evidence gaps outlined in paragraphs 3.2 and 4.6. Where we have identified a risk of disproportionate impact, we consider that such treatment constitutes a proportionate means of achieving a legitimate aim for the reasons set out above and in the paragraphs below.

4.5 We have considered the implications of the proposals for the advancement of equality of opportunity and the need to foster good relations. Our view is that where relevant, the proposals do not undermine attainment of those objectives and are justified in all the circumstances for the reasons set out.

4.6 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. Our initial view, however, is that the nature of the proposals is such that they are unlikely to put people with these protected characteristics at a particular disadvantage. Were any disadvantage to materialise, we believe it would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons set out above.

For those proposals directly affecting the remuneration of providers, we do not consider that they are likely to have a direct impact on clients. As discussed in the Impact Assessments, which accompany this consultation, clients could be affected if the changes have an impact on the sustainability of the legal aid market resulting in an adverse effect on service provision, however we believe this is unlikely. Potential impacts on clients are likely to depend upon the provider response to the changes and as such remain unquantifiable.

4.7 We welcome any relevant information to further inform our analysis, and have included an equalities question in the consultation to better understand the potential impacts of the proposals. We will be updating this equalities statement once we have considered all the relevant responses.

## 5 Specific Impacts

### 5.1 Restricting the scope of legal aid for prison law

#### 5.1.1 Impact on prisoners:

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

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

The data show that the majority of those impacted will be men (97%), who are over-represented amongst the affected client group when compared to the general population (where 51% are male). Those from a Black, Asian or Minority Ethnic

(BAME) group are also over-represented. There are limitations on the availability of data on other protected characteristics of prison law users.

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

#### 5.1.2 Impact on providers:

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

- 65% White-British, 30% BAME and 6% split-majority owned/controlled;
- 70% male, 13% female and 17% split-majority owned/controlled; and
- 4% of firms employed an ill or disabled manager.

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

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

#### 5.1.3 Justification:

We acknowledge there may be adverse impacts on certain clients, in particular those with learning difficulties, and providers, in particular male and BAME managed firms. If the proposal does result in particular disadvantage to persons with protected characteristics, we believe the impact is a proportionate means of achieving the legitimate aims set out in section 4 above. The prison law cases taken outside of scope of criminal law advice and assistance are not of sufficient priority to justify the use of limited public funds and would be dealt with more efficiently and effectively through non-legal channels, such as the prison complaints system.

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

## 5.2 Imposing a financial threshold in the Crown Court

### 5.2.1 Impact on clients:

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

- 82% were male and 7% female (gender was not recorded in 12% of cases). 78% of all Crown Court legal aid clients were male, 10% female and 12% unknown;
- 51% were White, 28% were from a BAME background with ethnicity unknown in 21% of cases. 18% of all Crown Court legal aid clients were BAME, 58% white and 25% unknown;
- 4% had a declared disability, 42% no declared disability with disability status unknown in 53% of cases. 15% of Crown Court clients declared a disability, 56% not ill or disabled and 28% unknown; and
- 4% were aged between 18–24 yrs, 85% aged between 25–64 years and 11% aged 65 years and older. 36% of Crown Court legal aid were aged between 18–24 yrs, 63% aged between 25–64 years and 1% aged 65 years and older.

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

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

### 5.2.2 Impact on providers:

As the proposed change concerns eligibility for defendants, we do not consider that it is likely to have a direct impact on providers (assuming for this purpose the proposal amounts to a provision, criterion or practice). As discussed in the Impact Assessment, providers could be affected if the changes have an impact on their income from legal aid work. However, this may be offset by a rise in demand for privately funded defence work. Were any disadvantage to materialise, given that providers with majority BAME and male managerial control are over represented among criminal legal aid providers in comparison with the population as a whole,

they may be disproportionately impacted. We consider any such impact to be justified for the reasons set out below.

#### 5.2.3 Justification:

When compared against the Crown Court legal aid client population, we acknowledge that there may be adverse impacts particularly on men, the BAME group, and those aged 25–64. However, we believe the proposal is a proportionate means of achieving the legitimate aims identified in section 4 above. By setting the threshold at a reasonable level, at which people should generally be able to pay for their own defence, it targets limited public resources at those people who need it most. There would also be a hardship review mechanism in place available to all affected individuals, regardless of their protected characteristics.

### 5.3 Introducing a residence test

#### 5.3.1 Impact on clients:

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

#### 5.3.2 Impact on providers:

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

#### 5.3.3 Justification:

We believe that this proposal is a proportionate means of achieving the legitimate aims set out in section 4. The requirement for 12 months of previous lawful residence at the time of the application for civil legal aid applies irrespective of nationality and targets limited public funds available for civil legal aid at those who have a strong connection to the UK, improving the credibility of the scheme.

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

#### 5.4 Paying for permission work in judicial review cases

##### 5.4.1 Impact on clients:

Any impact on clients is likely to depend on the provider response to the reforms and the extent to which the transfer of financial risk for the application for the permission stage of a judicial review reduces availability of representation for: (i) cases which the court does not allow to proceed; and (ii) judicial review cases more generally. As such the likely equality impacts remain unquantifiable.

Where providers go ahead on a legally-aided basis, clients will benefit from cost protection and would therefore not be personally at risk of paying costs if the permission application were unsuccessful. Where a provider refuses to take a case on a legally aided basis, clients may choose to proceed privately and bear the financial risk of the application themselves.

The limited available data suggests that men and those aged 18-24 are over represented among those who might be impacted in comparison to the population as a whole and the proposals may therefore have a disproportionate impact on them (assuming for this purpose the proposal amounts to a provision, criterion or practice). We consider any such impact which may materialise to be justified for the reasons set out below.

##### 5.4.2 Impact on providers:

We anticipate that the proposal will have an adverse impact on providers as they will see a reduction in legal aid income (assuming for this purpose the proposal amounts to a provision, criterion or practice). In common with all civil & family legal aid providers for whom data is available, those managing firms engaged in work impacted by this proposal are more likely to be male and non-disabled when compared to the population as a whole but, unlike the majority of civil and family providers, they are more likely to be BAME when compared to the population as a whole (29% amongst affected providers compared to 14% in the general population). The proposal may therefore have a disproportionate impact on those groups. However, we acknowledge that the extent of impact on a given provider firm may be dependent upon how much they rely on income from the areas of work affected by the proposal.

##### 5.4.3 Justification:

If the proposal does result in particular disadvantage to persons with protected characteristics, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4. By transferring the financial risk of the application to the provider, the proposal creates a greater incentive for providers to give more careful consideration to the strength of the case before applying for permission for judicial review. Therefore we consider that this proposal is the appropriate way in which to ensure that legal aid is not used to fund a significant number of weak cases and is focussed on cases that really require it.

#### 5.5 Civil merits test – removing legal aid for borderline cases

##### 5.5.1 Impact on clients:

We anticipate the proposal will have an adverse impact on civil legal aid clients in certain cases, in particular housing, family, immigration, claims against public authorities and public law where the case has a less than 50% chance of success.

The limited LAA data concerning the 100 (rounded) cases per annum that would be affected by the proposal suggests that disabled clients and those aged 25–64 are overrepresented as compared to the general population and so may be disproportionately affected by the proposal (assuming for this purpose the proposal amounts to a provision, criterion or practice). We consider any such impact to be justified for the reasons set out below.

#### 5.5.2 Impact on providers:

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

#### 5.5.3 Justification:

We believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4. As a matter of principle limited public funding should be directed to cases with at least a 50% or more prospects of success and our legal aid system is not efficient and credible as long as it pays for cases which, from the outset, are considered by the applicant's lawyer or the LAA to have borderline prospects of success. The proposal will mean that limited public funding is focused on those cases in which it is possible to say that the prospects of success are 50% or better.

### 5.6 Introducing competition in the criminal legal aid market

#### 5.6.1 Impact on clients

5.6.2 We anticipate the proposed competition model may have an adverse impact on clients because they would no longer have the choice of selecting any provider with a LAA contract to deliver criminal legal aid services (assuming for this purpose the proposal amounts to a provision, criterion or practice). As men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole the proposals may have a disproportionate impact on them. However we do not anticipate that the proposal will have a disproportionate impact on persons with other protected characteristics. Where clients with protected characteristics need to request a change in allocated provider due to exceptional circumstances, including where there is a breakdown in the relationship between the client and provider, or where some other substantial compelling reason exists as to why a different provider might be better suited to the client's particular needs, it will be possible to request a change in provider. To the extent that there is any disproportionate impact, we consider any such impact to be justified for the reasons set out below.

Although there may be an indirect impact on clients if the changes have an impact on the sustainability of the legal aid market affecting service provision as set out in paragraph 4.6 above, the move to competition is designed to ensure that legal aid services are procured at a rate the market is able to sustain, and therefore we do not anticipate adverse impacts on clients in terms of sustainability. Furthermore, the quality controls which we intend 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 clients.

### 5.6.3 Impact on providers

5.6.4 The proposed model is based on the premise that there are economies of scale and market inefficiencies to be exploited by those providers wishing to expand their businesses and deliver a greater share of work in their area. We accept that the ability for current providers to grow their business to the scale required to meet the demands of a larger case volume is likely to be more challenging for some smaller providers in a procurement area compared with some larger providers. To the extent that BAME majority managed firms are more likely to be small, the proposal may have a disproportionate impact on them (assuming for this purpose the proposal amounts to a provision, criterion or practice)

Some rates of pay for work within the scope of the competed contract will be set by the price competition, others such as appeals and reviews and prison law will be set administratively.<sup>130</sup> The proposal to include a price cap under which applicants will be invited to submit their price bids and the proposal to reduce the rates of pay set administratively for all other classes of work will mean providers will receive less fee income from legal aid.

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

### 5.6.5 Justification

We believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4 above. We consider that price competition is the best way to ensure the long-term sustainability of the criminal legal aid scheme. Moving away from the current complex system of administratively set fees to one in which providers determine the best price at which they can offer their services will drive efficiencies in the provider market and ensure value for money from the significant expenditure it represents.

Moreover, any adverse impact on clients may be mitigated by the fact that the future crime contract is likely to have similar, if not the same, provisions with regard obligations for providers to have a written equality and diversity policy that, as a minimum, must include how the provider would meet the diverse needs of their clients (including making reasonable adjustments for clients with disabilities). In addition, as set out above, provision for exceptional circumstances in which a client could request a change in allocated provider would mitigate any disproportionate impact arising.

Any adverse impact on providers may be mitigated by the proposed process by which smaller organisations may form consortia or use agents in order to develop the capacity and capability to deliver a greater volume of work under a simplified fee scheme. This is intended to promote fairness in the competitive tendering

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<sup>130</sup> For more detail on which prices will be set administratively see the Consultation Document Annex F.

approach to criminal legal aid services and, to the extent BAME majority managed firms are more likely to be small, may advance equality of opportunity.

## 5.7 Restructuring the Advocates Graduated Fee Scheme

### 5.7.1 Impact on barristers

Advocates engaged on cases resulting in a guilty plea will receive an increase in income and those engaged on cases resulting in a cracked trial will be unaffected. However, advocates will see a reduction in legal aid income when undertaking trials under the Advocates Graduated Fees Scheme (AGFS) in the future.

“Barristers’ Working Lives - A Biennial Survey of the Bar 2011” data on main area of practice (where barristers spend most of their working time) show that men and those of White ethnicity are over-represented amongst those engaged in criminal work when compared to the general population. As a result, they may be disproportionately impacted by the proposal. There is some evidence from the same survey that there is a greater proportion of female and BME barristers among the more junior members of the Bar.

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

### 5.7.2 Impact on Higher Court Advocates:

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

### 5.7.3 Impact on clients:

We do not anticipate any indirect impact on clients for the reasons set out in paragraph 4.6 above. We are unable to identify the protected characteristics of clients who would be affected if risks to sustainable supply were realised in order to identify the potential for any particular disadvantage. However, as men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole the proposals may have 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 for the reasons set out below.

#### 5.7.4 Justification:

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

If this proposal does result in particular disadvantage to persons with protected characteristics, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4. The proposal would apply irrespective of protected characteristics. The proposal targets the highest earners, restructuring fees to promote efficient resolution of cases, supporting our wider efforts to transform the justice system. Moreover, to the extent there is a greater proportion of female and BME barristers among the more junior Bar, the increase in fees for guilty pleas may further the advancement of equal opportunities.

#### 5.8 Reducing fees in Very High Cost Cases Crime (VHCCs)

##### 5.8.1 Impact on litigators:

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

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

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

##### 5.8.2 Impact on barristers:

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

and experience. To the extent that VHCCs are more likely to be conducted by more experienced barristers, the proposal may be more likely to impact upon older barristers. We consider any such impact to be justified for the reasons set out below

#### 5.8.3 Impact on clients:

We do not anticipate any indirect impact on clients for the reasons set out in paragraph 4.6 above. We are unable to identify the protected characteristics of VHCC (Crime) clients who would be affected if risks to sustainable supply were realised in order to identify the potential for any particular disadvantage. However, as men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole the proposals may have a disproportionate impact on them. It 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 for the reasons set out below.

#### 5.8.4 Justification

We acknowledge that BAME and male majority managed providers and white and male barristers may be disproportionately impacted, as well as older litigators and barristers. However, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4 above. By addressing the cost of the longest running and most expensive cases we believe the reductions we are considering will improve public confidence in the scheme and deliver value for money for the taxpayer.

### 5.9 Multiple Advocates

#### 5.9.1 Impact on barristers:

We expect that a number of the cases in which two counsel are instructed currently will instead have a single junior or QC instructed as a consequence of our policy. The decision to appoint additional advocates is taken by individual courts, and equality information is not collected for advocates. We do not therefore hold information which would allow us to identify the protected characteristics of barristers working on these cases. Survey data on main area of practice (where barristers spend most of their working time) show that men and those of White ethnicity are over-represented amongst those engaged in criminal work when compared to the general population. As set out in paragraph 5.7.1 above, there is some evidence that there is a greater proportion of female and BME barristers among the more junior members of the Bar.

As QCs have to demonstrate particular skills in order to be appointed to that rank, and as there may be a correlation between age and experience, then the policy may indirectly benefit older barristers. There is likely to be less work available for junior counsel, however, if two junior counsel, or a QC assisted by junior counsel, are instructed in fewer cases. To the extent that there is a greater proportion of female and BME barristers among the more junior members of the Bar, they could be disproportionately affected by the policy. In addition, as junior counsel may be less experienced and as there may be a correlation between age and experience,

younger barristers may be disproportionately affected. We consider any such impact to be justified for the reasons set out below.

#### 5.9.2 Impact on Higher Court Advocates

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

#### 5.9.3 Impact on clients:

The aim of this proposal is to ensure that multiple advocates are only instructed in cases where necessary. Cases which do not require such services will be undertaken by an appropriately qualified and experienced advocate. Accordingly, though we expect this policy to result in fewer cases with more than one advocate instructed, we do not anticipate that there will be any direct, negative impact on clients. As set out in paragraph 4.6, clients could be affected if the changes have an impact on the sustainability of the legal aid market resulting in an adverse effect on service provision in the market. Were these risks to materialise, clients will not be treated less favourably because of any protected characteristics.

We are unable to identify the protected characteristics of clients who would be affected if risks to sustainable supply were realised in order to identify the potential for any particular disadvantage. However, as men and BAME people are overrepresented among criminal legal aid clients generally in comparison to the population as a whole, the proposals may have 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 believe any disproportionate impact to be justified for the reasons given below.

#### 5.9.4 Justification:

We acknowledge that junior advocates are more likely to be disadvantaged by the proposals, and as a consequence younger, female and BME barristers may be more likely to be disproportionately impacted by the proposals. If this proposal does result in particular disadvantage to persons with protected characteristics, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4. By achieving a more proportionate approach to the use of multiple counsel, the proposal supports our aim of targeting limited public funds on the cases where it is really required.

### 5.10 Reducing the fixed representation fees paid to solicitors in cases covered by the Care Proceedings Graduated Fee Scheme

#### 5.10.1 Impact on providers

We anticipate that the impact of this proposal will be adverse, as solicitors will see a reduction in legal aid income from these cases. To identify the potential for providers to be subject to a particular disadvantage (assuming the proposal amounts to a provision, criterion or practice), we have matched LSRC survey data to 1,403 of the 2,103 solicitor firms (a match rate of 67%) that have provided

representation in public family law cases in 2011/12. These firms are potentially impacted by the proposal. Based on the data available, the managerial make-up of these firms was as follows:

- 90% White-British, 7% BAME and 3% split-majority owned/controlled
- 65% male, 17% female and 18% split-majority owned/controlled
- 5% of firms employed an ill or disabled manager.

In common with all civil & family legal aid providers for whom data is available, those managing firms engaged in public family law work (where equalities data is held) were more likely to be Male, and non-disabled than in the general population. Those providers may be disproportionately impacted, therefore. We consider any such impact to be justified for the reasons set out below.

#### 5.10.2 Impact on clients

We do not anticipate any indirect impact on clients for the reasons set out in paragraph 4.6 above. However, were any detriment to materialise, as women, BAME persons and those who are ill or disabled are over-represented as users of civil legal aid services in comparison to the general population, they may be disproportionately impacted by the proposal. However, the assessment must be treated with caution due to the high proportion of individuals in the affected group for which there are no data, especially for race and disability. We consider any such impact to be justified for the reasons set out below.

#### 5.10.3 Justification

We acknowledge that firms managed by a majority of persons who are male or non-disabled may be disproportionately impacted by the proposal. However, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4 above. By capitalising on efficiencies in the system, the proposal better ensures that public expenditure on legal aid represents value for money.

#### 5.11 Harmonising fees paid to self-employed barristers and other advocates appearing in civil (non-family) proceedings

##### 5.11.1 Impact on barristers:

Barristers undertaking civil legal aid work would see a reduction in the minimum guaranteed level of fees received for the same caseload but may receive enhancement of that fee if the specified criteria are satisfied. Affected barristers could experience different impacts depending on their location, the level of court in which a case is being heard, the level of fees they currently receive and whether or not the work they typically undertake would attract an enhancement and, if so, the level of that enhancement.

“Barristers’ Working Lives – A Biennial Survey of the Bar 2011” data shows that men and those of white ethnicity are over-represented amongst the population of barristers when compared to the general population<sup>131</sup> and so, generally, may be disproportionately impacted by the proposal. However, this proposal is likely to

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<sup>131</sup> [https://www.barstandardsboard.org.uk/media/1385164/barristers\\_\\_working\\_lives\\_30.01.12\\_web.pdf](https://www.barstandardsboard.org.uk/media/1385164/barristers__working_lives_30.01.12_web.pdf)

impact most significantly on barristers appearing in the county courts. While there is no data on the protected characteristics of barristers appearing specifically in those courts, we consider that they are likely to be junior members of the Bar and that therefore those who are female or BAME and younger barristers are likely to be over-represented amongst the population of barristers at that level when compared to the civil Bar as a whole and may be disproportionately impacted, therefore. The extent of the impact on barristers will depend on their reliance on income from civil legal aid work. We consider any such impact to be justified for the reasons set out below.

#### 5.11.2 Impact on clients:

We do not anticipate any indirect impact on clients for the reasons set out in paragraph 4.6 above. We consider this unlikely due to the quality assurance arrangements in place, including the role of the instructing solicitor, the court in the effective administration of justice and the availability of solicitor advocates. However, were any detriment to materialise, as women, BAME persons and those who are ill or disabled are over-represented as users of civil legal aid services in comparison to the general population, they may be disproportionately impacted by the proposal. However, the assessment must be treated with caution due to the high proportion of individuals in the affected group for which there are no data, especially for race and disability. We consider any such impact to be justified for the reasons set out below.

#### 5.11.3 Justification:

We acknowledge that men and persons of White ethnicity are overrepresented in the affected population generally and that female or BAME and younger barristers may be disproportionately impacted by the proposal. However, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4 above. By ensuring that similar rates are paid for similar services, the proposal better ensures that public expenditure on legal aid represents value for money and promotes public confidence in the scheme. Moreover it advances equality of opportunity.

### 5.12 Removing the uplift in immigration and asylum Upper Tribunal appeals

#### 5.12.1 Impact on clients:

We do not anticipate any indirect impact on clients for the reasons set out in paragraph 4.6 above. However, were any detriment to materialise, as women, BAME persons and those who are ill or disabled are over-represented as users of civil legal aid services in comparison to the general population, they may be disproportionately impacted by the proposal. However, the assessment must be treated with caution due to the high proportion of individuals in the affected group for which there are no data, especially for race and disability. We consider any such impact to be justified for the reasons set out below.

#### 5.12.2 Impact on providers:

We anticipate the impact of this proposal will be adverse, as providers will see a reduction in legal aid income. In common with all civil & family legal aid providers for whom data is available, those managing firms engaged in work impacted by this proposal are more likely to be male, and non-disabled when compared to the population as a whole, but unlike the majority of civil and family providers, they are

more likely to be BAME when compared to the population as a whole (48% amongst affected providers compared to 14% in the general population). The proposal may therefore have a disproportionate impact on those groups. However, we acknowledge that the extent of impact on a given provider firm may be dependent upon how much they rely on income from the areas of work affected by the proposal. We consider any such impact to be justified for the reasons set out below.

#### 5.12.3 Justification:

We acknowledge that the proposal may have a disproportionate impact on providers who are male, non-disabled or BAME. However, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4. We consider it unjustified to continue to pay a higher rate (incorporating an uplift) in the current economic climate. The higher rate was put in place under an old scheme of retrospective funding where work on the whole appeal was 'at risk'. Under existing arrangements only work on the permission application is 'at risk' and payment is made after a successful application. However the higher rate of payment still applies. Given the different arrangements put in place since the higher rate was introduced, we do not consider continued payment of the higher rate to be justified.

### 5.13 Expert Fees in Civil, Family and Criminal proceedings

#### 5.13.1 Impact on providers:

We anticipate the impact of this proposal would be adverse, as experts will see a reduction in legal aid income. Experts are a disparate group and the impact of any reduction in fees paid is difficult to predict. As the LAA does not contract directly with experts, no data is held from which to determine the average reduction or the protected characteristics of experts. Our initial view is that the nature of the changes is such that they are unlikely to put people with protected characteristics at a particular disadvantage. Were any such impact to materialise, we consider it would be justified for the reasons set out below.

#### 5.13.2 Impact on clients:

A reduction in the fee paid to experts is considered unlikely to have any negative equality impact on legal aid clients. The resultant effect of the proposed reduction in expert fees would mean that clients would receive the same level of expert service but this would be at a reduced cost to the legal aid fund.

#### 5.13.3 Justification:

Were any disproportionate impact to result, we believe the proposal is a proportionate means of achieving the legitimate aims set out in section 4. By ensuring that broadly similar rates are paid for similar services, the proposal better ensures that public expenditure on legal aid represents value for money and promotes public confidence in the scheme