



## Reform of Legal Aid in England and Wales: Equality Impact Assessment (EIA)

This EIA updates the EIA that was published by the Ministry of Justice in June 2011 alongside its proposals for the reform of Legal Aid in England and Wales. It has been updated to reflect changes that were made during the passage through Parliament of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and, in particular, to provide a baseline to assess the ongoing impact of the reforms.

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# Equality Impact Assessment (EIA)

## Scope of this EIA

1. On 21 June 2011, the Government published *Reform of Legal Aid in England and Wales: the Government Response*<sup>1</sup>, its response to the consultation paper, *Proposals for Reform of Legal Aid in England and Wales*. The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill was introduced in Parliament on the same day. The proposals contained in the response and in the Bill constituted a radical, wide ranging and ambitious programme of reform, which aimed to ensure that legal aid is targeted to those who needed it most, for the most serious cases in which legal advice or representation is justified.
2. An Equality Impact Assessment (EIA) was published in June 2011 alongside the Government Response, which set out the potential impact of the overall reform package on those persons sharing protected characteristics.
3. The LASPO Act 2012 received Royal Assent on 1 May 2012. During the passage of the Bill through Parliament, certain modifications were made to the overall package of legal aid reforms. This EIA therefore updates the June 2011 EIA by incorporating and analysing those changes, using the same 2009/10 baseline as the June 2011 EIA to facilitate comparison of the estimated impacts of the reforms before and after their Parliamentary passage, and, in particular, to provide a baseline against which to assess the ongoing impact of the reforms. The analysis presented in this EIA has been updated to take account of the modifications made during the passage of the Bill through Parliament, and because we have refined our analysis in relation to the comparator baseline groups.
4. The EIA analyses the potential impact of the reforms on the advancement of equality of opportunity, the fostering of good relations and the elimination of discrimination, harassment, victimisation and other conduct that is prohibited under the Equality Act 2010. It should be read alongside the Government response document published in June 2011 and the recently updated Impact Assessment (IA) Legal Aid Reform in England and Wales: *Cumulative Legal Aid Reform Proposals*.

## The structure of this EIA

5. This EIA updates the June 2011 EIA in light of the modifications made to the overall reform package since the introduction of the LASPO Bill in Parliament.
6. The policies in this EIA relate to the legal aid related measures in Part 1 and 2 of the LASPO Act. This EIA also covers reforms to Civil, Family and Criminal remuneration, including modifications to fees for expert witnesses, implemented in October 2011 and February 2012. We include these sections for the sake of completeness. However, this EIA does not cover policy changes to Central Funds and the Abolition of the Legal Services Commission (LSC) – these are included in separate EIAs,
7. The key modifications to the Bill that entered Parliament are as follows:

The following case types will now remain within the scope of legal aid:

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<sup>1</sup> *Reform of Legal Aid in England and Wales: the Government Response* (Cm 8072, 2011) Ministry of Justice. Available from: <http://www.justice.gov.uk/consultations/legal-aid-reform.htm>

- Clinical negligence - obstetrics cases in which, as a result of neurological injury a child is severely disabled.
  - Welfare benefits - advice and assistance for appeals on a point of law in the Upper Tribunal (including seeking permission from the Upper Tribunal to bring a substantive appeal), the Court of Appeal and the Supreme Court. Welfare benefit representation in the higher courts.
  - Domestic Child Abduction - legal aid for the recovery of a child who has been unlawfully removed within the United Kingdom.
  - Human Trafficking - legal aid for claims in the county courts for damages against a perpetrator of trafficking, or Legal Help to assist in a claim to the Employment Tribunal for such cases, as well as legal aid for immigration cases for victims of trafficking.
  - Special Educational Needs (SEN) cases for 16-24 year olds;
  - Domestic Violence - The Association of Chief Police Officers (ACPO) definition of domestic violence (DV) will now be the one used for the purposes of access to private family legal aid. Additional forms of evidence have been agreed as acceptable, including an undertaking given to a court by the other party in lieu of a protective order or injunction against that party for the protection of the applicant (and where there is no equivalent undertaking given by the applicant); a Police Caution for a domestic violence offence by the other party against the applicant; appropriate evidence of admission to a domestic violence refuge, appropriate evidence from a social services department confirming provision of services to the victim in relation to alleged domestic violence; evidence from a GP or other medical practitioner.
  - Community Care - cases will now not be included in the mandatory telephone gateway.
8. In this introductory section of the EIA we first set out the policy objectives of the legal aid reforms. We then set out the relevant legal duties, followed by the approach we have taken to assessing impacts including the sources of evidence and methodology used.
  9. We then consider the justifications for any potential adverse impacts, and whether there are less discriminatory alternatives, before moving on to the options available to limit or eliminate disadvantageous effects and advance equality of opportunity and foster good relations.
  10. This overview is followed by individual sections for each of the areas of reform, beginning with the assessment of the cumulative impact of all of policies.
  11. This is followed by our analysis of the likely impact of the reforms following the passage of the LASPO Bill through Parliament, an assessment of how this differs from the analysis in the initial EIAs, and the Government's decision on the reforms to be implemented. We then consider the elimination of discrimination, harassment, victimisation and other prohibited conduct for each area of reform, as well as setting out our consideration of the impacts identified and whether they are justified.

12. Finally, the advancement of equality of opportunity and the fostering of good relations is considered, followed by the next steps for the assessment of the impact of the reforms once they have been implemented.
13. The sections of this EIA specific to each area of reform refer back to, and should be read in conjunction with this introductory section as appropriate. All data Tables referred to are in the data section at the end of this EIA.

### **Policy objectives**

14. In November 2010 the Government published its proposals for reform in the consultation paper: *Proposals for the Reform of Legal Aid in England and Wales*. This set out proposals for a radical, wide ranging and ambitious programme of reform, which aimed to ensure that legal aid was targeted to those who needed it most, for the most serious cases in which legal advice or representation was justified.
15. Reducing expenditure on legal aid was one of the key drivers for reform, but irrespective of the current economic situation, the Government believes that legal aid is, in any event, in need of fundamental reform. Legal aid has expanded far beyond its original intentions, available for a wide range of issues, many of which should not require any legal expertise to resolve. This has encouraged people to bring their problems to court when the courts are not well placed to provide the best solutions. There is a compelling case for going back to first principles.
16. The proposals in the consultation paper were estimated to deliver a saving of £350 million to the public purse in 2014/15, against a scheme which now costs over £2 billion each year, an increase of around 6% in real terms since 1997/98. It is one of the most comprehensive, and expensive, legal aid provisions in the world upon which we spend around £39 a head (2010-11). Making comparisons to other justice systems is not straightforward. However, countries with a similar system spend less, such as £18 a head in New Zealand (2010).<sup>2</sup>
17. Overall it remains our view that the legal aid reforms will:
  - discourage unnecessary and adversarial litigation at public expense;
  - target legal aid to those who need it most;
  - make significant savings in the cost of the scheme; and
  - deliver better overall value for money for the taxpayer.

### **Legal duties**

#### ***The duties at the time of the consultation document***

18. At the time the consultation document was published in November 2010 the Government was under statutory equality duties under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975.
19. Those duties required MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation. The specific types of discrimination to which the duty of due regard applied, at the relevant time, were: (i) sex discrimination;

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<sup>2</sup> Sept 2011, *International Comparisons of Public Expenditure on legally aided services*, MoJ, London

(ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.

20. The statutory duties in force at the time also required MoJ to have due regard to the needs to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people. MoJ was also under specific duties to conduct gender, race and disability equality impact assessments of its policies.

### ***The duties now***

21. Since 5 April 2011, these separate statutory duties have been replaced with a single public sector equality duty, under section 149 of the Equality Act 2010. Under that duty it is necessary to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and other conduct that is prohibited by or under the Equality Act 2010;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- The relevant protected characteristics for these purposes are: (i) age; (ii) disability; (iii) gender reassignment; (iv) marriage and civil partnership; (v) pregnancy and maternity; (vi) race; (vii) religion or belief; (viii) sex; (ix) sexual orientation. These types of discrimination are all defined in the Equality Act 2010. The protected characteristic of marriage and civil partnership is relevant only in respect of eliminating unlawful discrimination.

22. Consistent with these statutory duties, we have considered the impact of our reforms with reference to all of these protected characteristics (including the three characteristics of age, religion or belief and sexual orientation) and with the statutory objectives of section 149 of the Equality Act 2010 in mind.

### ***The forms of prohibited conduct***

23. The provisions of the Equality Act 2010 currently in force contain, in Chapter 2, several forms of prohibited conduct, namely:

- direct discrimination (defined in section 13 of the Act);
- discrimination arising from disability (defined in section 15);
- pregnancy and maternity discrimination (defined in sections 17 (non-work cases) and 18 (work cases));
- harassment (defined in section 26);

- victimisation (defined in section 27);
- breach of a non-discrimination rule (see section 61);
- breach of an equality clause (see sections 66 and 73);
- indirect discrimination (defined in section 19); and
- failure to comply with a duty to make reasonable adjustments (see sections 20 and 21).

***Direct discrimination, harassment and victimisation***

24. As can be seen from the descriptions of the changes to legal aid in the sections for each area of reform in this EIA, all of the changes will apply to all people irrespective of whether they have any of the protected characteristics. We therefore do not consider that any of the changes will give rise to direct discrimination (whereby a person is treated less favourably than their comparators because of a protected characteristic)).
25. In relation to whether any of the proposed changes give rise to the possibility that a person having a protected characteristic will be harassed or victimised, we considered that none of the changes would have any impact on instances of harassment and victimisation.

***Breach of a non discrimination rule or equality clause***

26. We have also considered whether any of the changes will give rise to the possibility of breach of a non-discrimination rule or of an equality clause and have concluded that none of them are likely to do so.

***Unfavourable treatment arising in consequence of a person's disability, which cannot be objectively justified***

27. We have also considered separately whether any of the policies might cause unfavourable treatment to a disabled person arising in consequence of their particular disability. Where we have considered this to be a risk, we consider that such treatment would be a proportionate means of achieving a legitimate aim.

***Indirect discrimination***

28. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

*'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -*

*(a) A applies, or would apply, it to people with whom B does not share the characteristic,*

*(b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

### **Failure to make reasonable adjustments**

29. A failure to comply with a duty to make reasonable adjustments may arise where:
- a provision, criterion or practice puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled;
  - a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled; or
  - a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.
30. Of these three possibilities, we think that the second is unlikely to be of relevance to the changes. In relation to the first, we have considered whether each of the changes may amount to a provision, criterion or practice that puts disabled persons at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled and, if so, what steps it would be reasonable to take to avoid that disadvantage. We have also considered (and continue to consider) the provision of auxiliary aids, in particular in relation to the Community Legal Advice (CLA) telephone helpline the mandatory gateway for access to services in relation to Special Educational Needs, discrimination and debt.
31. The sections on each of the areas of reform in this EIA consider these elements where relevant, but in headline terms we have not identified any reform where there is likely to be a failure to comply with the duty. Whilst disabled people and individuals with specific disabilities are likely to experience a greater impact under some of these changes, we are not of the view that this impact would necessarily place them at a substantial disadvantage. Where there might be a substantial disadvantage we have considered what adjustments can be made to mitigate or remove that substantial disadvantage, as set out in greater detail below.

### **The assessment of impacts**

32. This EIA draws together evidence from a number of sources, including published and unpublished research and analysis of relevant data. A number of respondents to the consultation last year submitted new data or research, or referred to other existing information, and we included consideration of this where relevant in the individual sections for each area of reform in the previous EIA upon which this EIA is based.
33. Overall, we consider that the efforts that we have made to gather information have been entirely reasonable; the information on which we have relied, both in the initial EIAs, the EIAs published alongside the Government response to the consultation and in this EIA, was adequate, and the conclusions which we have drawn as to potential equalities impacts in the EIAs have been appropriate and sufficiently informed.

## **Methodology for statistical analysis of client and provider impact**

### **Data sources**

34. In the initial EIAs we used LSC claim data for 2008/09 in order to assess the potential impacts on providers and clients. The EIA that accompanied the Government response to the consultation updated this analysis by using data for 2009/10 that since became available. In this EIA, the potential impacts of the areas of the Bill updated during its passage through Parliament have been modelled on the same 2009/10 data used in the consultation response to ensure consistency and comparability. This should facilitate comparison of the estimated impacts of the reforms before and after their Parliamentary passage.
35. In order to assess the extent to which using the 2009/10 data has affected our assessment of the impacts of the reforms we have compared them to that for 2008/09 (see Tables 1- 3). This shows that the total legal aid caseload has remained stable, with the proportion of clients who have a protected characteristic changing very little between the two years.
36. Whilst the same 2009/10 baseline data is used in this EIA as in the June 2011 EIA we have refined our analysis, in relation to the comparator baseline groups (see paragraphs 50 and 51 below). Using these comparator groups in the June 2011 EIA would not have made a significant difference to the impacts identified and published alongside the consultation response.
37. In this EIA we have identified the following data sources as providing the most relevant information on potential equalities impacts:
  - LSC data on clients collected through provider billing for financial year 2009/2010 (LSC Client Data) This includes records of client's sex, age, race, and illness or disability status.
  - LSC claims data provides data on providers' legal aid income.
  - Legal Services Research Centre (LSRC) provider data, collected in support of their Routine Diversity Monitoring of the Supplier Base report, provides equalities data on legal services providers. This is a census of suppliers carried out by Resource Information System (RIS) on behalf of the LSC.
  - Joint LSC / Bar Council 2007-08 survey data, collected for the Barrister Workforce Profile, provides equalities data on the Bar.<sup>3</sup>
  - The Family Law Bar Association's Week at a Glance Survey provides data on the Family Bar.<sup>4</sup>
38. To assess the potential impact of the reforms on providers' legal aid income we have used detailed data on the number and value of legal aid cases completed in 2009/10. Where providers have undertaken work which would be outside the scope of the legal aid scheme following implementation of the reforms, or remunerated at a different rate, we have re-priced their work. The amount a provider would be paid under the reform proposals has been compared with what it was actually paid in 2009/10, and the

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<sup>4</sup> Price, D & Laybourne, A, (2009) *The Work of the Family Bar: Report of the Week-At-A-Glance Survey 2008*. Family Law Bar Association.

change in income implied by the reforms expressed as a percentage of total civil or criminal legal aid income as appropriate.

39. The LSRC matched equalities data for providers to the LSC claim data on those providers in order to estimate the average percentage reductions in legal aid income for groups of providers which share a protected characteristic. These average figures are compared between groups in order to identify any potentially disproportionate impact as a result of the reforms.

### ***Data limitations***

40. All of these data sources have some limitations, as was noted in the initial EIA and some consultation responses which were detailed in the EIA that accompanied the Government response to the consultation.
41. None of the data sources cover all of the protected characteristics. This EIA includes the available data on age, as well as those characteristics covered in the initial EIA: sex, race and disability.
42. Details of clients are recorded by providers, not the clients themselves, and are therefore unlikely to be as accurate as self defined data, particularly in respect of disability / illness and race.
43. As with many administrative datasets, the quality of the data is affected by the extent of missing data particularly regarding illness / disability status and race.
44. Data on disability / illness does not contain details of the exact nature of the disability or illness, so it is not possible to identify those specific groups that might be affected by different policies. We acknowledge in specific sections in this EIA that some of these proposals might have a greater impact on some people with certain specific disabilities, and not on others.
45. LSRC's provider equality data is based on a survey of providers which overall has a 54% response rate. A larger proportion of Not for Profit (NfP) civil and family law providers responded (76%) than solicitors (52%). The findings for NfP providers are therefore a more robust basis on which to generalise than for other providers. The combined data on all providers over represents NfPs relative to solicitors. NfPs make up 9% of all affected civil providers, but 13% of the civil providers equalities data sample.
46. Where data is only available for a very small number of providers (less than 5), analysis is withheld to protect the privacy of providers.
47. The equalities analysis presented here takes into consideration the relative limitations of each data source in terms of the strength of the conclusions that can be drawn regarding potential equalities impacts.
48. In assessing the potential impact on clients as a result of the reforms, where we are not able to break down the data to identify the specific clients likely to be affected we assume their characteristics are in the same proportion as clients within the broader category.
49. Volumes of missing data are reported and, where appropriate, the data is analysed both including and excluding the missing cases to assess the possibility of disproportionate impacts. Where missing cases are excluded from the analysis this makes the assumption that clients and providers for whom data is missing are

distributed across the protected characteristic categories in the same proportion as the clients and providers for whom data was available. This type of analysis allows comparisons to be drawn with population data.

50. In making these comparisons, we have used the characteristics of the England and Wales population to provide population comparators. In the previous EIAs, we used the population of England and Wales aged 16 and over as our comparator group. In this EIA we have used the Office for National Statistics (ONS) Mid-2010 population estimates for England and Wales for all ages, as this is a more useful comparator group in light of some of the modifications made to the Bill during its passage through Parliament (particularly those concerning clinical negligence).
51. With regard to the disabled population, the previous EIAs used as a comparator estimates for the working age population in England and Wales during 2009/10 from the ONS Annual Population Survey. In this EIA we have used Disability Prevalence Estimates 2009/10 from the Office of Disability Issues for Great Britain<sup>5</sup> as our comparator group as we consider these estimates the best available. Again, we have looked at the population of all ages as this is a more useful comparator group in light of updates to the Bill.

### ***Data analysis***

52. To assess the impact of the reforms on clients and providers of legal aid the proposed changes have been applied to one year of LSC data. This shows what the position for providers and clients would have been if the reforms had been in place, but all other factors had remained stable (for example, the number of problems experienced by clients and their personal circumstances which determine whether they are eligible for legal aid). This impact analysis is therefore based on a steady state situation when the reforms have been fully implemented, rather than assessment of how the impacts will unfold over coming years as the changes are implemented.
53. We have considered the arrangement and use of data in the initial EIA, the EIA that accompanied the Government response to the consultation and in this EIA, including the pooling and assessment of impacts under the specific policies and more generally (for example whether it is appropriate to undertake analysis at the level of category of law). Although the data has limitations we consider the approach adopted in this EIA to be robust.

### ***Data gaps***

54. We do not have any direct data on groups other than clients and providers that could be affected by the reforms, such as the children of clients. We have, however, considered in this EIA the potential for the reforms to have effects on other groups.
55. We recognise that there are a number of data gaps in relation to client and provider protected characteristics in the available data sources.
56. In the initial EIAs we assessed the potential impacts on clients and providers of publicly funded legal services with respect to gender, race and disability. We updated

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<sup>5</sup> Great Britain refers to England, Scotland and Wales but not Northern Ireland. Great Britain also includes a number of neighbouring islands but not the Isle of Man or the Channel Islands.

this analysis in the consultation response EIA by assessing the impact on people based on their age where possible and we continue to do so in this EIA.

### ***Addressing data gaps***

57. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will complement use of administrative data with bespoke research exercises where appropriate.
58. For example, the MoJ is planning to conduct a new study of legal aid clients to provide additional information on a range of client characteristics. The MoJ, Law Society and Legal Services Board (LSB) have commissioned research on legal services providers. The LSRC has also been considering telephone based services. We will keep research needs in this area under review.

### ***Intersectional discrimination***

59. The Law Society commented in its consultation response that we appear to have ignored the possibility of the proposed changes having an adverse and disproportionate impact on clients by reason of more than one protected characteristic, i.e. 'intersectional discrimination'.<sup>6</sup>
60. The Equality Act 2010 prohibits direct discrimination arising from a combination of two relevant protected characteristics (see section 14). However, the government has decided not to commence this provision during the lifetime of this Parliament. Nevertheless, we recognise the potential for intersectional discriminatory effects, and where respondents have suggested that there may be particular effects on clients or providers with a specified combination of protected characteristics we consider this in more detail in the relevant individual sections for each area of reform in this EIA below.

### **Justification of any adverse impacts**

#### ***The policy objectives***

61. As set out at previously, the aims of the reforms are to:
  - discourage unnecessary and adversarial litigation at public expense;
  - target legal aid to those who need it most;
  - make significant savings in the cost of the scheme; and
  - deliver better overall value for money for the taxpayer.
62. These objectives, of reforming legal aid to reflect the principles on which it was founded and achieving the stringent budgetary savings necessary across government, are of critical importance. We believe these to be legitimate aims with regard to principles of equality and non discrimination.
63. These objectives underpin and motivate the entire package of reforms. As we explained in paragraph 8 of the introductory sections of the initial EIAs:

‘The proposals in this consultation seek to deliver substantial savings in a fair, balanced and sustainable way. They will encourage people to resolve their problems themselves and to use alternatives to the courts where they are

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<sup>6</sup> Law Society response, §9.3.17.

effective. They will help reserve the courts for serious legal issues where there is a public interest in assuring access, and then only as a last resort. They also seek to ensure that scarce resources are targeted efficiently and effectively, delivering overall value for money.'

64. The Government believes that the programme, modified and refined as set out in the response to consultation document and the LASPO Act 2012, is a proportionate means of achieving these aims.

## 1. Cumulative impact of all policies

### **Description**

- 1.1 This section considers the cumulative impact of all the changes to legal aid described in the individual sections of this EIA specific to each of the areas of reform, below.

### **Legal Duties**

- 1.2 The legal duties that apply to MoJ are set out in full in the introduction to this document.

### **Analysis of Statistical Impacts**

#### ***Clients***

- 1.3 As set out in chapters 4 and 5, we do not believe that the policies relating to criminal and civil remuneration would have an impact on clients. While previous fee cuts to date do not appear to have had an adverse impact, there is a risk that the legal aid services market may not be able to sustain the cuts to scope and fees now proposed. There are two potential adverse impacts on the market: the number and type of suppliers; and the quality of advice received. The most recent published survey of law firms was commissioned by the Law Society during the consultation period. This suggested that while the proposed fee cuts are likely to be broadly sustainable, the market may not be able to sustain the proposed scope cuts with particular risks for smaller criminal concerns in London and civil / family firms more generally. However, the quantitative results are based on a small and possibly unrepresentative sample. In addition, there are issues with self-reporting and it is unclear whether the assumptions used to drive the financial calculations are robust, so the extent to which the results are reliable and representative of the wider market cannot be validated. Evidence from the Scottish Legal Aid Board suggests that there was an increase in solicitors' firms registered to provide legal aid services, despite cuts in legal aid fees paid to suppliers, but we cannot assume that the market in England and Wales will behave in the same way.
- 1.4 However, to mitigate any potential risk that clients may not be able to access legally aided services the Government intends to work with the LSC to ensure that effective contingency plans are in place to enable the LSC to respond promptly and effectively to address any shortage in supply once the remuneration reforms are implemented. This will be accompanied by the development of a client and provider strategy covering civil, family and criminal legal aid work which will include consideration of the best way that services remaining in scope can be bundled in future procurement rounds to ensure that clients are able to access the services they need. In the longer term, the move to competition is designed to ensure that legal aid services are procured at a rate the market is able to sustain.
- 1.5 The cumulative impact on clients set out below is therefore mainly in respect of the changes to the scope of civil legal aid and the implementation of the mandatory CLA helpline. Changes to eligibility and the way in which services are to be accessed are also taken into account, however as it is not possible to identify individual clients affected by both these sets of reforms, we make assumptions concerning reductions in case volumes based on the overall make-up of the client base either at the aggregate level (eligibility reforms) or the category specific level (telephone reforms).

- 1.6 Detailed analysis of civil legal aid clients is set out in the assessment of the reforms below, and the characteristics of civil legal aid clients are described in the impact assessment for the eligibility reforms. Taken together the reforms will affect the full range of civil legal aid clients, and therefore the groups likely to be affected are the same as those identified in these detailed impact assessments.
- 1.7 These show that overall the reforms have the potential to impact a greater proportion of women, BAME people and ill or disabled people. Those aged 25 – 64 are also potentially more likely to be affected (see Tables 4-7 for client impacts). As set out above, we do not believe that this necessarily translates to a particular or substantial disadvantage and we have taken steps to assess how disadvantageous effects could be minimised and to make reasonable adjustments.

### ***Solicitor and NfP Providers***

- 1.8 The following section details the provider impacts by three distinct groups, those delivering only civil legally aid services, those delivering only criminally legally aided services, and those delivering both criminal and civil legally aided services.

### ***Civil only providers***

#### **Solicitor and NfP impacts (see Table 27)**

- 1.9 Of those providers for which equalities data is available, there is no evidence of any differential impact between female owned and controlled solicitor providers and their male counterparts: each are expected to experience an average reduction in income of 41% and 43% respectively. In respect of NfPs, female owned and controlled providers see the highest average reduction in legal aid income of 84%. Their male counterparts see an average reduction in income of 76%.
- 1.10 With regard to race, White British solicitor providers experience the highest average reduction in legal aid income of 43%, compared to their BAME counterparts who are expected to experience an average reduction of 36%. For NfPs, White British owned and controlled providers see an average reduction in legal aid income of 83%, whereas their BAME counterparts experience an average reduction of 74%.
- 1.11 In terms of disability, there is no evidence of any differential impacts with average reductions in income being of a similar order across the characteristics. Solicitor providers employing an ill or disabled manager see an average reduction in legal aid income of 40%, compared with a 42% reduction in income for those that do not. For NfPs, providers employing an ill or disabled manager are expected to experience an average reduction in income of 84% compared to 81% for those that do not employ an ill or disabled manager.

#### **London / non-London impacts (see Table 28)**

- 1.12 A greater proportion of providers outside London have majority male ownership and control compared with those in London (62% compared with 53%) and a greater proportion also have majority White British ownership and control (93% compared with 49%). There was no difference in the proportion of providers employing one or more ill or disabled managers in London compared with outside (6%).
- 1.13 Estimates suggest that, across all the equalities strands, providers outside London are likely to experience a higher average reduction in legal aid income as a result of these policies when compared with those in London.

- 1.14 Providers with majority male ownership and control will see an average reduction in income of 39% in London, compared with 46% outside London. Similarly firms with majority female ownership and control are expected to see an average reduction of 40% in London and 57% elsewhere. This indicates a greater likelihood of a differential impact amongst providers outside of London.
- 1.15 Providers with majority White British ownership and control are likely to experience an average reduction of 39% in London compared with 49% elsewhere. Firms with majority BAME ownership and control are expected to see an average reduction of 40% in London and 44% elsewhere.
- 1.16 Those employing one or more ill or disabled managers will see an average reduction of 52% in London and 54% elsewhere, and those not employing an ill or disabled manager an average reduction in income of 39% in London and 48% elsewhere. This suggests that there is a greater likelihood of a differential impact within London than outside.

***Crime only providers***

**All providers (see Table 29)**

- 1.17 Of those providers for which equalities data is available, there is no evidence of a differential impact. Both female and male owned and controlled providers will see similar average reductions in legal aid income (6% compared with 7%). BAME owned and controlled providers see a reduction in income similar to that of their white British owned and controlled counterparts (8% compared with a 6%). In terms of disability, there is no difference in impact between those providers employing an ill or disabled manager and those that do not (7%).

**London / non-London (see Table 30)**

- 1.18 A greater proportion of providers outside London have majority male ownership and control compared with those in London (73% compared with 62%) and a greater proportion also have majority White British ownership and control (86% compared with 39%). There was no difference in the proportion of providers employing one or more ill or disabled managers in London compared with outside (4% compared with a 5%).
- 1.19 Estimates suggest that, taking all of the protected characteristics together, providers within London are likely to experience similar average reduction in legal aid income as a result of the criminal remuneration changes when compared with those outside London.
- 1.20 Providers with majority male ownership and control see an average reduction in legal aid income of 10% in London, compared with 6% outside London. Similarly firms with majority female ownership and control are expected to see an average reduction of 7% in London and 6% elsewhere.
- 1.21 Providers with majority White British ownership and control are likely to experience an average reduction of 9% in London compared with 6% elsewhere. Firms with majority BAME ownership and control are also expected to see an average reduction of 9% in London and 6% elsewhere.
- 1.22 Those employing one or more ill or disabled managers will see an average reduction of 10% in London and 6% elsewhere, and those not employing an ill or disabled

manager an average reduction in legal aid income of 9% in London and 6% elsewhere.

### ***Crime and civil providers***

#### **Solicitor and NfP impacts (see Table 31)**

- 1.23 Of those providers for which equalities data is available, there is no evidence of any differential impact, amongst solicitor providers in relation to gender. Female owned and controlled solicitor providers will see an average reduction in legal aid income of 31%, whereas their male counterparts experience an average reduction of 28%. In respect of NfPs, female owned and controlled providers will see an average reduction in legal aid income of 84%. Their male counterparts will see an average reduction in income of 76%.
- 1.24 With regard to race, white British solicitor providers experience an average reduction in income of 30%, with their BAME counterparts seeing an average reduction of 20%. For NfPs, white British owned and controlled providers will see an average reduction in legal aid income of 83%, whereas their BAME counterparts experience an average reduction of 74%.
- 1.25 In terms of disability, there is no evidence of any differential impact. Solicitor providers with an ill or disabled manager experience the same average reduction in income as those that do not (28%). For NfPs, providers employing an ill or disabled manager experience a similar reduction in income (84%) than those that do not employ an ill or disabled manager (81%).

#### **London / non-London impacts (see Table 32)**

- 1.26 A greater proportion of providers outside London have majority male ownership and control compared with those in London (64% compared with 56%) and a greater proportion also have majority White British ownership and control (90% compared with 43%). There is a no difference in the proportion of providers employing one or more ill or disabled managers in London compared with outside (5% compared with 6%).
- 1.27 Estimates suggest that, across all the equalities strands, providers outside London are likely to experience a higher average reduction in legal aid income as a result of the proposals when compared with those in London. This variation is likely to contribute to the presence of differential impacts outlined in the preceding analysis.
- 1.28 Providers with majority male ownership and control see an average reduction in legal aid income of 24% in London, compared with 31% outside London. Similarly firms with majority female ownership and control are expected to see an average reduction of 31% in London and 48% elsewhere.
- 1.29 Providers with majority White British ownership and control are likely to experience an average reduction of 29% in London compared with 36% elsewhere. Firms with majority BAME ownership and control are expected to see an average reduction of 25% in London and 23% elsewhere.
- 1.30 Those employing one or more ill or disabled managers see an average reduction of 39% in London and 43% elsewhere, and those not employing an ill or disabled manager an average reduction in income of 26% in London and 35% elsewhere.

### ***The Bar***

- 1.31 Barristers receiving legal aid funding will be affected by the reforms to by the changes in remuneration as well as the scope and eligibility rules for legal aid as well as the civil and criminal remuneration reforms. As noted in the individual sections of this EIA that are concerned with these latter areas of reform, we do not hold data on the protected characteristics of barristers which would allow us to carry out analysis for them.
- 1.32 However, as female and BAME barristers are more likely than their counterparts to practice in civil legal aid, and male and BAME barristers more likely to practice in criminal legal aid, reforms in these areas are likely to have a greater effect on them.
- 1.33 Overall, the combined impact of the reforms will see the total legal aid income of barristers undertaking civil work reduce by 32%, with the income of each barrister reducing by an average of 42%. Changes to remuneration for criminal legal aid work will see the total legal aid income of criminal barristers reduce by 11%. It is not possible to assess the actual impact of the reforms on individual barristers because of limitations in the data held on payment to advocates, therefore we have assumed that the reduction in income will be spread evenly across all barristers, who will therefore see an average reduction in legal aid income of 11% as a result of these reforms.

### **Comparison with previous EIAs**

- 1.34 Overall, both the initial EIA and the consultation response EIA for the reforms identified the potential for a disproportionate impact on clients who are female, BAME, and ill or disabled. Comparing this with the analysis set out above, it can be seen that these findings are the same as those of this EIA.
- 1.35 The initial EIA and the consultation response EIA also identified the potential for providers with majority female ownership and control to be disproportionately affected. Comparing this with the analysis above shows that the same potential impact on providers is identified in this EIA. Therefore, while the impacts identified differ in degree from those identified in the both earlier EIAs, the overall findings are the same.
- 1.36 The initial EIA and the consultation response EIA identified a slightly higher average impact for providers with majority White British ownership and control, and the analysis set out above confirms that providers with majority BAME ownership and control are expected to see lower average reductions in legal aid income as a result of the reforms.
- 1.37 The analysis in the initial EIA estimated that providers employing one or more ill or disabled managers would see a lower average impact. The consultation response EIA confirmed that providers employing an ill or disabled manager will not see a greater impact as a result of the reforms than those that do not, with the analysis above showing that this remains the case.
- 1.38 Differences between the initial and consultation response EIAs are likely to be attributable to changes in the caseload of providers between the 2008/09 data used for the initial EIAs and the 2009/10 data used in latter analysis, and at least in part to the changes to the proposal to make CLA helpline the gateway to legal advice funded under legal aid.

### **Potential Impact on NfPs**

- 1.39 The initial EIA assessed the net financial impact on the NfP sector as a result of the proposals at £60m (77%), against a total spend of £78m. The analysis set out in this EIA shows that the final package for implementation is likely to result in a reduction in legal aid expenditure on NfPs of £50m (74%) from a total expenditure of £68m in 2009/10.
- 1.40 The reforms to the legal aid system will reduce the income of those Not-for-Profit (NfP) organisations that hold legal aid contracts, although as legal aid is only one of several funding streams that NfP organisations receive, it is difficult to assess the impact that the legal aid reforms will have on the overall sustainability of the NfP sector. However, the Government recognises the important role that NfP organisations play in delivering advice services at a local level, and that the funding framework for this sector is changing. The Government made £16.8million available in November 2011 to support the NfP advice sector in England and Wales in 2012/2013, as it adapts to changes in the way it is funded, and was administered by the Cabinet Office. Further funding of £16.8 million for 2013/2014 and £16.8 million for 2014/2015 was additionally announced in the Budget in March 2012 to support the outcome of the Cabinet Office review of the long term sustainability of the NfP sector which is due to be published later this year,

### **Decisions**

- 1.41 The decisions on the final package of reforms are set out in detail in the relevant individual sections for each of the areas of reform in this EIA, and in the response to consultation document published in June 2011.

### **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

- 1.42 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out in the legal duties section of the introduction to this EIA.
- 1.43 As noted in paragraph 26 above, these changes will apply to all people, irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they will give rise to any direct discrimination. The form of prohibited conduct which is potentially relevant to the legal aid reforms is therefore indirect discrimination. However, for the reasons set out in paragraphs 63- 66 of the introductory section of this document, from paragraph 1.47 below, and elsewhere, we consider that the reforms are a proportionate means of meeting our legitimate policy objectives.
- 1.44 In the event that any of the reforms to legal aid were capable of causing such substantial or particular disadvantage we have considered what the position would be and have also considered our duty to make reasonable adjustments.
- 1.45 We hold data for the protected characteristics of sex, race, disability and age, and this is set out above. For the protected characteristics of marriage and civil partnership, pregnancy or maternity, gender reassignment, religion and belief and sexual orientation, we have no evidence to suggest that the nature of the reforms would be likely to have any disproportionate effect.

## Consideration of potential statistical impacts and justification

- 1.46 The individual impact assessments for each of the changes are set out in the respective sections below. We do not consider that any of the reforms are likely to amount to provisions, criteria or to give rise to practices which are likely to cause an individual in the protected groups an increased risk of suffering harassment, victimisation or breach of an equality clause. However, insofar as they do so, we consider that they are the least discriminatory means of achieving our legitimate aims.
- 1.47 As noted above, the cumulative impacts of the reforms are broadly consistent with those identified in the previous EIAs. We have identified the potential for a particular or substantial disadvantageous impact on clients who are female, BAME, and ill or disabled, and on providers with majority female and majority White British ownership and control, and on those employing an ill or disabled manager.
- 1.48 However, it is important to note that the overall impact on providers would also depend upon individual providers' reliance on income from legally aided clients. In addition the impact on providers is dependent upon how they adjust to changing patterns of demand. For example, if providers are able to cut costs and identify other efficiencies, or if providers are able to move into other business areas the impact on them is likely to be lessened.
- 1.49 A number of modifications were made to the original package of proposals for reform during the passage through Parliament of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These are set out in the individual sections of this EIA for each of the areas of reform below. The main modifications were as follows:
- Clinical negligence – obstetrics cases in which, as a result of neurological injury a child is severely disabled.
  - Welfare benefits - advice and assistance for appeals on a point of law in the Upper Tribunal (including seeking permission from the Upper Tribunal to bring a substantive appeal), the Court of Appeal and the Supreme Court. Welfare benefit representation in the higher courts.
  - Domestic violence - The Association of Chief Police Officers (ACPO) definition of domestic violence (DV) will now be the one used for the purposes of access to private family legal aid. Additional forms of evidence have been agreed as acceptable, including an undertaking given to a court by the other party in lieu of a protective order or injunction against that party for the protection of the applicant (and where there is no equivalent undertaking given by the applicant); a Police Caution for a domestic violence offence by the other party against the applicant; appropriate evidence of admission to a domestic violence refuge, appropriate evidence from a social services department confirming provision of services to the victim in relation to alleged domestic violence; evidence from a GP or other medical practitioner.
  - Community Care - Community Care cases will now not be included in the mandatory telephone gateway
  - Domestic Child Abduction - legal aid for the recovery of a child who has been unlawfully removed within the United Kingdom.

- Human Trafficking - legal aid for claims in the county courts for damages against a perpetrator of trafficking, or Legal Help to assist in a claim to the Employment Tribunal for such cases, as well as legal aid for immigration cases for victims of trafficking.
- Special Educational Needs (SEN) cases for 16-24 year olds.

1.50 These modifications mean that fewer people with protected characteristics will be affected by the reforms than if the consultation proposals had been implemented in their entirety. Clients with cases in the SEN and asylum support categories are particularly likely to have protected characteristics due to the nature of the services provided and therefore the modifications are likely to have a more positive effect on the equalities impact of the reforms in these areas than that proposed in consultation. However, the number of clients affected is small and data limitations mean it is not possible to present robust analysis for these clients. Therefore, it is not possible to say one way or the other about the overall equality impact of the package of legal aid reforms by the modifications made to the measures following consultation.

1.51 Where appropriate we have considered making reasonable adjustments to reduce the potential for disadvantage to ill or disabled people, and these are set out in the relevant sections below. Reasonable adjustments are particularly relevant to the expansion of telephone services, and respondents to the consultation suggested that ill or disabled people would find it difficult to access advice in this way. Reasonable adjustments, including the availability of minicom and British Sign Language facilities.

1.52 As set out in paragraph 17 above, the aim of these reforms is to make savings from the legal aid fund while ensuring that legal aid is properly focused on those areas where it is really needed. Further, reform specific justifications are set out in the relevant sections dealing with each area of reform below.

### **Advancement of equality of opportunity, fostering of good relations**

1.53 We have considered whether these proposals have implications for the advancement of equality of opportunity and the fostering of good relations.

1.54 We do not consider that the reforms would affect the participation of persons who share a relevant protected characteristic and who are under-represented in public life.

### **Next steps**

1.55 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.

1.56 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single mandatory gateway for specific types of law and the removal of legal aid for some

types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.

## 2. Changes to the scope of legal aid

### Description

- 2.1 In '*Reform of Legal Aid in England & Wales – the Government Response*' the Government confirmed its intention to remove the following cases from the scope of legal aid:
1. Tort matters and some claims against public authorities (Actions Against the Police category)
  2. Consumer law
  3. Debt matters where the client's home is not at immediate risk
  4. Education cases
  5. Employment
  6. Non-homelessness housing matters (excluding serious disrepair matters)
  7. Non-detention immigration
  8. Family private (excluding domestic violence and child abduction)
  9. Clinical negligence
  10. Miscellaneous: some types of case only
  11. Personal Injury: Criminal Injuries Compensation Authority (CICA) matters, some claims against public authorities and Tort matters
  12. Public Law category: some claims against public authorities
  13. Welfare benefits
- 2.2 These proposals were considered as part of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill and were debated in Parliament. As a consequence, modifications to the scope of legal aid were made in the following areas:
1. Clinical negligence
  2. Welfare benefits
  3. Domestic violence (family private category)
  4. Domestic Child Abduction (family private category)
  5. Human Trafficking (immigration category)
- 2.3 Analysis in the consultation response EIA was undertaken at the level of category of law, as defined in LSC claim data. Some types of case (for example, claims against public authorities) can occur in more than one category and the impact assessment considered both the individual category and overall impact of the changes to the scope of legal aid. This differed from the approach taken in the initial EIA which considered types of case without reference to the LSC defined categories of law.
- 2.4 Analysis in this EIA continues with the methodology employed in the consultation response EIA. Analysis of the equality impacts of all policies listed in paragraph 2.1 have been updated where modifications made during the passage of the legislation may have altered the impact on clients or providers.

## **Legal Duties**

- 2.5 The legal duties that apply to MoJ are set out in full in the introduction to this document.

## **Category analysis**

### **1. Tort matters and some claims against public authorities (Actions Against the Police category)**

- 2.6 All Tort matters, as well as some claims against public authorities (those where the case has been brought under the 'serious wrong-doing' test<sup>7</sup>), have been removed from the scope of the Actions Against the Police category.

## **EIA-specific issues raised in consultation responses**

- 2.7 There were very limited specific equalities points raised in relation to this area. The main point made was that, given disabled people are more likely to be engaged with and depend on the decisions of public authorities, the withdrawal of funding in this category would be likely to have a disproportionate impact on this group.

## **Statistical analysis of impacts**

### ***Clients***

- 2.8 Removal of some cases from the Actions Against the Police category of law is more likely to affect men than women. Table 4 shows that based on a comparison with the population of England and Wales, 73% of clients are expected to be male while they represent only 49% of adults and 44% of all legal aid cases affected.
- 2.9 Table 5 shows that BAME people are also over-represented when compared with the population of England and Wales (28% compared with 12%) but in line with the legal aid caseload when the unknown cases are excluded from the calculation (25%).
- 2.10 Data on the legal aid clients by age group is provided in Table 7. Based on a comparison with the population of England and Wales, those aged between 25-64 are expected to be over-represented - accounting for 84% of the total compared with only 53% of the population.
- 2.11 Because of the large number of cases without details relating to disability status, it is not possible to be certain about the proportion of clients who are ill or disabled or whether those with a particular disability may be put at a substantial disadvantage by these proposals. Details of what is known are provided in Table 6, and this shows that it is possible that there could be a disadvantage to ill or disabled people. Excluding the 27% of unknown cases, 24% of clients were estimated to be ill or disabled compared with 19% of the Great Britain population. This figure is line with of the overall legal aid caseload, 25% of who are ill or disabled.

### ***Solicitor and NfP providers***

- 2.12 The number of NfP providers undertaking work in this category of law and for which equalities data is available is too small to report on for reasons of provider privacy.

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<sup>7</sup> Claims against public authorities brought under the 'serious wrong-doing' test may also be funded under the personal injury category of law (see paragraph 2.178 below).

- 2.13 Of the 210 solicitor providers for which equalities data is available there is no difference in the expected impact on legal aid income between those with majority male ownership and control (4% reduction) and female ownership and control (3% reduction - see Table 10). Those with majority BAME ownership and control are also likely to experience a higher average reduction in legal aid income than those with majority White British ownership and control (8% compared with 4% - see Table 12). The estimate for providers employing no ill or disabled managers is a higher average impact than those that employ at least one ill or disabled manager (4% compared with 1% - see Table 14).

### **Decision in June 2011 consultation response**

#### **Tort matters**

- 2.14 While legal aid may be of assistance in holding the state to account in certain cases, we need to prioritise funding, and we have proposed focusing it on other claims with special features which give them an importance beyond money (e.g. claims relating to a contravention of the Equality Act 2010 and abuse claims), or on judicial review, or on more serious claims against public authorities (other than judicial review or other similar remedies) where these concern a significant breach of human rights, or an abuse of position or powers. We also intend to retain claims against private and public parties where these concern allegations of the abuse of a child or vulnerable adult, or allegations of sexual assault. We intend to retain the most serious claims against public authorities in scope. In stronger excluded cases, alternative sources of funding will be available, such as CFAs. We do not consider that litigants bringing the remaining cases are likely in general to be especially vulnerable, or that they will be unable to present their own case.
- 2.15 The Government decided that these cases should be excluded from scope, as originally proposed in the consultation paper.

#### **Public interest matters**

- 2.16 We do not consider that the presence of this factor should constitute an automatic entitlement to publicly funded legal services, particularly where an area of law has been excluded because it is considered insufficiently important to merit public funds, because there are alternative sources of funding available or because the procedure is simple enough that litigants can present their case without assistance or because the types of case are of a lower priority for funding. We do not consider that the presence of the “wider significant public interest” factor generally justifies the provision of public funding in cases which would otherwise be excluded.
- 2.17 However where a case is in scope – and therefore the type of proceeding is a priority for funding - the public interest will continue to be a relevant feature in the merits criteria, thus allowing the benefit to other individuals to be taken into account in the funding decision.

#### **2. Consumer law**

- 2.18 All cases in the consumer category, except claims relating to a contravention of the Equality Act 2010, have been removed from scope.

#### **EIA-specific issues raised in consultation responses**

- 2.19 There were limited equalities points raised in relation to this policy. The main point raised was that this policy would have a disproportionate impact on disabled clients,

with respondents suggesting that the inherent vulnerability of some clients with disabilities meant that they were more likely to be vulnerable to unscrupulous commercial operators, and therefore more likely to require funding under this category of law in order to seek redress.

## **Statistical analysis of impacts**

### ***Clients***

- 2.20 Clients affected by the removal of consumer law from the scope of legal aid are more likely to be BAME than the population of England and Wales as a whole. Of the total for consumer law (excluding unknown cases), 17% are from BAME groups compared with 12% of the population of England and Wales (see Table 5). Excluding the small proportion of unknown cases, 52% of clients are expected to be men compared with 44% of all those affected and 49% of the population of England and Wales.
- 2.21 In common with all those affected by the reforms, a greater proportion of consumer law clients are aged between 25 and 64 than for the population of England and Wales as a whole, and missing data on the disability status of clients means that we cannot rule out the potential for there to be a particular or substantial disadvantage to ill or disabled people (see Tables 6 and 7).

### ***Solicitor and NfP providers***

- 2.22 The number of NfP providers working in this category of law for which equalities data is available (12) is too small to report on for reasons of provider privacy, and robust analysis cannot be undertaken for this group.
- 2.23 Of the 390 solicitor providers for which equalities data is available, the data do not provide evidence of any major differential impact across those with different protected characteristics. Providers with majority male ownership and control and those with majority female ownership and control experience similar reductions in legal aid income (3% compared with 2% - see Table 10). There is no significant difference in the average reductions between those providers employing no ill or disabled managers and those that employ at least one ill or disabled manager (both groups are estimated to see a 2% reduction - see Table 14), while those with majority BAME ownership and control are likely to experience a reduction in legal aid income similar to those with majority White British ownership and control (3% compared with 2% - see Table 12).

## **Decision in June 2011 consultation response**

- 2.24 Having considered the responses to the consultation, we removed consumer and general contract cases from the scope of legal aid. Whilst there are some difficult cases, in particular professional negligence cases, these are still essentially claims concerned primarily with recovering damages, and that means that we consider that their relative importance is generally low, compared, for example, with issues of safety and liberty. There are other sources of advice available in relation to consumer matters, for example, from Trading Standards and Consumer Direct. There may be alternative non court based solutions in some cases, for example, through regulators and ombudsmen.
- 2.25 Although there may be exceptions, in our view the individuals bringing these cases are not likely to be particularly vulnerable compared with, for example, those in the mental health category. In addition, where these cases lead to an immediate risk of losing the home, then the possession or eviction proceedings remain in scope for

legal aid (see Housing below). Consumer matters are within scope where these concern an alleged contravention of the Equality Act 2010.

### **3. Debt matters where the client's home is not at immediate risk**

- 2.26 All debt matters where the client's home was not at immediate risk has been removed from scope.

#### **EIA-specific issues raised in consultation responses**

- 2.27 A significant number of issues were raised in relation to the equalities impacts of this policy. Some respondents highlighted the relationship between debt and mental health, with debt being identified as a cause of some mental health issues and those with mental health issues being more likely to get into problematic debt, implying that removing these cases from scope would have an adverse effect on disabled people.
- 2.28 Respondents also highlighted the potential for adverse impacts on women as a result of this proposal, suggesting that women are more likely to experience poverty than men, and as such the removal of debt advice would have a greater impact on women. Some reference was also made to intersectional discrimination, as it was suggested that BAME women were also far more likely to experience poverty.
- 2.29 In addition, some respondents highlighted the potential for adverse impacts on children.
- 2.30 In general terms, many respondents suggested that the beneficiaries of advice in this particular category are likely to be vulnerable, by virtue of old age or disability status, and as such the policy would have an adverse impact on these particular groups.

#### **Statistical analysis of impacts**

##### ***Clients***

- 2.31 Clients affected by the changes to the scope of the debt category of law are more likely to be ill or disabled than either the Great Britain population or the overall legal aid caseload affected. Specifically, 27% of clients are ill or disabled (excluding unknowns) compared with 19% of the population and 25% of all affected clients (see Table 6). Debt clients are also slightly more likely to be from BAME groups than the England and Wales population. In common with all affected clients, those in the debt category are more likely to be aged between 25 and 64 than the population as a whole accounting for 86% of the total compared with 53% for the population.

##### ***Solicitor and NfP providers***

- 2.32 Removing some cases from the scope of the debt category results in a greater percentage reduction in legal aid income for NfP providers than for solicitor providers.
- 2.33 For NfPs, those with majority female ownership and control are estimated to see a greater overall average reduction in legal aid income (38%) than those with majority male ownership and control (32% - see Table 9). NfP providers with majority White British ownership and control are likely to experience an average reduction in legal aid income of 38%, whereas the estimated reduction for those with majority BAME ownership and control is lower at 16% (see Table 11).
- 2.34 The difference in the reduction in legal aid income for NfP providers based on whether or not they employ one or more ill or disabled managers is smaller however, with those that do likely to experience an overall estimated average reduction of

34%, compared with those that do not facing an expected average reduction of 37% (see Table 13).

- 2.35 There is no evidence of any differential impact between solicitor providers. Solicitors affected by the change are expected to see a small reduction in legal aid income across the equality groups. Those with majority male ownership and control are likely to experience an average reduction in income of 2%, in line with the average impact for those with majority female ownership and control (3% - see Table 10). Similarly, solicitor providers with majority White British ownership and control see an estimated average reduction in income of 2% again equal to those with majority BAME ownership and control (a likely reduction of 2% - see Table 12).
- 2.36 Those solicitor providers employing one or more ill or disabled managers are expected to see an overall average reduction in legal aid income of 2% as a result of the debt reforms, which is equal to the estimated average reduction of 2% for those employing no ill or disabled managers (see Table 14).

### **Decision in June 2011 consultation response**

- 2.37 We recognised that the majority of the respondents were opposed to the removal of this category due to the impact on clients and on the not-for-profit sector. We carefully considered the points made.
- 2.38 One concern raised by respondents was that legal aid should be retained to contest charging orders whereby debts are secured against property. In these cases, the home is not at immediate risk at the stage where the charging order is made, but is at risk later when a creditor seeks to enforce the charging order through an order for sale. Funding has been retained where an order for sale is resisted because these cases present an immediate risk of homelessness, which we consider to be the highest priority. But legal aid will not be available to contest a charging order. At the charging order stage, the home is not at immediate risk, and the charging order merely secures the otherwise unsecured debt against the property.
- 2.39 Some respondents drew to our attention that clients may also face immediate loss of their home in bankruptcy proceedings where, for example, the home may be sold to pay creditors. We recognised that there are strong analogies to be drawn with our policy on providing legal aid where the house is at immediate risk.
- 2.40 As confirmed in Annex A of the response to consultation published in June 2011, legal aid for advice and representation in relation to a statutory demand, or for proceedings relating to the making or annulment of a bankruptcy order where the individual's estate includes a home was retained. However, legal aid will only be available where an individual was the respondent to a creditor's petition, and funding would not be available for voluntary bankruptcy. In voluntary bankruptcy the homeowner is essentially making a decision to place his home in the hands of the trustee, which is analogous to choosing to sell the home to satisfy creditors.
- 2.41 We also considered further the situation where the client's home is at immediate risk due to rent or mortgage arrears, and these arrears are caused by a dispute about welfare benefits. In such cases respondents urged us to allow legal aid to provide advice on the welfare benefits dispute. We consider that because there is a user-accessible tribunal to resolve welfare benefits problems, legal aid is not justified for such welfare benefits matters. Where the client loses their benefits appeal, and subsequently faces action for rent or mortgage arrears that places the home at risk, legal aid will become available to deal with the housing dispute (for example, to

negotiate with mortgage lenders), but it will not be available for the welfare benefits matter.

- 2.42 More generally, we noted the points made about the importance of early advice. However, given the need to make substantial financial savings within the spending review period, and to target resources on those who need them most, debt cases where there is an immediate risk of homelessness is the appropriate priority. Overall, we consider that financial issues, however important to the individual, are less important in terms of legal aid funding than fundamental issues such as safety or liberty.
- 2.43 Many of these cases are about practical rather than legal problems. Therefore whilst we recognise that advice on money management is often of clear benefit to the client, it is not necessarily an issue which requires specialist legal advice funded by legal aid. We recognise that many respondents told us that other sources of advice will no longer be available in the future. However, the Money Advice Service are continuing the existing free Face to Face Debt Advice service, so that people can have access to good, free money advice. The Money Advice Service is now responsible for the co-ordination and funding of free debt advice, which will help to ensure that individuals can access the support they need easily and that the service delivers the best possible value for money.
- 2.44 For these reasons, the Government decided to remove debt cases from the scope of legal aid, with the exception of cases where the home is at immediate risk.

#### **4. Education cases**

- 2.45 All education cases except claims relating to a contravention of the Equality Act 2010 have been removed from the scope of legal aid.

#### **EIA-specific issues raised in consultation responses**

- 2.46 A significant number of issues were raised by respondents in relation to equalities. In general terms it was suggested that, inherently, the removal of education cases from scope would have a disproportionate impact on children.
- 2.47 It was also suggested that clients in education cases come from some of the most vulnerable and deprived groups in society, and that there were high rates of income support among families and single parents supporting children with special needs. It was also suggested that in many instances parents were likely to share these characteristics. This was noted as being of particular significance in terms of a parent's ability to prepare and bring a case on behalf of their child in the absence of legal aid funding.
- 2.48 A considerable number of respondents focused on the Special Educational Needs (SEN) aspect, indicating that removal of scope for these cases would have a disproportionate effect on the vulnerable and disabled. This theme was also raised in relation to future prospects of children who currently benefit from advice in SEN matters, as it was suggested that an inability to secure education provision would lead to greater marginalisation in adulthood.
- 2.49 As well as observations concerning disability, it was also suggested by some respondents that women were likely to experience disproportionate impacts under this policy, as they are more likely to bring claims on behalf of children in their capacity as a parent than men who are parents.

- 2.50 Respondents also suggested that the policy had the potential to disproportionately impact BAME children, as some evidence suggests that some BAME groups are more likely to be excluded from school and thus advice on any exclusion may be more likely to be required.
- 2.51 Respondents also suggested that there was little distinction between SEN and disability discrimination cases, and that the rationale for retaining one should apply to the other.

### **Statistical analysis of impacts**

#### ***Clients***

- 2.52 In the education category data is generally held on the parents of the child who is the 'client' in the case. The estimate in Table 4 shows that women are substantially over-represented among those for whom we hold equalities information, indicating that mothers are more likely to instruct a legal advisor on behalf of a child than fathers. However, fathers could be equally affected by this change to the scope of legal aid.
- 2.53 Women account for 72% of those estimated to be affected, compared with 51% of the population of England and Wales and 56% of the overall legal aid caseload affected (see Table 4). Similarly, Table 5 indicates an over-representation of people from BAME groups with 40% of those affected (excluding unknowns) expected to be BAME compared with 12% in the population of England and Wales and 25% of the overall affected legal aid caseload.
- 2.54 As data is generally held on parents rather than children, it is therefore not possible to quantify the likely proportion of disabled children who may be at risk or at a particular or substantial disadvantage under this proposal. We consider that the likelihood of disadvantage in non-SEN and non-discrimination cases is likely to follow the data relating to parents. However, because of the large number of cases without details relating to disability status (18%), it is not possible to be certain about the proportion of clients who are ill or disabled.
- 2.55 We consider it highly likely that most children claiming disability discrimination and requiring SEN will be disabled. Therefore the policy to include SEN and claims relating to a contravention of the Equality Act 2010 within scope (see the decision section below) ought to assist them. Nevertheless we considered the proportionality and potential reasonable adjustments (including amending this proposal to include SEN cases within scope).
- 2.56 In common with all those affected by the reforms, those clients in the education category are more likely to be aged between 25 and 64 than the population of England and Wales (table 7).

#### ***Solicitor and NfP providers***

- 2.57 Only a small number (18) of NfP providers undertake work in this category of law and of those equalities data is only available for 13, meaning that robust analysis cannot be undertaken. This group is also too small to report on for reasons of provider privacy.
- 2.58 Of those solicitor providers for which equalities data is available, those with majority male ownership and control are likely to experience a similar average reduction in legal aid income as a result of this reform as those with majority female ownership and control (2% compared with 3% - see Table 10). Providers employing at least one

ill or disabled manager similarly are expected to see the same average impact as those with no ill or disabled managers (2% - see Table 14).

- 2.59 Only 3 solicitor providers working in the education category were identified as having majority BAME ownership or control, and this group is therefore too small to report on for reasons of provider privacy.

#### **Decision in June 2011 consultation response**

- 2.60 We considered a number of arguments put forward by respondents which, when taken together, persuaded us that current legal aid funding for SEN matters should be retained. The main arguments were:
- **Overlap with discrimination:** respondents argued cogently that SEN disputes could almost always be recast, on the very same facts, and going to the very same tribunal, as a claim of disability discrimination. This is different from more general employment cases where new facts would generally be needed to support a new discrimination ground. Many SEN claims could be brought as a claim under the Equality Act 2010 that the local authority had (i) treated a disabled child like other children, thereby putting that child at a particular disadvantage, or (ii) failed to make reasonable adjustments in the way that it provided education for that child. Lawyer respondents stated that they tried to steer clients away from bringing disability discrimination cases because local authorities were much more active in defending such claims given the reputational risks of conceding such claims. A rise in such claims was likely to be an obstacle to resolving disputes constructively.
  - **Similarity to community care:** respondents have argued that our proposals were inconsistent because while we proposed retaining legal aid for community care, SEN cases raise similar issues of resolving disputes about state assistance that will enable disabled individuals to live independent and fulfilling lives.
  - **Equalities:** research<sup>8</sup> shows that children with a disability are over twice as likely as non-disabled children to live with a parent with one or more disabilities (as defined under the then Disability Discrimination Act 1995). Nearly 46% of disabled children had a parent with a disability, compared to 20% of non-disabled children.
  - Parents with children with SEN are also more likely to have substantial caring responsibilities compared to other individuals. This means that clients in these cases may be more likely to have particular difficulty in proceeding without assistance from a lawyer.

- 2.61 We have also noted that current proposals by the Department for Education to reform SEN procedures,<sup>9</sup> and in particular their plans to mandate mediation, would mean that in future the cases which reach the tribunal would be the more complex and intractable cases where parents may be less able to present their case effectively.

- 2.62 For these reasons, we were persuaded that legal aid should continue to be available, for legal advice in preparation for the First-tier (Special Educational Needs and

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<sup>8</sup> *Prevalence of childhood disability and the characteristics and circumstances of disabled children in the UK: secondary analysis of the Family Resources Survey, Biomed Central 2010 (based on 2004-05 Family Resource Survey data).*

<sup>9</sup> *Support and aspiration: A new approach to special educational needs and disability.*

Disability) Tribunal and for the Special Educational Needs Tribunal for Wales, and for legal advice and representation at the Upper Tribunal (and higher courts). However, we did not consider that legal aid should be extended to cover representation at the First-tier (Special Educational Needs and Disability) Tribunal or the Special Educational Needs Tribunal for Wales. We considered that the user-friendly and accessible nature of the tribunal, with legal aid available for legal advice, would mean that legal aid for representation will not generally be necessary.

- 2.63 With the important exception of SEN cases, and claims relating to a contravention of the Equality Act 2010, which we consider to be the highest priorities within this category, the Government decided to proceed with the exclusion of the remainder of educational cases. However, as with other areas of law, we recognise the importance of being able to challenge public authorities' decisions on such matters via judicial review, and this remains in scope. Whilst we accept that legal advice is of some assistance to individuals, including some vulnerable individuals, the remaining educational cases are of lower priority than other matters remaining in scope, such as safety or homelessness. Nor given the retention of legal aid for SEN and claims brought under the Equality Act 2010, do we consider that the clients in this group of cases (usually the parents on the child's behalf) are likely to be particularly vulnerable,<sup>10</sup> or that those parents involved will necessarily be unable to present their own case. There may be alternative sources of help for education cases, and CFAs may be available in damages cases.

## **5. Employment**

- 2.64 All employment cases except claims relating to a contravention of the Equality Act 2010 (discrimination in employment) have been removed from scope.

### **EIA-specific issues raised in consultation responses**

- 2.65 Many respondents raised the general vulnerability of clients in employment cases. In particular it was noted that many do not speak English, implying a potential disproportionate impact on BAME people. It was also suggested that employment cases sometimes involve migrant domestic workers, who are particularly vulnerable.
- 2.66 The ability of people to prepare and present their own case at the Tribunal was also raised as an issue by respondents. It was suggested that many clients with an employment case had learning difficulties and as such would find the presentation of their own case virtually impossible, again implying a disproportionate impact on disabled clients.
- 2.67 It was also suggested by respondents that women were likely to be disproportionately affected by these proposals as a consequence of women experiencing systematic discrimination in the workplace in relation to remuneration, pregnancy and childcare.

### **Statistical analysis of impacts**

#### ***Clients***

- 2.68 Clients who would be affected by the change in the scope of the employment law category are more likely to be male and more likely to be from BAME groups than the population of England and Wales (see Tables 4 and 5). Missing data means that it is not possible to rule out the potential that ill or disabled people might be put at a

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<sup>10</sup> See paragraph 6 of the section of the consultation response on the programme of reform for the factors we took into account in considering an individual's vulnerability).

particular or substantial disadvantage, but the proportion of clients who are ill or disabled, excluding unknown cases, (11%) is lower in employment than in most other categories of law, and lower than for the population of Great Britain (19%) and for the proportion of all clients expected to be affected by the reduction in scope of legal aid (25%).

- 2.69 Table 7 shows that, in common with all affected clients, those in the employment category are more likely to be aged between 25 and 64 than the population of England and Wales but of a similar order to the proportion of all clients expected to be affected by the reduction in scope of legal aid (85% compared with 53% and 86% respectively).

### ***Solicitor and NfP providers***

- 2.70 NfP providers are estimated to have higher average reductions in legal aid income as a result of this change in scope than solicitor providers. Those with majority male ownership and control are likely to experience an average reduction in legal aid income of 15%, which is higher than the expected average reduction of 8% for those with majority female ownership and control.
- 2.71 The estimated reductions in average legal aid income for NfP providers were the same for those with majority White British ownership and control as for those with majority BAME ownership and control (11%). Those employing one or more ill or disabled manager are estimated to experience a lower impact than those who do not (8% and 12% respectively).
- 2.72 For solicitor providers, those with majority male ownership and control are projected to see an average reduction in income of 3%, in line with majority female owned and controlled solicitor providers who are expected to experience a 4% average reduction in income.
- 2.73 The estimated average reduction in legal aid income for solicitor providers with majority White British ownership and control was of a similar scale to those with majority BAME ownership and control (2% and 5% respectively). There was no difference in average impacts based on whether the provider employed one or more disabled managers or not, with both groups seeing an estimated average reduction in legal aid income of 3%.

### **Decision in June 2011 consultation response**

- 2.74 Whilst we accept that legal aid is of assistance in employment matters; that some employees find facing their employer, who may be legally represented, daunting; and that these cases can involve wider issues than simple monetary advantage (for example, resolving issues about access to flexible working), the decision was taken that legal aid should be withdrawn in this area.
- 2.75 The majority of these claims are pursued in the tribunal which is designed to be used by unrepresented litigants. While we recognise that clients find advice in the preparation of their case useful, we do not consider that this group of clients are generally likely to be particularly vulnerable, and we do not accept that the tribunal cannot be accessed or that justice cannot be obtained, without access to legal aid for advice. We consider that given the need to prioritise resources, employment matters are of a lower objective importance than cases involving life, liberty or homelessness. It is also the case that Damages Based Agreements (DBA) will remain available in appropriate cases.

- 2.76 We also note the consultation paper ‘Resolving Workplace Disputes’<sup>11</sup> which proposes that in future all cases should go to the Advisory, Conciliation and Arbitration Service (ACAS) before the employment tribunal to try to resolve problems before lawyers are needed.
- 2.77 For these reasons, the Government decided to remove legal aid funding for employment cases (other than claims relating to a contravention of the Equality Act 2010).

## **6. Non-homelessness housing matters (excluding serious disrepair)**

- 2.78 All housing matters have been removed from scope, other than where the home is at immediate risk (but not including those who are “squatting”), homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the county court.

### **EIA-specific issues raised in consultation responses**

- 2.79 Some respondents suggested that, by excluding disrepair claims, this policy had the potential for adverse impacts on children or older and disabled people as a consequence of their living in poor conditions.
- 2.80 Other respondents also highlighted the potential for particularly disadvantageous impact on women, and in particular women experiencing domestic violence, as they rely heavily on social housing.
- 2.81 It was also suggested that the nature of local authority social housing meant that beneficiaries were more likely to be disabled or experiencing a form of social exclusion, and as such the removal of housing advice from scope would have a disproportionate impact on these groups.

### **Statistical analysis of impacts**

#### ***Clients***

- 2.82 Housing clients are more likely to be female than the population of England and Wales as a whole, accounting for 61% of clients in this category compared with 51% of the population and 56% of all affected clients. Those expected to be affected are also more likely to be from a BAME group - 32% of those (excluding unknowns) expected to be affected are BAME compared with 12% of the population and 25% of overall legal aid caseload (excluding unknowns).
- 2.83 Similarly, those who are ill or disabled are expected to be over-represented relative to the Great Britain population. Specifically, 29% of those with affected cases (excluding unknowns) were ill or disabled compared with 19% of the Great Britain population as a whole.
- 2.84 Those in the housing category, as with all other categories removed from scope, are also more likely to be aged between 25 and 64 than the population of England and Wales.
- 2.85 The scope of the scheme has changed so that cases involving squatters are no longer funded under legal aid. Insufficient data is collected to allow us to accurately identify these cases, and as such it is not possible to identify the impacts that flow from this policy.

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<sup>11</sup> See: <http://www.bis.gov.uk/Consultations/resolving-workplace-disputes>

### ***Solicitor and NfP providers***

- 2.86 NfP providers are likely to experience a higher average reduction in legal aid income as a result of the reform to the scope of the housing category of law when compared with solicitor providers.
- 2.87 There is little evidence of any differential impact on NfP providers across the protected characteristics. NfP providers with majority male ownership and control are expected to experience an average reduction in legal aid income of 14%, which is the same as for those with majority female ownership and control. NfP providers with White British majority ownership and control are expected to experience a similar average reduction (13%) as those with majority BAME ownership and control (12%). Those not employing one or more ill or disabled managers are likely to see an average impact (13%) of a similar scale to those that do (11%).
- 2.88 Estimates for solicitor providers with majority male ownership and control suggest the likelihood of an average reduction in legal aid income of 3%, the same as that for solicitor providers with majority female ownership and control. Those with majority White British ownership and control are expected to experience a slightly lower average impact (2%) to those with majority BAME ownership and control (7%). Those employing one or more ill or disabled managers are expected to experience a similar average reduction in legal aid income than those who do not (5% and 3% respectively).

### **Decision in June 2011 consultation response**

- 2.89 **Housing disrepair:** We decided, as proposed in the consultation, to exclude less serious disrepair claims from scope where the disrepair does not pose a serious risk to the safety or health of the individual or their family. We consider that cases of less serious disrepair are a lower priority for funding, and given the need to prioritise we decided not to retain legal aid for the less serious cases. However we agree with respondents that the severity of the disrepairs will not always be clear at the outset until an expert assessment has been carried out (in line with the Housing Disrepair Pre-Action Protocol). In these cases legal aid will be granted where there is a credible allegation that there is a serious risk to the safety or health of the individual or their family. This will mean that legal aid will be available for the early stages of such cases to enable the merits of the claim to be investigated. Where a disrepair is found not to pose a serious risk, further funding will not be available.
- 2.90 **Orders for Sale:** in line with our decisions in debt cases, we decided to retain legal aid funding in respect of an order for sale of the home, as it represents an immediate risk to the individual's home. However, it will not be retained to contest an application for a legal charge, such as a charging order, to be placed on the home. The placing of a charging order is essentially to secure an outstanding debt and we did not consider debt as sufficiently important to merit funding. However an order for sale presents an immediate risk to the individual's home.
- 2.91 **Other housing matters:** The Government has decided to exclude from scope all other cases in the housing category (except claims relating to a contravention of the Equality Act 2010 and judicial reviews), including, without limitation: action to enforce a right to buy; action to enforce a right to buy a freehold or extend the lease; actions to set aside a legal charge or the transfer of a property; actions for damages and / or an injunction for unauthorised change of use of premises; an action under the Housing Grants, Construction and Regeneration Act 1996; applications for a new tenancy under the Landlord and Tenant Act 1954; actions concerning council house allocation; an action under the Access to Neighbouring Land Act 1992; an action for

wrongful breach of quiet enjoyment; housing disrepair proceedings where the primary remedy sought is damages, including damages for personal injury; an action under the Mobile Homes Act 1983 which does not concern eviction.

- 2.92 Many of these cases are about money or property, improvements to property, or use of property, and we consider that these cases are not of high importance when compared with cases concerning fundamental issues such as homelessness, eviction or the immediate safety of clients.
- 2.93 While people find assistance in dealing with, for example, trespass and wrongful breach of quiet enjoyment helpful, we have had to prioritise funding on the most serious cases and these cases are not as serious as eviction or unlawful eviction cases.
- 2.94 We decided to exclude from scope nuisance, negligence and breach of statutory duty torts for housing. While respondents have said that these cases are analogous to disrepair cases, we do not consider that the matters addressed through these claims are as serious as the housing disrepair claims which pose a serious risk to life or health that we wish to prioritise.
- 2.95 We decided to exclude from scope legal advice for planning matters as these will generally be of lower importance than eviction or possession cases and are heard before a relatively informal planning appeal panel.
- 2.96 We decided to exclude from scope the Housing, Grants, Construction and Regeneration Act 1996 concerning grants from a local authority to make a disabled person more able to live independently in their home. This is essentially an application for discretionary funding for a grant, rather than in relation to the local authority carrying out a statutory function, and we do not consider that clients will require legal assistance to make this application.

## **7. Non-detention immigration**

- 2.97 All non-detention immigration cases have been removed from scope.

### **EIA-specific issues raised in consultation responses**

- 2.98 In general terms it was noted that this policy was almost certain to have a disproportionate impact on BAME individuals given the nature of the cases.
- 2.99 Many respondents focused on the implications of this policy for children. It was suggested that children could not be expected to present their own case, and that any unaccompanied minors should always be able to receive advice and representation, irrespective of the arrangements for adults.
- 2.100 Potential adverse impacts were also highlighted in relation to women. It was suggested that the retention of legal aid in family private matters for women experiencing domestic violence should be extended to immigration matters, as abusive partners often use the threat of removal as a tool to subjugate women, exposing both them and their children to significant risk of harm.
- 2.101 It was also suggested that applicants who were particularly vulnerable as a consequence of learning disabilities or mental health issues would experience adverse impacts under these policies.

## **Statistical analysis of impacts**

### ***Clients***

- 2.102 It is estimated that 92% of clients (excluding unknowns) who would be affected by the change in the scope of the immigration category are likely to be from BAME groups (see Table 5). This estimate is not only substantially greater than both the proportion in the England and Wales population (12%) and the cases that are expected to be affected overall (25%), but also represents the biggest impact on this particular protected group. Immigration clients are also more likely to be male than the population of England and Wales, accounting for 53% of those expected to be affected compared with 49% within the England and Wales population.
- 2.103 Because of missing data we cannot rule out the possibility that ill or disabled people would be put at a particular or substantial disadvantage by the change, but at 5% the proportion of clients in this category who are ill or disabled (excluding unknown cases) is the lowest of any category of law and well below the level of the population of Great Britain (see Table 6).
- 2.104 In common with all those clients affected by the reforms, those with a case in the immigration category are more likely to be aged between 25 and 64 than the population of England and Wales as can be seen in Table 7.

### ***Solicitor and NfP providers***

- 2.105 NfPs with majority male ownership and control that would be affected by the reforms are expected to experience an average reduction in legal aid income of 24%, equal to that of those with majority female ownership and control (see Table 9).
- 2.106 NfP providers with majority White British ownership and control are expected to experience a lower average reduction in legal aid income (17%) compared with those with majority BAME ownership and control (35% - see Table 11).
- 2.107 Those employing at least one ill or disabled manager are likely to experience an average reduction in legal aid income of 15%. This compares with an estimated reduction of 28% for those who do not employ an ill or disabled manager (see Table 13).
- 2.108 Solicitor providers with majority male ownership and control are likely to experience an average reduction in legal aid income of 16%. This is lower than the estimated 21% reduction for those with majority female ownership and control (see Table 10). Those with majority White British ownership and control are expected to experience a similar average reduction (16%) to those with majority BAME ownership and control (19% - see Table 12).
- 2.109 Solicitor providers employing one or more ill or disabled managers are expected to have an average reduction of 13%. This compares with an average reduction of 18% for those not employing an ill or disabled manager (see Table 14).

### **Decision in June 2011 consultation response**

- 2.110 The Government decided that, in general, individuals in immigration cases should be capable of dealing with their immigration application and should not require a lawyer. Tribunals are designed to be accessible to users. Interpreters are provided free of charge. Claims for asylum, including claims under article 3 of ECHR, remain in scope. Otherwise, whilst it is true that immigration law can be complex, it is not generally the case that an appellant will need to argue points of law or have any

knowledge of the law. Immigration cases are generally about whether the facts of a particular case meet the immigration rules, and a significant amount of guidance is produced by UKBA and others to explain what these rules are, and how they apply.

- 2.111 The Government accepts that tackling inefficiencies in its administrative decision making process is extremely important. UKBA has a wide-ranging quality improvement programme in place to continue to improve the quality of its decision-making in asylum, entry clearance and decisions made under the Points Based System. However, this does not alter the need for savings to the legal aid budget if the Government is to meet its targets to reduce the deficit. The Government did not consider that there is any evidence to show there will be a significant negative impact on UKBA or the higher courts as suggested in consultation responses, from the removal of legal aid in immigration cases.
- 2.112 The Government has considered the impact on suppliers, and the risks that the market will not be able to sustain an adequate supply of providers of legally aided services. While the Government accepts that there is a risk of disruption, the reforms are sustainable, and that any short term disruption to services will be mitigated. Further details are set out at Annex F of the consultation response.

### **Domestic Violence Immigration Rule cases**

- 2.113 The Government's view is that these applications are comparable to other immigration applications, albeit that individuals need to obtain documentary evidence of their domestic violence. Whilst individuals may well find it difficult to fill in the forms, it is not specialist legal advice that is required. This is something that can be addressed through guidance or non-specialist help rather than legal aid.
- 2.114 In terms of the comparison with private family law, the Government will seek to prevent a victim of domestic violence from facing their abuser in court without legal representation. In immigration cases, the victim is making a paper-based application to the Home Office, and the Government therefore considers the situations to be different. Legal aid will continue to be available for those seeking a civil injunction to prevent domestic violence irrespective of their nationality or immigration status.

### **Refugee family reunion cases**

- 2.115 The Government considers that applications to join family members are immigration cases, and that they will generally be straightforward. If a person wishes to claim asylum it is open to them to do so either as a dependant of a primary asylum claimant or in his or her own right. Legal aid will be available for any such asylum claim.

### **Statelessness**

- 2.116 The Government considers that applications, such as that for a Stateless person's travel document, are straightforward. By making legal aid available to stateless persons on the same basis as other applicants for legal aid, the Government is fulfilling its international obligations. Civil legal aid in the UK is available to anyone who meets the criteria, irrespective of their immigration status.

## **The Council of Europe Convention on Action against Trafficking in Human Beings**

- 2.117 The requirement to provide legal aid under the Convention rules is not automatic (it is with reference to the requirements of Article 6 ECHR) and is to help victims of trafficking seek compensation rather than to make immigration claims.
- 2.118 There will be instances in which the Convention requires legal aid to be provided to victims of trafficking to fund their claims. However, we estimate that the volume of these cases is likely to be small and any obligation to provide legal aid will be met by the exceptional funding scheme that will provide legal aid where failure to do so would amount to a breach of the individual's rights to legal aid under the European Convention of Human Rights or European Union law.
- 2.119 For the reasons set out above, the Government decided to remove all immigration cases from the scope of legal aid where the individual is not detained, making a claim for asylum or appealing to the Special Immigration Appeals Commission.

### **Modification of proposals in relation to Human Trafficking**

- 2.120 This modification provides that legal aid will be available to take a claim in the county courts for damages against a perpetrator of trafficking, or Legal Help to assist in a claim to the Employment Tribunal for such cases, as well as legal aid for immigration cases for victims of trafficking.
- 2.121 LSC data does not allow us to identify the protected characteristics of legal aid clients affected by this specific modification, so we have taken the protected characteristics of those in the immigration category as representative. The modification may therefore offset some of the differential impact on clients who are BAME, male and in the 25-64 age group. We anticipate providing further funding as a result of this modification and this is reflected in the analysis of provider impacts above.

### **8. Family private (excluding domestic violence and child abduction)**

- 2.122 All family (private) cases have been removed from scope (excluding domestic violence and child abduction).

### **EIA-specific issues raised in consultation responses**

- 2.123 Respondents noted that women were more likely to have a case in the family private category, recognising the common financial inequality between parties at the dissolution of a relationship, and that as such any proposal to remove funding in this area would have a disproportionate impact on women with consequent effects on children.
- 2.124 Some respondents suggested that women, representing the majority of primary carers, would be disproportionately affected by this proposal on the basis that they have fewer resources, both in terms time and money, to prepare and present their own case. Other respondents suggested that the policy ignored the reality of oppressive relationships, and that an inability to reach financial settlement (and so achieve a degree of independence) might force women back into oppressive relationships as a consequence of financial necessity. It was also suggested that in the absence of advice and representation women might feel forced to enter into contact and residence arrangements that were unsafe for them and, in some cases, their children.

- 2.125 It was also suggested that BAME women would be particularly affected by the policy to expand the role of mediation services, as cultural or religious factors may have a part to play in determining parties' ability to negotiate on issues of money and children following separation. Without legal advice and representation, it was suggested, these women would be substantially disadvantaged in engaging with the justice system. Related to this, risks were also identified around some members of certain BAME communities encouraging inappropriate forms of alternative dispute resolution within their communities, where there might not be adequate safeguards to protect the vulnerable party or parties.
- 2.126 It was also suggested that single mothers were likely to experience the greatest effects under these policies, and that if they are implemented they could entrench and exacerbate the economic and social disadvantages faced by single mothers. It was also suggested that MoJ had failed to conduct an impact assessment on this particular group.
- 2.127 Some respondents identified the risk of adverse impacts on children as a consequence of lengthier court proceedings where parent parties were unrepresented. Other respondents cited instances where children are independently represented in proceedings, and questioned whether in practice children could reasonably be expected to represent themselves in court.
- 2.128 Other respondents suggested that the retention of funding in this area was essential for the protection of children, citing lengthy, expensive cases as being precisely the sort of matters where legal advice and representation could serve to protect the interests of children. It was also suggested that the absence of funding could result in some children living in permanent conflict concerning contact and residency. It was suggested that the polices failed adequately to protect the rights of vulnerable children and young adults, and failed to protect the interests of justice.
- 2.129 Many comments were received concerning the definition of domestic violence. It was suggested that the definition given in the consultation paper was narrower than the Association of Chief Police Officers (ACPO) definition and narrower than passages in the Supreme Court case of *Yemshaw v London Borough of Hounslow* [2011] UKSC 3, meaning that many vulnerable women might be put at a particular disadvantage in accessing the advice and support needed to resolve their situation. It was also suggested that the definition needed to be sufficiently wide to include those (more likely to be BAME women who do not have English as a first language), who might live within cultures where the consequences of taking action to protect themselves and their children from domestic violence might often be exclusion from the community.
- 2.130 From the provider perspective, the Bar suggested that the concentration of female and BAME barristers in family work would mean that removal of these cases from scope would have a particularly disadvantageous impact on women and / or BAME barristers.

## **Statistical analysis of impacts**

### ***Clients***

- 2.131 The Family Private category represents the largest number of potential users of legal aid who will be affected by these reforms. Clients in this category are more likely to be female than in any other category of law except education, representing 63% of total clients (excluding unknowns). This proportion exceeds both that of the England

and Wales population (51%) and the proportion of all affected cases which are female (56%).

- 2.132 The proportion of clients from BAME groups (12% excluding unknowns) is in line with that of the England and Wales population although this is well below that expected for the proportion of all affected cases which are BAME (25% excluding unknowns).
- 2.133 Missing data means that it is not possible to rule out the potential that ill or disabled people might be disproportionately affected by this change, but the proportion of clients who are ill or disabled (8% excluding unknowns) is lower in Family Private than in most other categories of law, and lower than for the population of Great Britain as a whole (see Table 6).
- 2.134 In common with all those clients affected by the reforms, those with a Family Private case are more likely to be aged between 25 and 64 than the population of England and Wales.
- 2.135 The removal of Family Private from scope raises the possibility of indirect discrimination on the grounds of marriage or civil partnership status, and there is likely to be a particular disadvantage to those who are married or in a civil partnership. However, taking these matters into consideration, as well as the need to prioritise finite resource on those most in need, we believe these reforms are a proportionate means of achieving our legitimate aims.

#### ***Solicitor and NfP providers***

- 2.136 Only a small number (19) of NfP providers undertake work in this category of law and of those equalities data was only available for eight. It is therefore not possible to provide a robust analysis for this group, and the small number of providers means that figures cannot be reported on for reasons of provider privacy.
- 2.137 Of all those solicitor providers for which equalities data was available, those with majority male ownership and control are estimated to experience a similar average reduction in legal aid income (34%) as those with majority female ownership and control (31% - see Table 10). Those with majority White British ownership and control are likely to have a higher average reduction in legal aid income than those with majority BAME ownership and control (34% compared with 23% - see Table 12). Solicitor providers with no ill or disabled managers are expected to experience a slightly larger average reduction compared with those with at least one ill or disabled manager (33% compared with 30% - see Table 14).

#### **Decision in June 2011 consultation response**

##### **Ancillary relief and private law children and family cases (where domestic violence not present)**

- 2.138 The Government accepts that certain features of private family law, and particularly ancillary relief cases, may be complex in some instances. However, we do not consider that these cases are routinely as complex as other areas, and legal aid will remain for exceptional cases where the failure to provide funding would amount to a breach of the European Convention of Human Rights or European Union law. The Government needs to prioritise its resources, and does not consider most private family law cases as high priority for legal aid compared with cases, for example, involving homelessness, domestic violence or liberty.

- 2.139 Many people currently choose to represent themselves in court, and the courts therefore already have to deal with litigants-in-person. The Government considers that certain factors will mitigate the impact of the proposals on access to justice for litigants in person. There is a fuller discussion of this cross-cutting issue in Annex C of the consultation response. These factors include:
- the evidence on the impact of Litigants in Person on case duration is mixed,
  - there is current assistance available to Litigants in Person,
  - the availability of legal aid for family mediation will continue and will work with providers to increase awareness,
  - the Government will examine the system to support Litigants in Person as part of the post-implementation review and will report the findings to Parliament.
- 2.140 The Government accepts some of the concerns raised about private family law cases which are brought as an alternative to public family law cases. As a result, we decided to retain in scope legal aid for the protective party in private law children cases involving child abuse.
- 2.141 The making of an interim care order at a private family law hearing is a relatively unusual step taken only where the judge considers it necessary to protect a child. The parents would be able to apply for legal aid to challenge the interim care order, as public family law cases will remain within the scope of legal aid.
- 2.142 The Government considers that the impact of the policies on children will be mitigated by the targeting legal aid on the highest risk cases – those involving domestic violence and child abuse, as well as continuing to fund international child abduction cases and child parties in private family law cases.
- 2.143 Concerns about cases involving child abuse and the impact of litigants-in-person on the courts is covered in the consultation response. We decided to take steps, including through guidance, to limit the impact of the reforms on Cafcass, and to monitor the scale of any impact. The Government considers that legal aid should be available for expert reports in cases remaining in scope. This means that a proportion of the costs of expert reports may remain available in cases involving domestic violence or child abuse, and in cases where there is a child party. The Government's recent publication of the Family Justice Review is a separate and independent programme of work from legal aid which looks at the whole system of family justice and is now being implemented. The legal aid reforms complement the aims of the Review, for example, by encouraging mediation.

#### **Prevention of child abduction cases**

- 2.144 The Government notes that preventing abduction is a particularly important concern in cases of abduction to non-Hague Convention countries where it is much harder to recover a child once they have been abducted. We decided to retain legal aid to obtain an emergency order to prevent unlawful removal of a child from the United Kingdom. Legal aid will not however be available to oppose orders to prevent unlawful removal taking place or to apply to take a child out of the jurisdiction.
- 2.145 The Government did not consider that internal cases not involving a risk of removal from the United Kingdom raised the same issues. Disagreements over where parents should live are commonplace in family proceedings. Furthermore, purely domestic cases do not involve the same imperative to prevent removal of the child to avoid the

difficulties of securing return once the child is abroad and in a different system. We did not change our general approach to private family law for these cases.

### **Representation for child parties in private law family cases**

- 2.146 While the Government accepted that some of these cases may be more complex than routine cases, the fact that it is in the best interests of the child to be separately represented does not necessarily mean that the case would be so complex as to require representation for all of the other parties.
- 2.147 The Government accepts that where a child needs to be a party to a private family law case they should have access to legal aid. We will seek to ensure that children are not used by adult family members who would be better placed to be a party as a way to get access to legal aid.
- 2.148 For these reasons, the Government decided that ancillary relief and private family law cases were to be taken out of scope, with the following significant exceptions:
- legal aid will continue to be available for victims of domestic violence and for the protective party in cases involving child abuse;
  - legal aid will be retained for emergency orders that seek to prevent a child from being removed from the United Kingdom (including for forced marriage), but not for the contact issues in these cases;
  - legal aid will also continue to be available for children who are separately represented under Rules 16.2 or 16.6 of the Family Procedure Rules 2010 (legal aid will only be available for child parties in these cases, and not for the other parties);
  - private law family cases will remain in scope for all child parties, including children who are parties other than under rules 16.2 or 16.6; and
  - legal aid will also be available for applications to prevent international child abduction.

### **Modification of proposals in respect of domestic violence:**

- 2.149 The Government have accepted that domestic violence should, for the purposes of access to private family legal aid, be defined consistently with the definition developed by the Association of Chief Police Officers (ACPO). The definition states that “any incident of threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional)” constitutes domestic violence (DV). It was never the intention to restrict civil legal aid in private family proceedings to DV victims who had suffered physical abuse, and it was not accepted that the original definition in the Bill had that effect, so the modification to the definition is not considered to make any substantive difference in scope or impact.
- 2.150 *Widening the evidence criteria for victims of domestic violence to qualify for private family legal aid.*
- 2.151 The list of forms of evidence which will be accepted as demonstrating domestic violence (which the Government will prescribe in regulations) so as to access legal aid for private family cases has been very significantly widened to include:-

- a Police Caution for a domestic violence offence by the other party against the applicant;
- appropriate evidence of admission to a domestic violence refuge,
- appropriate evidence from a social services department confirming provision of services to the victim in relation to alleged domestic violence;
- evidence from a GP or other medical practitioner

These are in addition to the forms of evidence already proposed:

- That a non-molestation order, occupation order, forced marriage protection order or other protective injunction against the other party for the protection of the applicant is either in place or has been made in the last 2 years
- A criminal conviction concerning violence or abuse towards a family member or a child abuse offence (unless the conviction is spent)
- Ongoing criminal proceedings for domestic violence towards a family member
- The victim has been referred to a Multi-Agency Risk Assessment Conference (as a high risk victim of domestic violence) and a plan has been put in place to protect them
- There has been a finding of fact in the courts of domestic violence

2.152 The Government have also doubled the time limit on currency of evidence from one to two years, other than for convictions, where the only limit will be if the conviction is spent.

2.153 LSC data does not allow us to identify the protected characteristics of legal aid clients affected by this change so we have taken the protected characteristics of those in the higher category (family private) as representative. The change may therefore offset some of the differential impact on clients who are female and in the 25-64 age group. We anticipate providing further funding as a result of this change and this is reflected in the analysis of provider impacts above.

### **Modification of proposals in respect of Domestic Child Abduction**

2.154 This change extends the scope of legal aid to include measures to recover a child who has been unlawfully removed within the United Kingdom.

2.155 LSC data does not allow us to identify the protected characteristics of legal aid clients affected by this modification so we have taken the protected characteristics of those in the higher category (family private) as representative. The modification may therefore offset some of the differential impact on clients who are female and in the 25-64 age group. We anticipate providing further funding as a result of this modification and this is reflected in the analysis of provider impacts above.

## **9. Clinical negligence**

2.156 All clinical negligence cases would be removed from scope; however, during the passage of the LASPO Bill through Parliament, modifications were made. These modifications are addressed later in this EIA.

### **EIA-specific issues raised in consultation responses**

2.157 In general terms, many respondents identified the potential for a disproportionate impact on disabled clients under this policy.

- 2.158 Many respondents suggested that legal aid for clinical negligence cases was mostly granted to children and those who lack capacity (or were disabled) as a result of injury. As such, there is the potential for those individuals to suffer a particular or substantial disadvantage or to require reasonable adjustments / auxiliary aids. It was also argued that injured children's Article 6 rights might be infringed as they might be denied legal aid on grounds of their parents' means (rather than their own, as the current test provides).
- 2.159 Other respondents observed that across the class of litigants, clinical negligence claimants were more likely to be disabled, elderly, frail or too young to bring proceedings on their own behalf, and that this inherent vulnerability should mean the retention of funding for this category of work.
- 2.160 Respondents also noted the particularly severe consequences of failure to obtain redress in these matters. It was suggested that, given the remedy in clinical negligence cases would usually be damages to assist in making adjustments to deal with a resulting disability (as well as loss of earnings), the absence of redress would compound the marginalised position of these individuals and have real impacts on quality of life and participation in public life.
- 2.161 We have also considered whether there might be an enhanced reasonable adjustments duty under the Equality Act 2010 where a public body such as the National Health Service (NHS) has been allegedly responsible for causing / contributing to a person's disability, and whether the proposal might give rise to unfavourable treatment in consequence of a person's disability (for example, if they lacked capacity).

## **Statistical analysis of impacts**

### ***Clients***

- 2.162 The estimates indicate that, compared with the population of Great Britain, clients with a clinical negligence case are more likely to be ill or disabled. For example, excluding those for whom details were not available, 57% of clients were ill or disabled while ill or disabled people represent 19% of the population and 25% of the overall caseload affected. There is also likely to be a sub-group of the more serious cases where the claimant is inherently likely to be disabled.
- 2.163 The proportion of BAME clients affected is expected to be at least at the level of the England and Wales population. The BAME caseload (excluding unknowns) accounts for 16% of the total compared with 12% of the population of England and Wales. For this reason we cannot rule out a disproportionate impact on BAME people.
- 2.164 Clients in the clinical negligence category closely reflect the male / female split of the population. However, in common with all clients affected by the reforms, they are more likely to be aged between 25 and 64. Clients in this category also include a larger proportion of children than other categories, with those aged 0-24 accounting for 20% of the total for clinical negligence cases compared to only 9% as a proportion of the overall projected caseload. However, this is still well below the 31% for the total England and Wales population<sup>12</sup>.

### ***Solicitor and NfP providers***

- 2.165 No NfP providers undertook clinical negligence work in 2009/10, so if previous work patterns persist, this change would not affect them.

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<sup>12</sup> Population Mid-Year Estimates, Office for National Statistics, 2010

- 2.166 Of all those solicitor providers for which equalities data is available, those with majority male ownership and control are expected to experience a lower average impact as a result of this reform (18%) compared with those with majority female ownership and control (24% - see Table 10). Providers with at least one ill or disabled manager are estimated to see a lower average impact than those with no ill or disabled managers (13% compared with 20% - see Table 14).
- 2.167 Only three solicitor providers working in the clinical negligence category were identified as having majority BAME ownership or control. A robust comparison relating to race is therefore not possible for this group, and impacts cannot be reported for reasons of provider privacy.

### **Decision in June 2011 consultation response**

- 2.168 We recognise that respondents have voiced serious concerns about the removal of clinical negligence from the scope of legal aid, and in particular on the impact on cases which require substantial expert investigation at the outset.
- 2.169 These concerns were also raised by respondents to the consultation on civil litigation costs (Jackson). In our response to that consultation, we announced our decision to implement a range of Lord Justice Jackson's recommendations, including abolishing the recoverability of success fees and "after the event" (ATE) insurance premiums associated with 'no win no fee' conditional fee agreements (CFAs), increasing general damages by 10% and extending the availability of damages based agreements (DBA's).
- 2.170 However in light of the concerns that had been raised about disbursements and clinical negligence cases in particular, we announced that a power will be put in place (subject to Parliamentary approval) to allow recoverability of the ATE insurance premiums to cover the cost of the expert reports in clinical negligence cases only. The MoJ will continue to work with the Department of Health and claimant and defendant representatives and insurers, to ensure that joint expert reports can be commissioned wherever possible so that ATE insurance is not necessary.
- 2.171 In our view, these changes will deter less meritorious claims, but will continue to allow meritorious clinical negligence claims to be brought under CFAs (and now DBA's). Therefore, we considered that, despite the importance of the issues in some of these cases, the exclusion of clinical negligence from scope was justified because there will remain a viable alternative source of funding, enabling the targeting of limited resources to other priority areas.
- 2.172 We accept that there may be particularly complex cases, where despite the arrangements for funding disbursements described above, it may be difficult to find a CFA, but the exceptional funding scheme for out of scope cases will ensure that individual cases of this type continue to receive legal aid where, in the particular circumstances of the case, the failure to do so would amount to a breach of the individual's rights to legal aid under the European Court of Human Rights or European Union law. Cases granted funding under the exceptional funding scheme in the clinical negligence category will, as with other damages cases, be subject to the Supplementary Legal Aid Scheme.

### **Modification of proposals in respect of clinical negligence:**

- 2.173 The modification provides for civil legal services to be available in relation to claims where clinical negligence has caused a neurological injury as a result of which a child

is severely disabled. The time period in which the negligence must have occurred is from the point of the mother's pregnancy until the end of a period of eight weeks starting with the child's birth. Where the child is born before the beginning of the 37th week of pregnancy, the eight week period will be taken to start from the first day of what would have been the 37th week of the mother's pregnancy.

- 2.174 LSC data does not allow us to identify the protected characteristics of legal aid clients for whom clinical negligence has caused such an injury. We would however reasonably expect these clients to be children, and to have a disability as a result of the negligence.

### **10. Miscellaneous: some types of cases**

- 2.175 All cases in the miscellaneous category (including Upper Tribunal appeals) have been removed from scope (excluding confiscation proceedings under POCA 2002, injunctions concerning gang-related violence, Independent Safeguarding Authority Appeals, Legal Help at inquests, Protection from Harassment Act 1997 matters concerning restraining orders and defending injunctions against anti-social behaviour orders, and quasi-criminal proceedings).

### **EIA-specific issues raised in consultation responses**

- 2.176 Very limited responses were received in terms of equalities issues under this policy. Some respondents argued that the proposal to exclude contentious probate had the potential to have a particularly disadvantageous on the elderly or children where they were dependents making a claim, running the risk of vulnerable claimants being denied access to justice.

### **Statistical analysis of impacts**

#### ***Clients***

- 2.177 The miscellaneous category includes tort, probate matters, personal data, infringement of copyright, advice on changes of name and advice on making of wills. Clients in this category are more likely to be female, accounting for 60% of cases (excluding unknowns) compared with 51% for the population of England and Wales and 56% of the overall projected legal aid caseload of women.
- 2.178 While the proportion of clients in this category who are BAME (11% excluding unknowns) is at the same level as the population of England and Wales (12% of whom are BAME), because of missing data we cannot rule out the possibility that BAME clients might be over-represented in this category. The same applies for those who are ill or disabled. Although 17% of clients (24% excluding unknowns) are known to be ill or disabled (compared with 19% of the Great Britain population), details are not available for 31% of clients.
- 2.179 In common with all those affected by the reforms, clients in the miscellaneous category are more likely to be aged between 25 and 64.

#### ***Solicitor and NfP providers***

- 2.180 Only 19 NfP providers undertook work in this category in 2009/10 and of these equalities data is only available for eight. It has not therefore been possible to provide a robust analysis for this group, or to report on impacts for reasons of provider privacy.

2.181 Of all those solicitor providers for which equalities data is available there is no evidence of any differential impact. Those with majority male ownership and control are estimated to experience an average reduction in income of 3% as a result of this reform, and this is similar scale to those firms where there is majority female ownership and control (1% - see Table 10). Those with majority White British ownership and control are expected to see a similar average reduction in legal aid income than those with majority BAME ownership and control (3% compared with 1% - see Table 12). Providers with no ill or disabled managers are estimated to experience a similar average reduction in income to those with at least one ill or disabled manager (2% compared with 1% - see Table 14).

### **Decision in June 2011 consultation response**

#### **a) Appeals to the Upper Tribunal from the General Regulatory Chamber of the First-tier Tribunal** – This covers appeals from a number of small tribunals:

- Charity - certain organisations and individuals can appeal under the Charities Act 1993 against a decision of the Charity Commission.
- Claims Management Services - businesses and individuals who provide claims management services can appeal against decisions of the claims regulator.
- Consumer Credit – hears appeals against decisions of the Office of Fair Trading relating to licensing and money laundering.
- Environment - hears appeals against civil sanctions made by environmental regulators.
- Estate Agents – hears appeals under the Estate Agents Act 1979 against decisions made by the Office of Fair Trading.
- Gambling Appeals - hear appeals by individuals or companies against the decisions of the Gambling Commission.
- Immigration Services - hears appeals against decisions made by the Office of the Immigration Services Commissioner and considers disciplinary charges brought against immigration advisors by the Commissioner.
- Information Rights - hears appeals from notices issued by the Information Commissioner relating to freedom of information, data protection and other issues.
- Local Government Standards in England - determines references and appeals about the conduct of members of local authorities.
- Transport - hears appeals against decisions of the Registrar of Approved Driving Instructors (the 'Registrar'). These appeals concern approved driving instructors, trainee driving instructors, and training provider appeals.

2.182 We decided to exclude these matters from the scope of civil legal aid. The issues involved are, in many cases, quasi-business, and financial issues. We consider that these cases are of relatively low importance compared to fundamental issues such

as liberty or homelessness, and we do not consider that the class of individuals involved in these cases is generally likely to be particularly vulnerable.<sup>13</sup>

**b) Actions relating to contentious probate or land law, for example, actions to challenge the validity of a will (including Inheritance (Provision for Family and Dependents) Act 1975).**

2.183 In our view these cases are primarily about financial entitlement, which we consider to be of a low objective importance compared to other areas of fundamental importance, such as personal safety or liberty. Nor do we consider that the class of individuals involved in these cases is generally likely to be particularly vulnerable.<sup>14</sup> The Government decided that these cases should be excluded from scope.

2.184 This section of the paper also referred to applications under section 14 of the Trusts for Land and Appointment of Trustees Act 1996. This was interpreted by some respondents as relating to “ancillary relief” cases involving cohabitants. However, such matters were included and dealt with in our proposals for ancillary relief, and this section was concerned solely with other non-family matters of trust law under that section of the 1996 Act.

**c) Legal advice in relation to a change of name.**

2.185 These cases are typically funded in the context of family proceedings. For example, in cases where a mother seeks to change her child’s surname to that of her new partner, and her ex-partner objects (for example seeking a prohibited steps order). Where the funded client was successful in resisting the order, legal aid (Legal Help) could also cover the steps necessary to enact the change of name.

2.186 We decided that these cases should be excluded from legal aid given the lower objective importance of these matters compared to other more fundamental matters.

**d) Actions concerning personal data, such as actions relating to inaccurate or lost data or rectification of personal data.**

2.187 Given the relatively low objective importance of these matters and the need to prioritise resources these cases have been excluded from scope.

**e) Legal advice on will-making for (i) the over 70s; (ii) disabled people; (iii) the parent of a disabled person; and (iv) the parent of a minor who is living with the client but not with the other parent, and the client wishes to appoint a guardian for the minor in a will.**

2.188 While the making of wills is generally excluded from the legal aid scheme, it is currently made available in the above circumstances. While such services may be useful, and some of the class of client covered by this case may be particularly vulnerable, we consider that the making of wills is of lower objective importance compared to more fundamental issues, and given the need to prioritise funds these cases have been excluded from scope.

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<sup>13</sup> See paragraph 6 of the section of the consultation response on the programme of reform for the factors we took into account in considering an individual’s vulnerability.

<sup>14</sup> As above

## **f) Cash forfeiture actions under the Proceeds of Crime Act 2002:**

- 2.189 Money may be seized by a customs officer or police officer because they have reasonable grounds for suspecting that it is intended for use in unlawful conduct. Such seized cash may be forfeited by order of a magistrates' court. The decision of the magistrates' court may be appealed to the Crown Court. Civil legal aid funding is available for both the magistrates' court proceedings and Crown Court appeal. Given that these proceedings are essentially about preserving a sum of cash, we consider that these cases are not of as high importance and therefore accord them a lower priority than cases involving more fundamental issues such as liberty or homelessness. These cases have been excluded from scope.

## **11. Personal Injury: Criminal Injuries Compensation Authority (CICA) matters, some claims against public authorities and Tort matters**

- 2.190 Criminal Injuries Compensation Authority (CICA) matters, some claims against public authorities (those where the case has been brought under the 'serious wrong-doing' test<sup>15</sup>), and Tort matters have been removed from the scope of the personal injury category.

### **EIA-specific issues raised in consultation responses**

- 2.191 Respondents primarily focused on the CICA element of this proposal when making equalities comments. It was suggested that victims of crime were an inherently vulnerable group, and that many would be children who have been the victims of sexual and / or physical abuse, women who have been the victims of domestic violence, victims who have suffered severe psychiatric injury, and victims who have suffered traumatic brain injury. It was suggested that in all of these examples the client would not be in a position to bring their claim without legal assistance. It was also suggested that individuals with special needs were substantially more likely to be victims of violent crime, again implying that such individuals could be put at a substantial disadvantage if funding were to be withdrawn.
- 2.192 Some respondents were also concerned that removing criminal injuries compensation from the scope of legal aid would have consequences for trafficked women contrary to the UK's obligations under Articles 12 and 15 of the Council of Europe Convention on Action against Trafficking in Human Beings, which require states to provide legal advice and information to victims and free legal aid to enable them to seek redress, including compensation, for the harm they have experienced.
- 2.193 As noted above in relation to claims against public authorities, the main point made was that given that disabled people are more likely to be engaged with and depend on the decisions of public authorities, the withdrawal of funding in this category would be likely to place this group at a substantial disadvantage, or that legal aid might be required as a reasonable adjustment to prevent a disabled person from being put at a substantial disadvantage

### **Statistical analysis of impacts**

#### ***Clients***

- 2.194 Clients in the personal injury category of law are more likely to be male than the population of England and Wales as a whole. For example, men are estimated to account for 63% of total personal injury cases, excluding unknown cases, compared

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<sup>15</sup> See also the Actions Against the Police category from paragraph 2.4 above.

with 49% for the England and Wales population and 44% of the overall projected caseload.

- 2.195 Similarly, BAME clients are expected to be over-represented in personal injury cases, accounting for 22% of the total, excluding unknown cases. This compares with only 12% for the population of England and Wales and 25% of the overall projected caseload for the BAME group.
- 2.196 Because of the substantial amount of missing data relating to illness or disability of potential clients (53%) we cannot exclude the possibility that ill or disabled people might be over-represented among clients with a personal injury case compared with that the population aged 16 to 64 as a whole. We acknowledge that, for a subset of the highest value personal injury cases, the clients are highly likely to be disabled persons.
- 2.197 In common with all clients who could be affected by the reduction in scope, those in this category are more likely to be aged between 25 and 64 than the population as a whole. Those aged under 25 are also expected to be over-represented relative to the proportion projected for the overall caseload (15% compared with 8% as a proportion of the overall caseload) although the estimate is in line with the proportion for the population of England and Wales in this age group.

#### ***Solicitor and NfP providers***

- 2.198 Only one NfP provider undertook cases which would be affected by this change to scope in the personal injury category in 2009/10. It is therefore not possible to provide an analysis for this group due to provider privacy considerations.
- 2.199 There is no evidence of any differential impact across solicitor providers in this category, with those with majority male ownership and control likely to experience an average reduction in legal aid income of 5% as a result of this reform, compared with an average reduction of 3% for those with majority female ownership and control (see Table 10).
- 2.200 Solicitor providers with majority White British ownership and control are estimated to experience an average reduction in legal aid income of 4%. This is lower than the average reduction expected for those with majority BAME ownership and control where the proportion is 11% (see Table 12). However, this result should be treated with caution as only seven providers working in this category of law have been identified as having majority BAME ownership and control.
- 2.201 Those solicitor providers employing at least one ill or disabled manager are estimated to experience an average reduction of 1%, of a similar scale to the 4% average reduction in income for those who do not employ any ill or disabled managers (see Table 14).

#### **Decision in June 2011 consultation response**

##### **CICA (Criminal Injury Compensation Authority)**

- 2.202 We recognise that the people making these applications might be vulnerable,<sup>16</sup> having often been through a traumatic event, and that these matters can involve more complex issues around appeals and assessing whether the award is fair one. We also accept that these cases might involve money for medical equipment. We

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<sup>16</sup> See paragraph 6 of section on the programme of reform in the consultation response.

consider that article 15 of the Trafficking Convention might require exceptional funding for CICA applications and appeals where, in the particular circumstances of the case, the failure to do so would amount to a breach of the individual's rights to legal aid under the ECHR.

- 2.203 We considered that the application forms are straightforward to complete, and that CICA provides help and guidance for applicants to help them put forward their claim. While appeals may be more complex, we have to prioritise funding and we consider that these cases are primarily money claims, which are of lower priority for public funding.
- 2.204 For these reasons, we decided to remove legal aid for Criminal Injuries Compensation claims, as proposed in the consultation.

### **Tort and other general claims**

- 2.205 As set out in paragraph 2.12 above, while legal aid may be of assistance in holding the state to account in certain cases, we need to prioritise funding, and we have focused it on other claims with special features which give them an importance beyond money (e.g. claims relating to a contravention of the Equality Act 2010 and abuse claims), or on judicial review, or on more serious claims against public authorities (other than judicial review or other similar remedies) where these concern a significant breach of human rights, or an abuse of position or powers. We also decided to retain claims against private and public parties where these concern allegations of the abuse of a child or vulnerable adult, or allegations of sexual assault. We intend to retain the most serious claims against public authorities in scope. In stronger excluded cases, alternative sources of funding will be available, such as CFAs. We do not consider that litigants bringing the remaining cases are likely in general to be especially vulnerable, or that they will be unable to present their own case.
- 2.206 The Government decided that these cases should be excluded from scope, as originally proposed in the consultation paper.

### **12. Public Law category: some claims against public authorities**

- 2.207 It was decided that some claims against public authorities would no longer be funded under the Public law category.

### **EIA-specific issues raised in consultation responses**

- 2.208 As noted above in relation to claims against public authorities, the main point made was that given that disabled people are more likely to be engaged with and depend on the decisions of public authorities the withdrawal of funding in this category would be likely to place this group at a particular disadvantage, or that legal aid might be required as a reasonable adjustment to prevent a disabled person from being put at a substantial disadvantage.

### **Statistical analysis of impacts**

#### ***Clients***

- 2.209 A small number of clients have cases within the LSC public law category which would be affected by the changes to the scope of the legal aid scheme, and estimates of impact should therefore be treated with caution. Nevertheless, the data shows that these clients are more likely to be female, more likely to be ill or disabled and, in line

with all clients who would be affected by the reforms, are more likely to be aged between 25 and 64 than amongst the England and Wales population.

- 2.210 It is not possible from the data to identify judicial reviews that specifically relate to immigration and asylum. However given the subject area involved, we would assume an over representation of BAME clients in comparison to the population, and as such any change to exclude these cases is likely to have a greater impact on BAME clients as against any other protected characteristic. The predominance of men in the general immigration client base also suggests that this change is likely to impact on men more than women.

#### ***Solicitor and NfP providers***

- 2.211 Only a small number (22) of NfP providers undertook work in this category of law in 2009/10 and of these equalities data is only available for 14. It is therefore not possible to provide a robust analysis for this group and figures cannot be reported on for reasons of provider privacy.
- 2.212 While a larger number of solicitor providers work in the public law category, due to the small volumes of cases involved, impacts are shown to be 0% as a percentage of legal aid income (see Tables 10, 12 and 14).

#### **Decision in June 2011 consultation response**

- 2.213 Most of the cases highlighted by the Judges' Council are not, we believe, brought with the benefit of legal aid. The current criteria governing the granting of legal aid in individual cases would generally preclude such funding. Even if the numbers of cases involved are relatively small, we accept the principle that these cases should not receive funding, subject to certain safeguards. However, we consider that there were some important exceptions to these exclusions principally to take into account potential changes in an individual's circumstances over time, and to ensure that cases where an appeal has not already taken place are not inadvertently captured. We also consider that challenges to detention pending removal should remain in scope (as they relate to the applicant's liberty).
- 2.214 The Government decided that it will retain legal aid for judicial review in immigration and asylum cases, except for:
- i) Immigration and asylum judicial reviews where there has been a full hearing before the First-tier Tribunal or a judicial review on the same issue or a substantially similar issue within a period of one year.
  - ii) Judicial reviews challenging removal directions except where there has been a delay of more than one year between the determination of the decision to remove a person and the giving of removal directions.
- 2.215 However, cases falling within (i) and (ii) above would be subject to certain exceptions:
- where funding is necessary to comply with Article 15 of the Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (this will apply to judicial reviews of a decision of the Secretary of State not to treat further submissions as a fresh

asylum claim and cases against a certificate issued under section 94 of the Nationality, Immigration and Asylum Act 2002<sup>17</sup>); and

- where the challenge is to a certificate issued under section 96 of the Nationality, Immigration and Asylum Act 2002.<sup>18</sup>

2.216 We decided to maintain the restriction, currently in the Legal Services Commission's Funding Code, which allows legal aid for judicial review cases only where the proceedings have the potential to produce real benefits for the applicant, the applicant's family, or the environment. These changes to the Funding Code which were introduced by the previous administration were recently quashed by the High Court. While the Court found that the process followed in making these changes was flawed, the Court did not find that the restriction itself was unlawful. Legal aid should be focused on the highest priority cases, and because we consider that bringing a judicial review over a matter with which you have no personal involvement or connection will not generally be of a high priority for funding, we decided to remove these cases from the scope of the legal aid scheme.

### **13. Welfare benefits**

2.217 All cases in the Welfare Benefits category except claims relating to a contravention of the Equality Act 2010 have been removed from scope.

#### **EIA-specific issues raised in consultation responses**

2.218 Many respondents focused on the potential for substantial or particular disadvantage to disabled people under this policy. Some respondents suggested that the policies would amount to a barrier to access to the Tribunals and courts. Others noted substantial or particular disadvantages, as set out below.

2.219 Some respondents indicated that entitlement to Disability Living Allowance (DLA) was the only way in which some disabled people could ensure that their mobility and care needs were met.

2.220 In respect of DLA / Attendance allowance and other 'passported' benefits, it was suggested that these benefits mitigated the substantial disadvantages of disabled people more than the pure monetary value of the benefits themselves as, in many cases they automatically entitle that individual to a practical benefit (for example, a disabled parking 'Blue Badge' if a person is entitled to the higher rate mobility component of DLA). That disabled individual might be placed at a substantial disadvantage in other areas of their life if put at a further disadvantage in challenging the decision to award such benefits.

2.221 It was also noted that, for many disabled people, welfare benefits (including DLA, attendance allowance, incapacity benefit and those benefits which are to replace them) would be their only source of income and as such it would be unjust to deny them access to challenge decisions which could damage their health and wellbeing.

2.222 It was further argued that practical barriers to challenging benefits decisions could lead to social exclusion.

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<sup>17</sup> Section 94 allows the Secretary of State to issue a certificate preventing an appeal within the United Kingdom in the case of an unfounded human rights or asylum claim.

<sup>18</sup> Sections 96 allows the Secretary of State to issue a certificate preventing an appeal to the First-tier Tribunal on an issue where a person has already had an opportunity to raise the issue in an earlier appeal.

- 2.223 Some respondents also suggested that those with learning difficulties might be especially disadvantaged in relation to understanding the benefits thresholds or process for challenging a determination in the Tribunal. It was also suggested that elderly people could be placed at a particular disadvantage if they did not receive advice sufficiently early on when they came to meet the appropriate thresholds to ensure they applied for relevant benefits at the earliest opportunity.
- 2.224 Other respondents suggested that there was potential for BAME individuals to be placed at particular disadvantage if welfare benefits cases were to be removed from scope. Other respondents noted the relative complexity of welfare benefits law, and questioned whether in practice vulnerable people could realistically be expected to represent themselves in a tribunal without the assistance of legal advice.

## **Statistical analysis of impacts**

### ***Clients***

- 2.225 Welfare benefits clients are the second largest number of potential users of legal aid who would be affected by the reforms. A greater proportion of welfare benefit clients are expected to be ill or disabled compared with any other category of law (58% of the total, excluding unknown cases). Consequently, those who are ill or disabled are expected to be substantially over-represented among welfare benefit clients relative to the population of Great Britain as a whole (19% of which is ill or disabled).
- 2.226 Welfare benefits clients are also more likely to be from a BAME group (27%) when compared with the population of England and Wales (12%), excluding unknown cases.
- 2.227 In common with all clients who could be affected by the reduction in scope, clients with a welfare benefits case are more likely to be aged between 25 and 64 compared with the population of England and Wales (87% compared with 53%).

### ***Solicitor and NfP providers***

- 2.228 NfP providers will see higher average impacts as a result of this reform than solicitor providers.
- 2.229 There is no evidence of a differential impact between NfPs with majority male ownership and control, who are expected to see an average reduction in legal aid income of 36% as a result of this reform, compared with an average reduction of 39% for those with majority female ownership and control (see Table 9). The average reduction estimated for NfP providers with majority White British ownership and control is 37%. This is lower than the 42% reduction for those with majority BAME ownership and control (see Table 11). Those employing at least one ill or disabled manager experience a larger average reduction in legal aid income in comparison to those that do not (43% and 37% respectively – see Table 13).
- 2.230 There is no evidence of a differential impact between Solicitor providers with majority male ownership and control affected by this change who are expected to see an average reduction of 4%, compared with 8% for those with majority female ownership and control (see Table 10).
- 2.231 The estimate for those solicitor providers with majority White British ownership and control is an average reduction in legal aid income of 3%, compared with a 13% reduction for those with majority BAME ownership and control (see Table 12).

2.232 There is no evidence of a differential impact between Solicitor providers employing at least one ill or disabled manager and those who do not. Those who do are expected to experience an average reduction of 6%, in line with an average reduction of 5% for those who do not (see Table 14).

#### **Decision in June 2011 consultation response**

2.233 The Government accepts that there are some difficult cases brought before the tribunal concerning the complex interaction between, for example, entitlement to benefits and nationality issues. These cases are typically ones where legal aid currently provides representation through the exceptional funding scheme. We do not consider that most cases before the tribunal are this complex. Cases range in importance from entitlement to subsistence benefits, to overpayment cases, but even so we generally consider that the importance of these cases is low when compared to safety, liberty or homelessness cases.

2.234 We recognise that benefits issues can have a knock-on impact on homelessness, but we consider that our approach to prioritise cases where there is a direct and immediate risk of homelessness is rational and appropriate. Funding has been retained for homelessness matters but, for benefits cases, the accessible and relatively user-friendly nature of the tribunal means that applicants can generally present their case without legal assistance. Whilst we acknowledge that respondents told us that other sources of advice, particularly the voluntary sector may not be able to meet the demand for welfare benefit services because of factors such as local authority cuts, it remains the case that Job Centre Plus and the Benefits Advice line will continue to be available to assist applicants. For several years, reports by the President of the Appeal Tribunals have shown that most welfare benefits decisions are overturned on the basis of new factual evidence obtained orally from the appellant, rather than legal submissions.

2.235 For these reasons, the decision was that these cases should be excluded from scope, except for judicial review and claims relating to a contravention of the Equality Act 2010.

#### **Asylum support**

2.236 The Government recognises that what is at stake in these applications is often not entitlement to money, but provision of housing for otherwise destitute asylum seekers. While applications can be for subsistence payments, data from the UKBA shows that 90% of these applications cover applications for accommodation. Therefore, the large majority of these cases are closely analogous to the local authority housing cases we intend to retain within scope (i.e. cases under Part VII of the Housing Act 1996 covering the statutory duties of local authorities to house homeless individuals).

2.237 For these reasons, we decided to retain legal aid for advice for asylum support cases which concern applications for accommodation for destitute asylum seekers. Asylum support applications which only concern financial support will be excluded from scope, in line with other welfare benefits matters.

#### **Modification of proposals in respect of welfare benefits:**

2.238 This modification brings into scope advice and assistance in relation to a welfare benefits appeal on a point of law in the Upper Tribunal (including seeking permission from the Upper Tribunal to bring a substantive appeal), the Court of Appeal and the

Supreme Court. It also brings into scope representation for these welfare benefits appeals in the Court of Appeal and Supreme Court.

- 2.239 LSC data does not allow us to identify the protected characteristics of legal aid clients in relation to this modification, so we have taken the protected characteristics of those for welfare benefits as representative. We anticipate providing further funding as a result of this modification and this is reflected in the analysis of provider impacts above.

## **Combined impact of the scope reforms**

### ***Statistical analysis of impacts***

#### ***Clients***

- 2.240 In each of the four tables accompanying the client commentary (Tables 4-7) the bottom two rows provide the totals in percentages for the current caseload and the population.
- 2.241 This shows that the current caseload comprises 56% women whereas the population of England and Wales comprises 51% women, and so women are therefore over-represented among civil legal aid clients. BAME people are also over-represented compared with the population of England and Wales (25% of clients excluding unknown cases, compared with 12% of the population), and ill or disabled people make up a larger proportion of clients than the population of Great Britain, whether or not unknown cases are excluded from the figures (21% including unknowns and 25% excluding, compared with a figure of 19% disabled for the Great Britain population).
- 2.242 Civil legal aid clients are also more likely to be aged between 25 and 64, and less likely to be aged either under 25 or over 64 compared with the population of England and Wales.
- 2.243 Looking at all of the different impacts described and using the current caseload as the basis of comparison, women appear to be most affected by changes to Education and men with regard to Action Against the Police. For ethnicity BAME people will be most affected by changes to Immigration and White people by Debt. Data available for people who are ill or disabled is incomplete and robust comparisons cannot be made across categories. The majority of current clients are aged between 25 and 64, and people in this age group will be slightly over-represented In Family-Private matters relative to their proportion in the overall current caseload.
- 2.244 As noted in the general introduction these proposals have not only been assessed by reference to the potential statistical effect across, for example, all disabled people. We have also carefully assessed the qualitative submissions of respondents.

#### ***Solicitor and NfP providers***

- 2.245 The proportion of providers with majority female ownership and control was higher for NfP providers than for solicitors' firms; 53% of NfPs had majority female ownership and control compared with 17% of solicitor providers (see Tables 9 and 10).
- 2.246 With regard to ethnicity, overall 86% of affected providers had majority White British ownership and control and 10% majority BAME ownership and control. The proportions for both NfP and solicitor providers were broadly the same (see Tables 11 -12).

- 2.247 NfP providers were more likely to employ one or more ill or disabled managers than solicitor providers, with 15% of NfPs doing so compared with 5% of solicitor providers (see Tables 13-14).
- 2.248 Overall, on current workloads it is estimated that NfP providers will see higher average impacts than solicitor providers. As can be seen in each of the Tables presented, NfPs register higher impacts when compared with solicitors.
- 2.249 NfPs with majority White British ownership and control will see an average reduction in legal aid income of 71% as a result of the reform, similar to those with majority BAME ownership and control (an average 67% reduction). NfP providers with majority female ownership and control will see a higher average impact than those with majority male ownership and control (72% compared with 66%) and those that employ an ill or disabled manager will see a higher average impact (74%) than those that do not (69%).
- 2.250 Solicitor providers with male and female majority ownership and control are estimated to experience similar average reductions in legal aid income of 36% and 34% respectively, while the difference between providers with majority White British (36%) and majority BAME (28%) ownership and control is larger. Solicitor providers that employ at least one ill or disabled manager will see an average reduction of 33%, compared with the 36% average impact for those that do not.

#### **Scope reforms – London / Non London reduction in legal aid income impacts**

- 2.251 Equalities data is available for over 400 (42%) of affected providers in London and over 2,100 (51%) of those outside London (Tables 15-17).
- 2.252 A greater proportion of providers outside London have majority male ownership and control compared with those in London (62% compared with 53% - see Table 15) and a greater proportion also have majority White British ownership and control (93% compared with 49% (see Table 16). However, there was no difference in the proportion of providers employing one or more ill or disabled managers in London compared with outside (6% - see Table 17).
- 2.253 Estimates suggest that across all the equalities strands providers outside London are likely to experience a higher average reduction in legal aid income as a result of the reforms to change the scope of legal aid when compared with those in London.
- 2.254 Providers with majority male ownership and control will see an average reduction in legal aid income of 30% in London, compared with 38% outside London. Similarly firms with majority female ownership and control are expected to see an average reduction of 31% in London and 48% elsewhere.
- 2.255 Providers with majority White British ownership and control are likely to experience an average reduction of 30% in London compared with 42% elsewhere. Firms with majority BAME ownership and control are expected to see an average reduction of 31% in London and 37% elsewhere.
- 2.256 Those employing one or more ill or disabled managers will see an average reduction of 45% both in London and elsewhere, and those not employing an ill or disabled manager an average reduction in legal aid income of 30% in London and 41% elsewhere.

### **The Bar**

- 2.257 The *Barrister Workforce Profile* shows that, in 2008, 77% of barristers did civil work, but that only 57% of these did legal aid work with 24% of these relying on legal aid for less than 10% of their income.
- 2.258 Of those practising in civil, women were more likely to undertake legal aid work than men (64% compared with 53%), but there was no difference between the proportion of barristers undertaking legal aid by race, or disability status.
- 2.259 While the survey is the best source of data on barristers working under legal aid, it should be noted that data is only held on those 35% of barristers responding, and the findings should be treated with caution. Overall, however, this data shows that the reforms might have a disproportionate impact on female barristers.

### **The Family Bar**

- 2.260 Additional data on the Family Bar is available from the Week-At-A-Glance Survey.<sup>19</sup> This found that, in 2008, 60% of family barristers were female, and that female barristers have a higher reliance on legal aid income with 65% of the female barristers surveyed seeing 50% or more of their income coming from legal aid as opposed to 52% of male barristers.
- 2.261 In particular, female BAME barristers have a disproportionately high dependence on legal aid with 30% depending on legal aid for between 60% and 80% of their turnover and a further 22% for more than 80% of their income.
- 2.262 This feature of the Bar means that any change to family work is likely to have a disproportionate impact on female barristers and on female BAME barristers

### **Comparison with previous EIAs**

- 2.263 In terms of clients, the initial EIA identified the potential for changes to the scope of legal aid to have a disproportionate impact on women, BAME people and ill or disabled people as they are over-represented among civil legal aid clients when compared with the population as a whole.
- 2.264 The analysis set out in the consultation response EIA, in the commentary above and in Tables 4 – 7 confirms that overall these are the groups likely to be affected by the scope reforms, with the total proportion of affected clients split by sex, race and illness or disability remaining consistent with the initial EIA.
- 2.265 This is also true of the by category impact assessment for clients. While there is variation in the proportion of clients affected by group in the initial and consultation response EIAs, this is typically within a narrow range and does not affect the assessment of whether there is likely to be a disproportionate impact as a result of the reforms.
- 2.266 The exception to this is in public law where female clients are over-represented in comparison to the population (although as noted above these figures should be treated with caution because of the small number of cases involved) in this and the consultation response EIA, but not in the initial EIA that used 2008/09 data. The proportion of affected clients who are known to be ill or disabled also increased from 13% in the initial EIA to 29% in the analysis here and in the consultation response

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<sup>19</sup> Price, D & Laybourne, A, (2009) *The Work of the Family Bar: Report of the Week-At-A-Glance Survey 2008*. Family Law Bar Association

EIA, meaning that based on the 2009/10 data ill or disabled people are over-represented among users of these services. However due to the small number of cases affected in both the initial EIA, the consultation response EIA and this EIA, these findings should be treated with caution.

- 2.267 The proportion of affected clients for whom illness and disability information is not held fell overall (from 18% to 15%) and in the majority of categories of law between the 2008/09 data used in the initial EIA and the 2009/10 data used in this and the consultation response EIA. The exception to this is in the personal injury category, where the proportion of clients for who information is not held rose from 27% to 53%, although the proportion of clients who are recorded as ill or disabled remained constant at 11%.
- 2.268 We undertook analysis based on the age of affected clients in this EIA and in the consultation response EIA and, as set out above, this analysis shows that those aged under 25 and those aged 65 and over are under-represented when compared with the population and those ages between 25 and 64 are over-represented.
- 2.269 In terms of solicitor and NfP service providers, the initial EIA found that those with majority female and majority White British ownership and control would be likely to see a greater average impact as a result of the reforms, and the results of the analysis set out in this and the consultation response EIA confirms this assessment.
- 2.270 In addition, this analysis shows that providers employing an ill or disabled manager are expected to experience a similar average impact than those who do not.

#### **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

- 2.271 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out the legal duties section of the introduction to this EIA.
- 2.272 As noted in paragraph 26 above, these changes will apply to all people, irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they will give rise to any direct discrimination. We have considered the potential for indirect discrimination, discrimination arising from disability and the duty to make reasonable adjustments above. However, for the reasons set out in the introduction to this document, we consider that insofar as there is any potential particular or substantial disadvantage or unfavourable treatment arising in consequence of a particular disability, the proposed reforms are a proportionate means of meeting our legitimate policy objectives and that reasonable adjustments for people with disabilities are being made.
- 2.273 In addition, by retaining claims relating to a contravention of the Equality Act 2010, protection from harassment and domestic violence cases within scope, we believe that the reforms will not undermine the ability of the legal aid scheme to fulfil the obligation to eliminate discrimination, harassment, victimisation and other prohibited conduct, and to contribute to the promotion of equality between groups.
- 2.274 We do not consider that any of the policies are likely to amount to provisions, criteria or to give rise to practices of the LSC which are likely to put an individual in the protected groups at a particularly significantly increased risk of suffering harassment, victimisation or breach of an equality clause. However, insofar as they do so, we consider that the decision to retain certain classes of case within scope was the least discriminatory means of achieving our legitimate aims.

- 2.275 We hold data which allows us to assess the impact of the reforms on people based on the protected characteristics of sex, race, disability and age, and this analysis is set out above. For the protected characteristics of gender reassignment, religion and belief and sexual orientation, we have no evidence to suggest that the nature of the reforms would be likely to have any disproportionate effect.
- 2.276 The nature of the reform to reduce the scope of family law services available under legal aid will be particularly relevant for the protected characteristics of marriage and civil partnership and pregnancy and maternity, however we do not consider that the reforms would be likely to have a disproportionate impact on those who are affected based on their protected characteristics.
- 2.277 It is possible that some clients in 'squatting' cases would argue that their actions result from a religious or philosophical belief, as defined in the Equality Act 2010. We have considered this and concluded that it is unlikely to put those individuals at a particular disadvantage, and that in any event withdrawing legal aid in 'squatter' cases is a proportionate way to achieve our legitimate aims.
- 2.278 During consultation respondents submitted evidence on the impacts of the policies, including detailed representations on each area of law to be removed from scope. These are set out in the response to consultation document, but general points made included that:
- legally aided clients are often vulnerable, whether through age, illness, disability, low income, social exclusion or difficult family circumstances;
  - the proposals will have a disproportionate effect on women and this will have a knock-on effect on the welfare of children;
  - early advice is vital and clients are unlikely to find alternative sources of advice if legal aid scope is reduced as the advice sector has limited capacity; and
  - many people will not be able to enforce their rights if the reforms are implemented because they will feel unsupported and lack the confidence or skills to represent themselves.
- 2.279 A summary of the impacts identified in this EIA and how they differ from those in the initial EIA is set out above.

### **Consideration of potential statistical impacts and justification**

- 2.280 As set out above, the initial EIA and the analysis presented in this document show that women, BAME people and those who are ill or disabled are likely to experience a disproportionate impact as a result of these reforms as they are over-represented among those who use civil legal aid services when compared with the population as a whole.
- 2.281 Following consultation, we have made modifications to our policies on:
- SEN education cases;
  - asylum support in accommodation cases involving homelessness;
  - debt advice in cases involving accommodation in which the home is at immediate risk; debt including involuntary bankruptcy and resisting an order for sale
  - in the housing context removing legal aid for those who are squatting;

- unlawful eviction cases;
- legal aid for child parties in private law family cases, and to secure an emergency order to prevent child abduction;
- increasing the fee for mediation for a limited number of cases requiring additional work; and
- including additional criteria for the gateway for domestic violence and private law children cases where the child is at risk of abuse.

2.282 These changes will result in fewer clients being affected by the reductions in the scope of legal aid than if we had implemented the proposals as consulted upon. Due to the nature of many of these services clients are likely to be drawn disproportionately from groups with particular protected characteristics. However, it is not possible to undertake robust analysis for these clients who would have been affected but will not now as these changes have been made, as it is not possible to accurately identify these cases in LSC data. In any event, these changes do not affect the overall impact that the reforms are likely to have.

2.283 Some claimants in clinical negligence cases will be so disabled that they lack capacity or are children whose cases are brought on their behalf by litigation friends.<sup>20</sup> We recognise that this data only considers clients of legal aid and not these third parties. We have considered the impact of these proposals on these people and consider that it is not proportionate to retain clinical negligence cases within scope for this reason.

2.284 We are satisfied that there are suitable alternative funding options for such individuals as set out in greater detail in the response to consultation. Removing legal aid for this area will increase the number of cases which rely on CFAs. However, under the changes being implemented to the CFA arrangements, and set out in more detail in the response to consultation, After The Event (ATE) insurance premiums for expert reports would be recoverable from defendants who lose in certain circumstances, enabling meritorious claims where claimants cannot otherwise afford to pay for expert reports upfront, to continue to be brought. We do not, therefore, consider that there is an unlawful or disproportionate particular disadvantage to disabled claimants. Where exceptional circumstances arise reasonable adjustments would be made through the exceptional funding scheme.

2.285 The Bar Council in their response highlighted the potential impact on female and BAME barristers as a result of these reforms, arguing that they would damage diversity at the Bar and have a knock-on effect on the diversity of the judiciary.

2.286 As set out in the introductory section of this EIA, we do not believe that the proposed reduction in scope would put women or BAME practitioners at a 'particular disadvantage' over others in practice at the Bar and that this could 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 consider that these policies are a proportionate means of achieving the legitimate aims set out.

2.287 The primary responsibility of MoJ in administering the Legal Aid system must be to provide fair and effective legal aid to those clients most in need. The specific levels of representation within given practice areas at the Bar and Solicitors profession are primarily the responsibility of the Bar and Law Society to ensure equality of opportunity to all areas of practice. Given the finite resources available it would not

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<sup>20</sup> See e.g. Bar Council consultation response p 38

be proportionate for MoJ to recommend any lower protection for the most needy clients in order to subsidise the legal profession. 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 judicial diversity.

2.288 Respondents to the consultation suggested a range of alternatives to reducing the scope of legal aid, including raising taxes on alcohol and introducing a levy on the financial services industry, as well as making savings from improving the efficiency of the wider systems in which legal aid operates or requiring other government departments to contribute to the cost of legal aid. The response to consultation document sets out more fully our analysis of these alternative policies, but in summary we have not adopted them because:

- any reduction in the contribution from legal aid to MoJ savings target will need to be met from elsewhere in the Ministry's budget;
- taxation is a matter for central Government and HMT, and not within MoJ's remit;
- other departments are already required to complete a Justice Impact Test, including any potential costs to legal aid, when proposing to introduce new policies and transfer resources where appropriate; and
- costs are already borne by public authorities in some successful civil legal aid cases.

2.289 As set out in paragraph 15 above and elsewhere, the aim of these reforms is to make savings from the legal aid fund while ensuring that legal aid is properly focused on those areas where it is really needed.

2.290 The impact of the reforms will also be to some extent mitigated by the operation of the exceptional funding mechanism, which will enable some cases which fall outside the scope of the reduced legal aid scheme to be funded. This may be of particular relevance to some disabled people who may be more likely to qualify for funding by virtue of their disability. In the statistical analysis above we have factored in the number of cases assumed to fall within the criteria.

2.291 In addition to changes to our policies following consultation, the passage of the LASPO Bill through Parliament led to the following modifications affecting the scope of legal aid in the following areas:

1. Clinical negligence
2. Welfare benefits
3. Domestic violence (family private category)
4. Domestic Child Abduction (family private category)
5. Human Trafficking (immigration category)

2.292 These modifications will result in fewer clients being affected by the reductions in the scope of legal aid. Due to the nature of many of these services clients are likely to be drawn disproportionately from groups with particular protected characteristics. However, it is not possible to undertake robust analysis for these clients as it is not possible to accurately identify these cases in LSC data. In any event, these modifications do not affect the overall impact that the reforms are likely to have.

## **Advancement of equality of opportunity, fostering of good relations**

2.293 As noted in paragraph 24 in the introductory section of this EIA, retaining claims relating to a contravention of the Equality Act 2010 and, due to changes made to the policies following consultation, SEN cases in the scope of legal aid we are providing protections for the advancement of equality of opportunity and the fostering of good relations.

### **Next steps**

2.294 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.

2.295 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single mandatory gateway for specific types of law and the removal of legal aid for some types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.

### 3. Financial eligibility

#### Description

3.1 The following options to change legal aid eligibility were consulted upon:

- Applicants for legal aid who are in receipt of ‘passported’ benefits should be subject to the same capital eligibility rules as other applicants
- Introduce a £100 capital contribution fee for clients with disposable capital over £1,000.
- Abolish capital disregards (no longer disregarding capital held by the client when applying the means assessment for legal aid) in cases not involving contested property, but retain a waiver scheme for those who cannot access their equity. In cases involving contested property, abolish capital disregards but retain a disregard relating to the disputed asset.
- Increase income contributions for all legally aided clients who make contributions

3.2 The *Reform of Legal Aid in England and Wales: the Government Response*<sup>21</sup> document provides more detail about the amended proposals following initial consultation, but having given due consideration to the consultation responses, the Government’s response to the consultation confirmed that the Government decided to proceed with the following policies:

- To apply the same capital eligibility rules to applicants in receipt of “passporting” benefits as other applicants for legal aid;
- To retain the ‘subject matter of the dispute disregard’ and to cap it at £100,000 for all levels of service;
- To increase the levels of income based contributions to a maximum of approximately 30% of monthly disposable income.

3.3 During the passage of the LASPO Bill through Parliament, the policy intentions surrounding financial eligibility did not change.

#### Legal Duties

3.4 The legal duties that apply to MoJ are set out in full in the introduction to this document.

#### ***EIA-specific issues raised in consultation responses***

3.5 Respondents raised a number of equalities issues. Many identified the potential for particular disadvantage to elderly people, on two main grounds. It was stated that those now receiving pensions were more likely to have greater equity in their home, and as such to be severely impacted by the policy to remove the equity disregard. The other main potential impact identified for elderly people concerned the capital disregard, as it was suggested that these savings are likely to be essential for the

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<sup>21</sup> *Reform of Legal Aid in England and Wales: the Government Response* (Cm 8072, 2011) Ministry of Justice. Available from: <http://www.justice.gov.uk/consultations/legal-aid-reform.htm>

maintenance of property and living standards for pensioners, who are likely to be on very low incomes.

- 3.6 It was also suggested that the policy in relation to increased contributions from disposable income had the potential to put affected disabled people at a particular or substantial disadvantage, as a consequence of their having additional expenditure in relation to their disability, such as the costs of purchasing and maintaining specialist equipment, and additional transport costs.

### **Analysis of Statistical Impacts**

#### ***Clients***

- 3.7 The actual effect that the eligibility reforms have on people depends on factors including whether they are in receipt of passported benefits, how much disposable capital they have, and whether they have equity in their homes. Data on these factors is not available for legal aid clients, so this analysis should be treated with caution.
- 3.8 Current legal aid clients are more likely to be female than male, Table 1 in the data section of this EIA shows that 55% of clients were female and 45% male. Compared with the population of England and Wales, which is 51% female and 49% male, women are therefore over-represented among civil legal aid clients compared with men.
- 3.9 Table 2 shows that 26% of clients are BAME and 63% white (29% and 71% respectively when excluding the 11% unknown cases). Compared with the England and Wales population, which is 12% BAME, BAME people are over-represented among civil legal aid clients.
- 3.10 Table 3 shows that ill or disabled people make up 21% of current legal aid clients. Comparing these figures with the the Great Britain Population, 19% of whom are ill or disabled, shows that ill or disabled people are over-represented among current civil legal aid clients, even without taking into account the 18% of legal aid clients for who data is not held.
- 3.11 Current legal aid clients are more likely to be aged between 25 and 64 than in the population of England and Wales as a whole. Table 7 shows that 86% of clients fall into this age group, compared with 53% of the England and Wales population.
- 3.12 Changes to the eligibility rules for civil legal aid therefore have the potential to have a disproportionate effect on women, BAME people and ill or disabled people. Those aged 25 – 64 are also potentially more likely to be affected.

#### ***Providers***

- 3.13 As it is not possible to identify precisely which clients would be affected under this reform, it is not therefore possible to establish the precise provider impact. We did not receive any additional information during the consultation process to assist in measuring this.

### **Comparison with earlier EIAs**

- 3.14 Because we do not hold the detailed information on clients' means and personal circumstances needed to identify which individuals would be affected by the reforms to change eligibility for legal aid, it was not possible to undertake this analysis in either the initial EIA, the consultation response EIA or this EIA.

- 3.15 Respondents to the consultation did not provide additional evidence and data which would support further analysis, and therefore we have compared the characteristics of all civil legal aid clients – the group from which those who will be affected will be drawn - with those of the general population to identify any potential for a disproportionate impact.
- 3.16 Both the consultation response and this EIA confirm the findings of the initial EIA, in that civil legal aid clients overall are more likely to be female, more likely to be BAME, and more likely to be ill or disabled than the population aged 16 to 64 as a whole.
- 3.17 Similarly, as it is not possible to identify the individual clients who would be affected by the changes to eligibility, their cases cannot be matched to providers and it is therefore assumed that the impact of the reforms will fall evenly across all providers regardless of protected characteristics.
- 3.18 The policies remained unchanged during the passage of the LASPO Bill through Parliament.

### **Decision in June 2011 consultation response**

#### **Capital passporting**

- 3.19 Currently a person who receives certain income-based benefits (subsistence benefits) is automatically deemed eligible for legal aid on both income and capital grounds. However, while the legal aid eligibility rules provide that persons who have more than £8,000 disposable capital are not eligible for legal aid, automatically passporting certain benefits recipients has meant that over time persons who have more than £8,000 have been awarded legal aid (as their disposable capital has not been subject to the legal aid eligibility test). This has led to a position where passported benefit recipients may be awarded legal aid even where they have up to £16,000 disposable capital. However, a person of similar income but who is not in receipt of these 'passporting' benefits and who has more than £8,000 disposable capital is ineligible for legal aid. The capital limits for those receiving passporting benefits are de facto more generous. The consultation paper therefore proposed that applicants receiving these benefits should be subject to the same capital test as other applicants.
- 3.20 The Government recognises that many consultees have concerns about the capital eligibility test being applied to all applicants including persons receiving subsistence benefits.
- 3.21 However, the position allows some passported clients to receive legal aid who would be found to be ineligible on capital grounds if their capital assets were assessed in the same way as other applicants. The Government believes that this is inequitable as it means that applicants with similar levels of disposable income and capital may be eligible for legal aid or be excluded from it depending on the source of income. Ensuring that the capital assets of all individuals are subject to the same eligibility test helps to ensure that limited public legal aid funds are properly focused on the most financially vulnerable clients, and that those who can afford to pay for, or contribute towards the costs of their case do so.
- 3.22 Instances of individuals having a higher level of disposable capital due to an award of damages in personal injury cases arise under the present system. In most of these cases, individuals have a sum exceeding £8,000 in a trust fund and presently there is no disregard for the damages. This proposal does not therefore result in the capital in personal injury trust funds being treated differently from the current position.

3.23 The June 2011 consultation response therefore confirmed the Government's view that applicants who are in receipt of subsistence benefits should be subject to the same capital eligibility test as other legal aid applicants, thereby focusing limited public legal aid funds on the most financially vulnerable clients. The consultation response therefore confirmed that the Government would implement this reform as proposed in the consultation.

### **Capital contributions**

- 3.24 An important driver of this proposal was to give clients a direct financial interest in their case, making clients more likely to approach litigation in a similar way to privately paying litigants and possibly deterring unnecessary litigation. The proposed £100 contribution aimed to help to underline that litigation is not cost- and risk-free, and needs to be approached proportionately.
- 3.25 The Government accepts the argument that in some cases (for example, those involving particularly emotive issues) there are likely to be drivers more powerful than financial considerations in motivating the client's interest in the conduct of their case. However, the Government believes that this does not justify the absence of a financial interest where the client has sufficient income or disposable capital. We accept the Bar Council's arguments that in some cases, (for example, family law cases) the financial contribution may not be a significant consideration when deciding how to proceed, but we believe that clients should have a financial stake in their case wherever possible. The Government notes that the Bar Council, along with other respondents, has agreed in principle that it is important for litigants to have some financial interest in the conduct of litigation in order to ensure that costs are sensibly managed. This includes litigants with limited financial resources.
- 3.26 The argument presented by some respondents comparing the £100 capital contribution to deductions that DWP makes from benefit payments for rent arrears payments to social landlords conflates the issue of income deductions with issues of capital. As such, the Government does not find this argument against the capital contribution to be compelling. Under this policy, free legal aid would remain targeted to the most vulnerable (individuals whose disposable capital is less than £1,000) who do not have the ability to pay towards their case.
- 3.27 The Government notes concerns from respondents such as advice organisations, whose role in the advice sector and community is premised on offering free advice, about recouping the £100 contribution. However, the £100 capital contribution would not apply at the level of initial advice, so this concern appears to be misplaced. Should, for example, law centres offer legal representation in cases, then clients of those organisations are already subject to the legal aid rules relating to contributory payments.
- 3.28 The Government is firmly of the view that people who can afford to pay, or contribute to, the cost of their case, should do so. However, we recognise that at the level of £1,000 of disposable capital individuals' assets may be highly variable in nature, and sums below £1,000 may represent for many a contingency fund. We also recognised the importance of individuals saving for necessities. In addition, the collection of the fee would have delivered only modest savings which would have been off-set, to an extent, by the administration costs of collection. Having considered respondents' concerns we have decided not to proceed with this proposal to introduce a £100 capital contribution.
- 3.29 The June 2011 consultation response therefore confirmed that the Government considered that proceeding with the proposal to ensure that all applicants' disposable

capital is assessed and that monthly contributions are increased will ensure that individuals with sufficient means have a financial interest in how their case is conducted.

### **Capital disregards**

- 3.30 The Government recognises that the system of capital disregards and the waiver system are closely connected. The Government accepts that the waiver is likely to be routinely applied if these and related proposals on capital disregards were implemented.
- 3.31 The Government recognises that there may be practical difficulties with using capital in equity to fund proceedings, and for this reason a waiver was proposed. We accepts, as respondents have argued that it is likely that the vast majority of clients subject to this policy would need to take advantage of the waiver, and therefore immediate savings would be minimal. In addition it is likely to take a number of years before charges placed on property would be redeemed. Having conducted further work during the consultation period, the Government considered that the proportion of homeowners who are eligible for legal aid is significantly smaller than originally estimated. Therefore, only a small proportion of legally-aided individuals are homeowners, and the vast majority of them would qualify for the waiver, and savings would only be delivered in the long-term. We therefore considers that this reform does not justify the additional complex and potentially expensive administrative burden it would place on individuals or the Legal Services Commission's successor.
- 3.32 The Government recognises that this may mean that people with substantial assets may still be eligible for legal aid. We acknowledge that some respondents have commented that the current system of capital disregards is generous. However, we consider that retaining the current system is capital disregards can be justified as:
- a relatively small proportion of home owners will be eligible for legal aid; and
  - they may have difficulty in releasing the equity from their property.
- 3.33 The Government therefore concluded as confirmed in the June 2011 consultation response, that the costs of these proposed reforms outweigh the benefits and decided not to proceed with these proposals to abolish the equity and pensioner disregards.

### **Mortgage disregards and gross capital limits**

- 3.34 Retaining the mortgage disregard limit with the £100,000 cap removed found favour with many respondents. However, introducing a gross capital limit received a much less favourable response. The Government recognises that implementing these policies in isolation from the other changes to capital disregards may also lead to more individuals (with relatively expensive properties but high mortgages) being eligible for legal aid. This in turn may result in additional financial demands on limited public legal aid funds.
- 3.35 The policies on the mortgage disregard and gross capital limits were developed as part of a package of proposed changes to capital disregards and the discretionary waiver scheme. However, the Government recognises that abolishing the current capital disregards and introducing the revised system set out in the consultation paper, would mean that a complex and expensive administrative system would have to be put in place.

3.36 The Government has concluded that, as an overall package, the limited financial benefits were outweighed by the additional administrative costs. We therefore confirmed in the June 2011 consultation response that we did not intend to implement these proposed reforms on mortgage disregards and gross capital limits.

#### **Discretionary waiver scheme**

3.37 For the reasons set out earlier, the Government has decided not to proceed with the related package of proposals to abolish capital disregards, or to the discretionary waiver scheme.

#### **The 'subject matter of the dispute' disregard**

3.38 This policy was developed to address a deficiency in the current system that means that parties who are contesting ownership of a very expensive property may be eligible for legal aid for advice (though not representation). For this reason, although it is related to the wider policies on capital disregards, it can be considered separately, and is not contingent on the implementation of the others. The Government believes that its implementation would serve to streamline and ensure a consistent limit is applied to different types of cases. This would ensure that limited legal aid resources are not expended on those who own high value properties but instead are focussed on those most in need. Currently, in assessing eligibility for controlled work, such as Legal Help, the value of any assets that are disputed in the proceedings is completely disregarded, meaning that extremely wealthy people can currently obtain legal aid for advice in relation to disputes about contested property.

3.39 While we note respondents' arguments that the £100,000 cap should not apply for legal help, we are of the view that early resolution should be an objective in all cases in so far as possible and is not contingent on the availability of free legal aid help where clients have the resources to pay for or contribute to the costs of legal advice. While we note respondents' concerns that the disputed nature of the assets may make it more difficult to secure a loan against these assets we also note that:

- persons seeking legal aid for representation are already subject to this £100,000 subject matter of dispute cap and as such are required to draw upon their own resources where they have sufficient assets, and;
- the sums required to pay for legal advice would be significantly lower than the current expectation that clients above the limits fund their own legal representation

3.40 Having considered the responses to the consultation, the June 2011 consultation response confirmed the Government's view that a consistent £100,000 cap for the subject matter of the dispute should be applied to different types of cases and at all levels of service. For this reason, it was decided to retain the subject matter of the dispute disregard but to cap it at £100,000 for all levels of service, as proposed in the consultation.

#### **Income contributions**

3.41 The Government expressly addressed the issue of expenditure on food, utilities and other items in the consultation paper. The Government explained that it had taken the decision not to lower the £316 threshold for financial contributions, as this threshold broadly reflects the level of subsistence benefits payments which are intended to cover the basic elements such as food, utilities and other items. As such, the consultation paper did not propose to change the criteria used to assess disposable income, and there are no plans to amend these.

- 3.42 This policy aimed to achieve the Government's objective of increasing financial ownership of litigation and was developed to ensure that the increased contributions for low income clients were limited. However, the potential savings from this policy are significant. By increasing the contribution of those who have the means to contribute, limited public legal aid funds are preserved to assist those who are the most financially vulnerable and do not have the means to contribute.
- 3.43 The Government does not accept the suggestion that the means test fails to take account of the position of disabled clients. Under the relevant regulations certain disability benefits, such as disability living allowance, are disregarded in calculating disposable income to reflect the extra costs incurred by disabled people.
- 3.44 Of those respondents who expressed a preference, the majority favoured option 1 as being the more equitable of the two options for increasing monthly contributions.
- 3.45 For these reasons, June 2011 consultation response confirmed that the Government would proceed with this proposal to increase the monthly income based contributions as set out under option 1 in the consultation paper.

### **Conclusion**

- 3.46 Having given due consideration to the responses to the consultation, the June 2011 consultation response confirmed that the Government had decided:
- to apply the same capital eligibility rules to applicants in receipt of passporting benefits as other applicants for legal aid;
  - to retain the 'subject matter of the dispute disregard' capped at £100,000 for all levels of service;
  - to increase the levels of income based contributions to a maximum of 30% of monthly disposable income, as set out under option 1 of the consultation.

### **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

- 3.47 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out the legal duties section of the introduction to this EIA.
- 3.48 As noted in paragraph 24 above, these changes will apply to all people, irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they will give rise to any direct discrimination or discrimination arising in consequence of a person's disability. The form of prohibited conduct which is potentially relevant to the reforms to change the eligibility rules for legal aid is therefore indirect discrimination and the duty to make reasonable adjustments. We have identified the potential for some groups to be at risk of particular or substantial disadvantage under the reforms above. However, for the reasons set out in the introductory section of this document, from paragraph 3.49 below, and elsewhere, we consider that the reforms are a proportionate means of meeting our legitimate policy objectives and that reasonable adjustments are being made.
- 3.49 The changes to legal aid eligibility are in our view likely to amount to 'provisions, criteria or practices' within the meaning of the Equality Act 2010. We do not believe that these would serve to place any group of clients at a particular disadvantage when compared with others, and moreover we believe these policies to be proportionate to achieve the legitimate aims.

3.50 We hold data for clients on the protected characteristics of sex, race, disability and age, and this is set out above. For the protected characteristics of marriage and civil partnership, pregnancy or maternity, gender reassignment, religion and belief and sexual orientation, we do not consider that the nature of the reforms would be likely to have any particularly disadvantageous effect.

### **Consideration of potential statistical impacts and justification**

3.51 Our assessment of the impact that the changes to the eligibility rules for civil legal aid will have is set out above. Respondents to the consultation raised equalities points including that:

- people who have retired who have savings and / or equity in their property will need these to fund their retirement, and that changes to the eligibility rules would therefore have a greater impact on them;
- disabled people often have added expenditure related to their disability, and so would be particularly affected if required to contribute more to the costs of their cases; and
- reductions in the number of people who are eligible for legal aid will disproportionately affect women, and in particular women on low incomes and women who share more than one protected characteristic (including BAME women).

3.52 We decided not to proceed with the proposals to require clients with £1,000 or more of disposable capital to make an additional £100 contribution to the cost of their case, and not to proceed with the proposals to abolish capital disregards. This meant that fewer clients would be affected by the changes (and so providers will also see a lesser impact) than if we were to implement the proposals as consulted upon. As noted in both the initial EIAs and in the analysis in this document those affected by changes to legal aid eligibility are drawn from a group where women, BAME people and the ill and disabled are over-represented.

3.53 Older people in particular would have clearly been affected by the removal of the pensioner disregard, and due to the changes we have made to the proposals following consultation fewer people will now be affected.

3.54 However, because of a lack of data on individual clients' means and circumstances it is not possible to quantify this change in impacts, and it does not affect the overall assessment of the impact that these changes are likely to have.

3.55 As noted above, respondents made a number of alternative proposals for reform which would not involve changes to legal aid eligibility. However, for the reasons set out in this document and the Government response to consultation these proposals are unlikely to achieve our aims. Respondents also suggested alternatives to the proposals to change eligibility, including making the proposed capital waiver automatic. As noted above, we are not pursuing this aspect of the reforms.

3.56 As set out above we consider that in light of the need to make savings from legal aid these changes to civil legal aid eligibility are justified and proportionate. Further, we consider that our policies are necessary and justified by the need to achieve our objectives of focusing limited public legal aid funds on the most financially vulnerable clients and increasing financial ownership of litigation.

## **Advancement of equality of opportunity, fostering of good relations**

- 3.57 We have considered whether these policies have implications for the advancement of equality of opportunity and the fostering of good relations. We do not consider that the changes to civil legal aid eligibility would affect the participation of persons who share a relevant protected characteristic and who are under-represented in public life.

### **Next steps**

- 3.58 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.
- 3.59 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single mandatory gateway for specific types of law and the removal of legal aid for some types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.

## 4. Remuneration in civil and family proceedings

### Description

- 4.1 The following options were consulted upon:
- Reduce all fees paid in civil and family matters by 10%
  - Cap and set criteria for enhancements to hourly rates payable to solicitors in civil cases
  - Codify the rates paid to barristers subject to a 10% reduction
  - Apply risk rates to every civil non-family case where costs may be awarded against the opponent and to apply risk rates from the end of investigative stage or once total costs reach £25,000 or from the beginning of cases with no investigative stage
  - Cap and set criteria for enhancements to hourly rates payable to solicitors in family cases
  - Restrict the use of Queen's Counsel in family cases
- 4.2 These policies remained unchanged during the passage of the LASPO Bill through Parliament.

### Legal Duties

- 4.3 The legal duties that apply to MoJ are set out in full in the introduction to this document.

### EIA-specific issues raised in consultation responses

- 4.4 Respondents to the consultation primarily raised the potential for indirect discrimination of female and BAME practitioners, stating that, for both advocates and litigators, the level of representation of individuals with these protected characteristics was high in publicly funded work. As such, it was argued that reductions in remuneration levels would deter individuals from these groups from working in legal aid, affecting the diversity of the provider base.
- 4.5 The Bar also took this argument further, arguing that reductions in the levels of diversity at practitioner level would mean that the future diversity of the judiciary would be undermined.

### Analysis of Statistical Impacts

#### *Clients*

- 4.6 The key issue in relation to the reforms to civil legal aid fees is whether clients with cases remaining within the legal aid scheme will receive an appropriate service. As the changes concern remuneration for providers we do not consider that they are likely to have a direct impact on clients however, 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.

- 4.7 While previous fee cuts to date do not appear to have had an adverse impact, there is a risk that the legal aid services market may not be able to sustain the cuts to scope and fees that form part of this final package of legal aid reform. There are two potential adverse impacts on the market: the number and type of suppliers; and the quality of advice received. The most recent survey of law firms was commissioned by the Law Society during the consultation period. This suggested that while the fee cuts were likely to be broadly sustainable, the market may not be able to sustain the scope cuts with particular risks for smaller criminal concerns in London and civil / family firms more generally. However, the quantitative results are based on a small and possibly unrepresentative sample. In addition, there are issues with self-reporting and it is unclear whether the assumptions used to drive the financial calculations are robust, so the extent to which the results are reliable and representative of the wider market cannot be validated. Evidence from the Scottish Legal Aid Board suggests that there was an increase in solicitors' firms registered to provide legal aid services, despite cuts in legal aid fees paid to suppliers, but we cannot assume that the market in England and Wales will behave in the same way.
- 4.8 To mitigate any potential risk that clients may not be able to access legally aided services the Government is working with the LSC to ensure that they have robust mechanisms in place to identify any developing market shortfall and that they are able to respond promptly, effectively and appropriately, should this materialise in any form. This is being accompanied by the development of an appropriate client and provider strategy which includes consideration of the best way that services remaining in scope can be bundled in future procurement rounds to ensure that clients are able to access the services they need. In the longer term, the move to competition is designed to ensure that legal aid services are procured at a rate the market is able to sustain.
- 4.9 We have also considered the characteristics of civil legal aid clients who would be affected if risks to sustainable supply were realised in order to identify the potential for any disproportionate impact. This shows that women are over-represented among civil legal aid clients when compared with the population of England and Wales as a whole, as are BAME people and those who are ill or disabled. A greater proportion of clients are aged between 25 and 64 than in the population of England and Wales as a whole, while a smaller proportion are aged under 25 and over 65 (see Tables 1-3 and 4-7 in the data section of this EIA).

#### ***Solicitor and NfP Providers***

- 4.10 It is only possible to model the effect of the 10% reduction option within the package of civil remuneration reforms on providers, as detailed data which would allow us to assess the changes to enhancements and the use of QCs is not held. As such, no particular discriminatory disadvantageous impact has been identified - the reduction affects all providers across the board.
- 4.11 Even if there is a particular disadvantage for a protected group, as opposed to their comparators, this proposal has generally not been remarked on as discriminatory and has even been considered a potentially fair option. Indeed the Bar Council Response to question 34 states: '*[w]e accept that if there is to be a 10% reduction across the board then it should plainly be applied equally to barristers fees. But the reduction should be to rates actually paid and not to national standard rates*'.<sup>22</sup>
- 4.12 As set out in the section on client impacts, above, taking into account all of the available data, on balance, we consider that the proposed reductions are likely to be

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<sup>22</sup> Bar Council, p. 155. See further Law Society paragraphs 5.9-5.11

sustainable. To mitigate any potential risk in this area MoJ will work with the LSC on a client and provider strategy and monitor the actual impact that the reforms have on providers and clients as part of the post-implementation review of the scheme.

### ***The Bar***

- 4.13 As noted above in paragraphs 2.257 - 2.262 in the section on scope changes, barristers practising in civil and family law are more likely to be female, BAME and ill or disabled. Therefore reforms to the fees for this work might lead them to be put at a particular or substantial disadvantage.

### **Comparison with previous EIAs**

- 4.14 As noted in paragraph 4.5 above, we do not consider that the reform of civil fees will affect clients as after reviewing the available evidence we believe the legal aid market will be sustainable.
- 4.15 The reforms affect all providers equally, as the fee reductions are uniform. Therefore we did not identify any potential particular or substantial disadvantage as a result of the changes in the initial EIA.
- 4.16 The analysis of this reform in this full EIA is therefore consistent with that in the initial EIA.

### **Decision in June 2011 consultation response**

#### **Reducing civil and family fees codifying and reducing barristers' rates**

- 4.17 Under section 25(3) of the Access to Justice Act 1999, the Lord Chancellor is explicitly required to have regard to the cost of public funds and the need to secure value for money when setting remuneration rates. Given the urgent need to address the fiscal deficit the Government's view is that it is crucial to review every area of expenditure to ensure that this duty is being met and that the amount that it pays for any service represents maximum value for money. In this context the Government considers that it needs to ensure that it only pays those fees that are absolutely necessary to secure the level of services that are required.
- 4.18 As noted above, the Bar Council specifically argued that the benchmark rates set out in Table 5 of the consultation paper were incorrect. While they did not provide any specific examples of cases where higher fees were being paid, the Government made it clear in paragraph 7.14 of the consultation paper that it intended to set the rates for Queen's Counsel in the Supreme Court at a different level to those in the High Court and Court of Appeal to reflect the novelty and complexity of the case issues being advocated at that level. Therefore the rates set out in Table 5 of the consultation paper for Queen's Counsel High Court and Court of Appeal do intentionally represent a reduction to the rates currently paid at that level. However, the Government has revisited the other proposed rates and has identified that the rate of £120 per hour for junior counsel in the county court contained in Table 5 in the consultation paper was incorrect. Further discussions with the LSC have confirmed that split rates of £125.00 outside London and £150.00 inside London are currently used as the starting point for payments to counsel in the county courts, with staff having discretion to award higher levels if they consider it justified. Otherwise the Government is satisfied that the rates set out in Table 5 do accurately reflect the rates currently paid.
- 4.19 Clearly no provider is likely to support changes that directly impact on their own income, therefore the opposition to the proposed general reduction in fee levels was

to be expected. However, in this context it is interesting to note the substantial support from the solicitor sector for codifying and reducing barrister's fees. This reflects concern amongst solicitors, generally, about the different rates currently payable to barristers and solicitor advocates for comparable work.

- 4.20 The codification of barrister's rates and reduce all fees paid in civil and family matters by 10% will deliver an estimated £50m in annual steady-state savings. This will make an important contribution to making substantial savings in overall legal aid spend. While the Government accepts that there is a risk that the proposed fee reductions could lead to at least some providers leaving the legal aid market, given the current fiscal deficit it considers that it has to look critically at what the market can sustain as opposed to what providers would like to receive in terms of remuneration for legal aid work.
- 4.21 As was set out in Annex F of the consultation response, taking into account all of the available data, on balance, the Government concluded that the proposed reductions are likely to be sustainable. It considers that they draw an appropriate balance between the need to reduce spending and encouraging providers to be efficient and innovative, while ensuring that clients can continue to access legally aided services where absolutely necessary. Although there is a risk of short term disruption in supply in some areas, particularly immigration and asylum and some other areas of work mainly provided by the Not for Profit sector, it is confident that these could be dealt with by appropriate mitigating action by the LSC, such as running additional bid rounds and / or expansion of other services such as telephone, if suitable.
- 4.22 For the reasons set out above the June 2011 consultation response confirmed that the Government's decision to:
- implement the proposed 10% reduction in all fees paid under the civil and family legal aid scheme; and,
  - codify barristers rates, subject to a 10% reduction, as proposed in Table 5 of the consultation paper, subject to amending the county court rate to reflect that currently being applied by the LSC
- 4.23 These changes have since been implemented.
- 4.24 The 10% reduction applies to all fees and hourly rates paid under the civil and family legal aid scheme, except those where the service has been procured following competition on price, regardless of whether the service provided is subject to fixed rates, general assessment or an individually negotiated contract. This includes Very High Costs Cases which are paid under hourly rates or "events rates" models, but not those paid under risk rates

#### **Enhancements in civil and family cases**

- 4.25 Although the current limits have been in place since 2007, indicative data from the LSC and the general consensus amongst respondents is that very few cases currently exceed the proposed new lower limits. The Government therefore accepts that any savings that would arise at this time would be negligible. It also recognises that, while it is not possible to assess what the precise impact on individual providers might be, where a particular provider has received enhancements at the higher rates in the past, the proposed new caps would mean that they would receive less income for similar cases in the future. While the Government accepts that this may mean that some practitioners would leave the legal aid market, as noted in Annex F of the consultation response, the Government is satisfied that the proposed changes are likely to be sustainable.

- 4.26 As noted above, the Government accepted that any savings that would arise from the introduction of the proposed new limits on enhancements at this time would be negligible. However, this is solely due to the fact that very few cases currently appear to exceed those new limits. It is far from clear that this would be the case in the future. Given the pressing need to address the fiscal deficit the Government considers that it is important to take steps now to ensure that there are appropriate controls in place to avoid future cost pressures. It considered that the changes proposed in the 2010 consultation paper to the maximum level of enhancements that can be paid in civil and family cases are critical to this in providing greater certainty and control over those areas not covered by standard fees and hourly rates. Given the general consensus about the very limited numbers of cases to which higher rates currently apply, it is satisfied that lower maximum limits can be applied without adversely affecting sustainability.
- 4.27 During the consultation the Government identified that paragraph 7.12 of the consultation paper incorrectly suggested that the maximum rate of enhancement that would payable in civil (non-family) cases in the Upper Tribunal would be 50%. These cases currently attract the same level of enhancement as the High Court, Court of Appeal and Supreme Court and it is not the Government's intention to alter this link. Therefore, the maximum rate of enhancement that would be payable in these cases should also be 100%.
- 4.28 The LSC already publish guidance on the application of enhancements which contains detailed and comprehensive criteria. Given that only a small minority of cases appear to currently exceed the proposed new thresholds and the limited suggestions for additional / revised criteria, the June 2011 consultation confirmed that the Government is satisfied that new criteria are not necessary at this time.
- 4.29 The June 2011 consultation response therefore confirmed that Government had therefore decided to cap the maximum level of enhancements that can be paid to solicitors in civil and family cases generally, as proposed in the consultation paper, but to apply the 100% cap on enhancements to civil (non-family) cases in the Upper Tribunal. This change has now been implemented. However, the Government does not intend for this to lead to a pro rata reduction in the level of enhancements currently awarded below the new, lower caps and will consider with the LSC how this can be clarified in guidance.
- 4.30 Given that the existing LSC guidance is sufficiently detailed and comprehensive the Government decided not to introduce new criteria at this time.

### **Risk Rates**

- 4.31 The consultation paper set out the Government's view that the system of risk rates discourages lawyers from proceeding with cases which have little chance of success. The purpose of the consultation was to explore whether they could be applied at a much earlier stage in the process before costs had reached such a high level. In light of the consultation responses and further modelling, the June 2011 consultation response confirmed that the Government concluded that the majority of cases that could realistically be affected by any extension of risk rates would be public law cases, most of which would be Judicial Reviews. In these cases, risk rates would only apply after the initial application for permission has been considered and therefore after weaker cases have been filtered out. As a result, the Government concluded that any extension would be unlikely to have a particular impact on the number of cases being issued.

- 4.32 The consultation paper also set out the Government's view that the current system of risk rates resulted in a higher success rate at a lower cost to the legal aid fund, resulting in improved results for clients and greater value for money for the fund. However, the system of risk rates is dependent upon successful parties being able to recover their costs at full inter-parties rates. Many respondents argued that public law cases, in particular, were often settled on the basis that the defendant / appellant does not seek an order for costs, and even where the case is resolved in court it will often result in no order for costs. While it is essentially a matter for the judiciary, it would be reasonable to expect that any extension of risk rates would therefore result in the courts coming under increasing pressure to make more costs orders. If granted, these would result in potentially significantly higher costs for public authorities defending these cases.
- 4.33 The extent of any additional costs that could be faced by public authorities would, to a large extent, depend upon the reaction of the judiciary. Currently, when deciding on the question of costs, the courts follow the general guidance set down in the case of *Boxall v Mayor and Burgess of the London Borough of Waltham Forest*. This sets out that the overriding objective of the court is to do justice without incurring unnecessary court time and consequently additional cost to either side. As a result, the courts generally will not award costs against a public authority where the case has been settled after the permission stage without the need for a hearing.
- 4.34 The Government believes that a large proportion of public law cases are settled at a relatively early stage in proceedings and wants to avoid changes that could unnecessarily prolong litigation as defendants sought to avoid costs being awarded against them.
- 4.35 Although it is difficult to assess precisely how the judiciary are likely to respond to the proposed extension of risk rates, the Government takes the view that there is a high risk that significant additional costs could be imposed on defendants. Given that any costs orders would be payable at private client rates, which are nearly double the rates paid under legal aid, it is likely that any savings to the legal aid fund from the introduction of risk rates would be exceeded by the additional costs imposed on defendants.
- 4.36 For the reasons set out above the June 2011 consultation response confirmed that Government decided not to proceed with the risk rates proposals.

#### **Use of Queen's Counsel in family cases**

- 4.37 Given the urgent need to address the fiscal deficit the Government view is that it is crucial to review every area of expenditure to ensure that this duty is being met and that the amount that it pays for any service represents maximum value for money. In this context the Government considers that it needs to ensure that it only pays the level of fees that are absolutely necessary to secure the correct level of services that are required.
- 4.38 The use of QCs is a very specialised resource. The Government believes that this should only be provided at public expense where it is truly necessary. However, LSC analysis and the general consensus amongst respondents suggest that they are used by parents in public law family cases regardless of the level of Counsel employed by the public authority. While the Bar Council have argued that use of a QC by a local authority should not be relevant to parents facing serious allegations, it is not clear that a QC is necessarily needed in all the cases where they are currently employed.

- 4.39 In their response the Law Society and many solicitor respondents took the view that there were only a minority of cases where the use of an extremely experienced counsel was necessary and that, in any event, this input was often only needed at a particular stage, not through the whole duration of a case. For example, there could be instances where there was a very complex interim hearing requiring the use of a QC, but afterwards the issues simplify. Therefore, while their input may be needed initially, there is no absolute need for any ongoing involvement. The revised criteria contain the flexibility to permit the use of a QC regardless of the approach taken by a local authority where there are exceptional features to a case and the Government is satisfied that this should provide an appropriate safeguard to ensure that QCs can be used where and when their expertise is necessary.
- 4.40 The Government is satisfied that the criteria will provide sufficient flexibility to permit the use of a QC where the expert input provided by a QC is necessary. The June 2011 consultation response therefore confirmed that the Government would tighten the guidance covering the engagement of a QC in a family case (whether the case is above or below the VHCC threshold) to make clear that they should only be approved by the LSC if they meet provisions equivalent to those applying in criminal cases, as proposed in the consultation. This change has now been implemented.
- 4.41 Payments made to QCs in these cases have also been reduced by 10% in line with the general reduction to all fees paid under the civil and family legal aid scheme.

#### **Remuneration for excluded cases**

- 4.42 Given the urgent need to address the fiscal deficit the Government view is that it is crucial to review every area of expenditure to ensure that this duty is being met and that the amount that it pays for any service represents maximum value for money. It considers that it needs to ensure that it only pays the level of fees that are absolutely necessary to secure the correct level of services that are required. It simply cannot afford to pay rates that are in excess of this level.
- 4.43 In this context, it is essential that the Government takes steps to ensure that there are appropriate controls and safeguards in place to manage future spend. The Government therefore believes it is desirable to retain existing current fixed fee or hourly rate in the relevant category, subject to the proposed reduction of 10%, for excluded cases, as differential rates could have the undesired effect of incentivising the taking of exceptional funding cases as opposed to those remaining in scope.
- 4.44 The June 2011 consultation therefore confirmed the Government's decision that cases funded in future through the new scheme for excluded cases, should be paid at the current fixed fee or hourly rate in the relevant category, subject to the proposed reduction of 10%.

#### **Conclusion**

- 4.45 Having considered, and given due weight to the responses to the consultation, the June 2011 consultation response that the Government would introduce the following reforms to remuneration in civil and family proceedings:
- To reduce all fees paid in civil and family proceedings by 10%, as proposed in the consultation;
  - To cap enhancements to hourly rates payable to solicitors in civil cases as proposed in the consultation;
  - To codify the rates paid to barristers, and reduce them by 10%;

- To cap enhancements to hourly rates paid to solicitors in family cases, as set out in the consultation;
- To restrict the use of Queen's Counsel in family cases to cases where provisions similar to those in criminal cases apply, as set out in the consultation;
- To pay cases funded, in future, through the new scheme for excluded cases, at the current fixed fee or hourly rate in the relevant category, subject to the proposed reduction of 10%.

4.46 The 10% reduction applies to all fees and hourly rates paid under the civil and family legal aid scheme, except those where the service has been procured following competition on price, regardless of whether the service provided is subject to fixed rates, general assessment or an individually negotiated contract. This includes Very High Costs Cases which are paid under hourly rates or "events rates" models, but not those paid under risk rates.

4.47 These were implemented by secondary legislation under the Access to Justice Act 1999 and amendment to LSC contracts in October 2011 and February 2012.

#### **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

4.48 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out the legal duties section of the introduction to this EIA.

4.49 As noted in paragraph 26 above, these changes will apply to all people, irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they will give rise to any direct discrimination or discrimination arising in consequence of a person's disability. We also do not consider this area is likely to give rise to a need for any particular reasonable adjustments as none have been suggested in the consultation responses. The form of prohibited conduct which is potentially most relevant to the reforms to the civil fees rules for legal aid is therefore indirect discrimination and we have identified the potential for some groups to be at risk of particular disadvantage under the reforms above. However, for the reasons set out the introductory section of this document, from paragraph 4.50 below, and elsewhere, we consider that the proposed reforms are a proportionate means of meeting our legitimate policy objectives.

4.50 While we believe that changes to civil legal aid remuneration are likely to amount to provisions we do not believe that they are likely to put any protected group at a particular disadvantage.

4.51 While we hold data on the protected characteristics of sex, race, disability and age, as set out above it has not been possible to use this data to assess the potential impact of the changes to civil legal aid fees. We do not hold data on the protected characteristics of marriage and civil partnership, pregnancy or maternity, gender reassignment, religion and belief and sexual orientation, and we do not consider that the nature of the reforms would be likely to have any disproportionate effect on people based on having any of these protected characteristics.

#### **Consideration of potential statistical impacts and justification**

4.52 Our assessment of the impacts of the changes to civil legal aid fees, and how this compared with the assessment in the initial EIAs, is set out above. Respondents to the consultation raised equalities issues as a result of these proposals, including that:

- among barristers BAME women are over-represented in publicly funded family work and the proposals will have a particular effect on them and their progress in the profession, with knock-on effects on judicial diversity; and
- smaller and 'niche' firms that serve BAME clients would be particularly affected by reductions in remuneration rates.

4.53 Respondents to the consultation suggested a range of alternative options some of which, such as a levy on alcohol, do not imply a change to lawyers' fees while others, such as a cap on individual's earning from legal aid might. However, as set out above and in the Government response to consultation, we do not consider that these proposals would meet our aims.

4.54 Following consultation we decided not to pursue the proposal to extend the use of 'risk-rates' for civil legal aid cases, and therefore fewer cases will be affected by the reforms than if we had implemented the proposals as consulted on. The Bar were particularly concerned about the potential impact of this proposal and because of this decision the impact of the reforms on the Bar is less than would have been the case if we had implemented the proposals as consulted upon.

4.55 As set out in the introductory section of this document, we consider that the overarching need to make savings from legal aid justifies the proposals, including cuts to legal aid fees, and that they are a proportionate means of achieving our legitimate aims. Further, as set out above, reform of civil legal aid fees is also necessary to achieve our policy objectives as it is important to take steps now to ensure that there are appropriate controls in place to avoid future cost pressures, and provide greater certainty and control over those areas not covered by standard fees and hourly rates. In relation to the changes to the use of QCs, the Government believes that such a specialist and expensive resource should only be provided at public expense where it is truly necessary.

### **Advancement of equality of opportunity, fostering of good relations**

4.56 As set out in paragraph 26 of the introductory section of this EIA, we have considered whether these proposals have implications for the advancement of equality of opportunity and the fostering of good relations.

4.57 We do not consider that the changes to civil legal aid remuneration would affect the participation of persons who share a relevant protected characteristic and who are under-represented in public life.

### **Next steps**

4.58 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.

4.59 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single

mandatory gateway for specific types of law and the removal of legal aid for some types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.

## 5. Remuneration in criminal proceedings

### **Description**

5.1 The following options were consulted upon:

- 1 Introduce a single fee of £565 in either way cases suitable for summary trial that result in a cracked trial or a guilty plea, enhance the lower standard fee for cracked trials and guilty pleas in the magistrates' court in either way cases and abolish the committal fee paid under the litigators' graduated fee scheme.
2. Harmonise fees for guilty pleas and cracked trials in indictable only and either way cases where magistrates have declined jurisdiction and enhance the guilty plea fee by 25%
3. Adjust some graduated fee categories (murder / manslaughter and dishonesty offence)
4. Align magistrates' court fees in London with other major urban areas
5. Reduce advocates graduated fees – 'bolt ons'
6. Harmonise payments in Very High Cost Cases
7. Limit the use of leading counsel, and / or multiple advocates

5.2 These policies were implemented under existing legislation in October 2011.

### **Legal Duties**

5.3 The legal duties that apply to MoJ are set out in full in the introduction to this document.

### **EIA-specific issues raised in consultation responses**

- 5.4 The points made above in relation to civil remuneration were also raised concerning the proposed changes to criminal remuneration.
- 5.5 Some respondents also noted that as London has the largest number of firms with majority BAME ownership and control, and as a larger proportion of solicitors in London are BAME, the removal of London weighting in magistrates' court fees could have a disproportionate effect on them.

### **Analysis of Statistical Impacts**

#### **Fees for guilty pleas in either way cases in the Crown Court deemed suitable for summary trial**

##### ***Solicitor providers***

5.6 Of those providers for which equalities data is available, there was no difference in impact seen between male and female owned and controlled providers under this reform (2% average reduction in income). White British owned and controlled providers similarly saw the same average impact as their BAME owned and controlled counterparts (a 2% average reduction in income). Impacts on providers

employing an ill or disabled manager were also the same as on those employing an ill or disabled manager, with both seeing an average reduction in legal aid income of 2%.

### **Fees for guilty pleas and cracked trials in the Crown Court**

#### ***Solicitor providers***

- 5.7 Of those providers for which equalities data is available, there is no evidence of any differential impact between male and female owned and controlled providers under this reform (3% and 2% average reductions in legal aid income respectively - see Table 20). There was also no differential impact between White British owned and controlled providers and their BAME owned and controlled counterparts (a 2% and 3% average reduction in income respectively). Impacts on providers employing an ill or disabled manager and those that do not are also of the same order (a 3% compared with a 2% average reduction in legal aid income respectively).

#### ***The Bar***

- 5.8 The overall impact of this proposal would be a reduction of 25% in the Advocates Graduated Fees Scheme (AGFS) payments to barristers in affected cases. It is not possible to identify individual equality impacts as a result of this reform, as a consequence of a shortfall in equalities data on advocates.

### **Fees in cases of murder and manslaughter**

#### ***Solicitor providers***

- 5.9 Of those providers for which equalities data is available, there was no difference in impact seen between male and female owned and controlled providers under this reform (1% average reduction in income, Table 21). There was also no difference between White British owned and controlled providers and their BAME owned and controlled counterparts (1% average reduction in legal aid income). Impacts on providers employing an ill or disabled manager and those that do not were also equal (1% average reduction in legal aid income).

### **Fees in cases of dishonesty**

#### ***Solicitor providers***

- 5.10 Of those providers for which equalities data is available, there is no evidence of any differential impact. Male owned and controlled providers are expected to experience a similar impact under this reform to their female owned and controlled counterparts (1% compared with a 1% average reduction in legal aid income (see Table 22). BAME owned and controlled providers are expected to experience a similar impact to their White British owned and controlled counterparts (1% compared with a 0% average reduction in income). Impacts on providers that did not employ an ill or disabled manager are also of a similar order for those that did employ an ill or disabled manager (1% compared with a 0% average reduction in legal aid income).

### **Fees in the magistrates' courts in London**

#### ***Solicitor providers***

- 5.11 Of those providers for which equalities data are available, there was no evidence of a any differential impact. Male and female owned and controlled providers are both expected to experience a 3% average reduction in legal aid income (see Table 23). White British owned and controlled providers are likely to experience an average 3%

reduction in legal aid income compared to 2% for BAME owned and controlled counterparts. Impacts on providers employing an ill or disabled manager and those that do not were equal (2% average reduction in income).

### **Ancillary Payments (bolt-ons)**

#### ***The Bar***

- 5.12 Modelling under this reform suggests that it would result in an average reduction in legal aid income of 4% for barristers. As this reform affects advocates rather than litigators, it is not possible to identify individual equality impacts, as a consequence of a shortfall in equalities data on advocates.

### **Very High Cost (Criminal) Cases**

#### ***Solicitor providers***

- 5.13 Modelling under this reform produces estimates which suggest all providers are likely to experience an average reduction in income of 0% irrespective of equality characteristics. This is due to the reform affecting very few cases, and as such does not have a noticeable impact on individual firms' legal aid income when considered as a proportion of total income. At the aggregate level, the net reduction in legal aid income for all providers affected by this reform is 3%, but this does not translate to measurable reductions when providers are grouped by individual equality characteristics i.e. the resulting impacts are 0%. This is because, at the individual provider level, there are very few of these cases and as such they do not have a measurable impact when considered as a proportion of overall fund take.

### **Combined impact of the criminal fee reforms**

#### ***Statistical analysis of impacts***

#### ***Clients***

- 5.14 The key issue is whether clients with cases remaining within the legal aid scheme will receive an appropriate service. As these changes concern remuneration for providers we do not consider that they will have a direct impact on clients however, clients could be affected if the changes have an impact on the sustainability of the legal aid market meaning that services are affected.
- 5.15 While previous fee cuts to date do not appear to have had an adverse impact, there is a risk that the legal aid services market may not be able to sustain the cuts to scope and fees now proposed. There are two potential adverse impacts on the market: the number and type of suppliers; and the quality of advice received. The most recent survey of law firms was commissioned by the Law Society during the consultation period. This suggested that while the fee cuts proposed in the consultation are likely to be broadly sustainable, the market may not be able to sustain civil scope cuts with particular risks for smaller criminal concerns in London and civil / family firms more generally. However, the quantitative results are based on a small and possibly unrepresentative sample. In addition, there are issues with self-reporting and it is unclear whether the assumptions used to drive the financial calculations are robust, so the extent to which the results are reliable and representative of the wider market cannot be validated. Evidence from the Scottish Legal Aid Board suggests that there was an increase in solicitors' firms registered to provide legal aid services, despite cuts in legal aid fees paid to suppliers, but we cannot assume that the market in England and Wales will behave in the same way.

- 5.16 To mitigate any potential risk that clients may not be able to access legally aided services the Government is working with the LSC to ensure that they have robust mechanisms in place to identify any developing market shortfall and that they are able to respond promptly, effectively and appropriately, should this materialise in any form. This is being accompanied by the development of an appropriate client and provider strategy which includes consideration of the best way that services remaining in scope can be bundled in future procurement rounds to ensure that clients are able to access the services they need. In the longer term, the move to competition is designed to ensure that legal aid services are procured at a rate the market is able to sustain.
- 5.17 We have also considered the characteristics of criminal legal aid clients who would be affected if risks to sustainable supply were realised in order to identify the potential for any disproportionate impact. Data on the age of clients in criminal cases is not collected, so analysis cannot be presented for this protected characteristic. However data is collected on sex, race, and disability. This shows that men are over-represented among criminal legal aid clients when compared with the population of England and Wales, as are BAME people. The large amount of missing data on the disability status of criminal legal aid clients means that robust conclusions cannot be drawn, and we cannot rule out the potential that ill or disabled people might be disproportionately affected if, contrary to our expectations, the reform of criminal legal aid fees did have an impact on clients. Also, we recognise that the client might not be the only person potentially affected by the criminal process.
- 5.18 To mitigate any potential risk in this area MoJ will work with the LSC on a client and provider strategy covering civil and criminal legal aid work. We will also monitor the actual impact that the reforms have on providers and clients as part of the post-implementation review of the scheme.

### ***Solicitor and NfP providers***

- 5.19 As set out in the section on client impacts, above, taking into account all of the available data, on balance, we consider that the reductions are likely to be sustainable. To mitigate any potential risk in this area MoJ will work with the LSC on a client and provider strategy, and monitor the actual impact that the reforms have on providers and clients as part of the post-implementation review of the scheme. We have also undertaken analysis of the impacts that the proposals are likely to have on providers using LSC claim data, and this is set out below.
- 5.20 LSRC collect data to support their *Routine Diversity Monitoring of the Supplier Base* report.<sup>23</sup> In relation to providers delivering criminal legal aid services, they were able to match up to 1,510 provider offices to their equality data. This represents 62% of all providers delivering criminal legal aid services. The following analysis does not consider NfP providers separately as there are so few that conduct criminal legal aid work, and those that do tend to do so in highly specialised areas.
- 5.21 The gender breakdown of all those providers for which equalities data is available who owned and controlled criminal legal aid practices was 70% male, 13% female and 17% mixed who had ownership and control of the firms (see Table 29).
- 5.22 With regard to ethnicity, overall 76% of all providers, for which equalities data is available, affected by the reforms had majority White British ownership and control and 18% majority BAME ownership and control, (with the remaining 6% having mixed ownership and control (See Table 29).

<sup>23</sup> available from: [www.justice.gov.uk/about/lsrc/index.htm](http://www.justice.gov.uk/about/lsrc/index.htm)

- 5.23 Overall, of those providers for which equalities data is available 95% of affected providers did not employ an ill or disabled manager compared with 5% who did.
- 5.24 Based on the LSRC equalities data, there is no evidence of any differential impacts. Those with majority BAME ownership and control are likely to experience an average reduction in legal aid income of (8%) in comparison to those with majority White British ownership and control (6%). Providers with either majority female or male control are estimated to experience similar impacts (6% and 7% respectively). Similarly, providers employing at least one ill or disabled manager are estimated to see no difference in average impact than those that do not employ a disabled manager (7%).

### **London / Non London reduction in legal aid income impacts (see Table 30)**

- 5.25 Of the 62% of providers for which equalities data is available, 21% of affected providers were based in London and 79% were based outside of London.
- 5.26 A greater proportion of providers for which equalities data is available outside of London have majority male ownership and control compared with those in London (73% compared with 62%) and a greater proportion also have majority White British ownership and control (86% compared with 39%). However, there was not a large difference in the proportion of providers employing one or more ill or disabled managers in London compared with outside (4% compared with 5%).
- 5.27 Estimates suggest that, across all the equalities strands, providers based in London are likely to experience a higher average reduction in legal aid income as a result of the criminal remuneration reforms when compared with those outside of London (9% compared with a 6% average reduction in income - see Table 30).
- 5.28 Providers with majority male ownership and control will see an average reduction in legal aid income of 10% in London, compared with 6% outside London. Similarly, firms with majority female ownership and control are expected to see an average reduction of 7% in London and 6% elsewhere.
- 5.29 Providers with majority White British ownership and control are likely to experience an average reduction of 9% in London compared with 6% elsewhere. Firms with majority BAME ownership and control are expected to see an average reduction of 9% in London and 6% elsewhere.
- 5.30 Those employing one or more ill or disabled managers will see an average reduction of 10% in London and 6% elsewhere, and those not employing an ill or disabled manager an average reduction in legal aid income of 9% in London and 6% elsewhere.

### ***The Bar***

- 5.31 Overall the changes to criminal remuneration imply an 11% reduction in legal aid income for barristers. It is not possible to assess the actual impact of the reforms on individual barristers because of limitations in the data held on payment to advocates, therefore we have assumed that the reduction in income will be spread evenly across all barristers, who will therefore see an average reduction in legal aid income of 11% as a result of these reforms.
- 5.32 As noted above, as equalities data is not held on individual advocates it is not possible to assess the average impact of the proposals on barristers based on whether they share any of the protected characteristics.

- 5.33 As set out in the initial EIA for the criminal fee changes, data from the *Barrister workforce profile*<sup>24</sup> shows that male barristers and BAME barristers are more likely to practice in criminal legal aid, and therefore be affected by these reforms.

#### **Comparison with consultation paper EIA**

- 5.34 As noted above, we have not identified any potential disproportionate impact on clients as a result of the reforms to change criminal fees. We have identified the potential for the reforms to have a disproportionate impact on male and BAME barristers. These impacts are the same as those identified in the initial EIA for these reforms.
- 5.35 In the initial EIA we identified the potential for the proposals to have a slightly greater impact on firms with majority BAME ownership and control, and while the analysis in this EIA confirms this slight difference in average impact figures we do not consider that this amounts to evidence of a differential impact.

#### **Decision in June 2011 consultation response**

##### **Fees for guilty pleas in either way cases in the Crown Court deemed suitable for summary trial**

- 5.36 Many respondents argued that lawyers do not have any influence over plea. The Government accepts that the final decision on plea rests with the defendant. There is a body of research though, cited recently in a LSRC report,<sup>25</sup> suggesting that many defendants enter the plea their lawyer advises. The Government does not suggest that lawyers necessarily advise on plea based on the likely legal aid fee. However, there remain concerns that the current system of fees does not sufficiently support the aim of speedy and efficient justice and may discourage the defence team from giving early consideration of plea. For the specific group of cases to which these reforms apply, there are significant differences between fees paid in the magistrates' courts and those paid in the Crown Court, depending upon the timing of the plea.
- 5.37 Despite the points raised in consultation responses, the June 2011 consultation response confirmed the Government's view that, in this narrow group of 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. The Government does not believe that the proposal affects the right to jury trial, as that remains an option for the defendant, and the fees paid to the defence lawyers that do go to trial are unaffected by this proposal.
- 5.38 The proposed fee per case of £565 itself has been calculated to be in line with the average cost of an either way guilty plea in the magistrates' court, including those paid at the higher standard fee and non-standard fee. The June 2011 consultation response confirmed the Government in its belief that for this narrow group of cases the fee represents 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.
- 5.39 The Government carefully considered all the arguments and concerns raised by various respondents, including the concern that enhancing the lower standard fee

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<sup>24</sup> LSRC, February 2008 (unpublished).

<sup>25</sup> *Transforming Legal Aid: Access to Criminal Defence Services*, Kemp, V. (2010), London.

was inadequate. We agree that this reform is likely to result in an increase in the number of either way cases being heard in the magistrates' court (which, we consider, justifies increasing certain magistrates' court fees as part of this set of proposals) We accept that the original proposal did not take adequate account of those cases where more work was required before a defendant entered their guilty plea. For these reasons, the June 2011 consultation response confirmed our decision that the higher standard fees for either way guilty pleas should also be increased so that these cases are remunerated at an appropriate level.

- 5.40 The consultation response also confirmed that we would increase the Higher Standard Fee for a guilty plea by 8% and to scale back the enhancement to the lower standard fee to 23%. The 8% increase in higher standard fees takes fee levels to the current upper fee limit. Any greater increase would risk the new higher standard fee exceeding the limit at which the fee 'escapes' to hourly rates, so paying more for the higher standard fee cases than some 'escape' cases. The 23% increase in lower standard fees means that the overall total increase in remuneration remains the same as the original proposal.
- 5.41 The Government noted the suggestion by the Criminal Law Solicitors Association that some Category 2 fees should also be enhanced. However, Category 2 fees cover contested trials as well as cases fully prepared for trial that crack on the day of trial, and it was never our intention to increase them. As explained in the consultation paper (paragraph 6.18), this proposal only related to fees for guilty pleas and cracked trials. Whilst category 2 fees include some cracked trial fees, it clearly would not have made sense in the context of our proposals to increase the fees for those cases as they are already paid at full trial rates. We would therefore like to use this opportunity to correct an error in the original consultation paper (Annex G page 202) which suggested that there would be a similar 25% enhancement to category 2 fees.
- 5.42 As for committal proceedings, the June 2011 consultation response confirmed our belief that, in practice, they are rarely substantive hearings, usually just confirming the decisions made earlier at the mode of trial hearing, with such papers as there are served either very late or on the day itself. Moreover, any preparation which solicitors are required to make will cover much the same ground as for the Plea and Case Management Hearing in the Crown Court just a few weeks later. There are provisions (not yet been commenced at the time of the June 2011 consultation response) in the Criminal Justice Act 2003 that would put an end to committal proceedings altogether. At the time of the consultation response, the Government was considering whether they should be brought into force (they have since been commenced in certain local justice areas). But the response confirmed that the Government would in any event proceed with the proposal to abolish the committal fee.
- 5.43 We have noted the concerns raised by advocates about a single fee payable only to the litigator. We have concluded that questions of whether or not to introduce a single graduated fee will best be dealt with in the context of competition, which will be the subject of a future separate consultation exercise. The June 2011 consultation response therefore confirmed our decision to adjust the original proposal and divide the fee into two separate fixed fees payable for litigation and advocacy.
- 5.44 We believe that the appropriate way to establish separate fees for litigation and advocacy is to split the single fee in line with the ratio of payments currently made to litigators and advocates in cases that crack following election by the defendant. This means looking at payments under the two Crown Court graduated fees schemes and taking into account the committal fee currently paid to litigators for the work done in the magistrates' court. Current expenditure on this group of cases sees 64% going to litigators and 36% going to advocates. Applying those same percentages to the fixed

fee of £565 + VAT provides a fixed fee for litigation of £362 + VAT and a fixed fee for advocacy of £203 + VAT.

5.45 These reforms were implemented in October 2011.

#### **Fees for guilty pleas and cracked trials in the Crown Court**

5.46 The Government accepts that the final decision on plea rests with the client and we do not suggest that lawyers necessarily advise on plea based on the likely legal aid fee. However, as before, we remain concerned that the current system of fees does not sufficiently support the aim of speedy and efficient justice and may discourage the defence team from giving early consideration of plea given the great disparity in fees depending upon the timing of the plea.

5.47 We recognise that there is some force in the argument that, even after taking account of the 25% enhancement for early guilty pleas, the proposals would not always adequately remunerate the most complex cases which required significant and sustained work to prepare for trial, and where the defendant changed his or her plea or the prosecution changed its view at a late stage in the run-up to trial. It was for this reason that we consulted on whether the existing rules on special preparation for cases involving over 10,000 pages of prosecution evidence provide reasonable enhancement for the most complex cases. Most respondents disagreed that special preparation would provide appropriate enhancement in the most complex cases.

5.48 The June 2011 consultation response confirmed our conclusion that the best way to achieve our aims, taking into account the responses to consultation, is to leave fees for guilty pleas at current levels while reducing the fees for cracked trials by 25% overall, rather than the 33% implied by harmonisation at early guilty plea level. This would reduce the current significant differential in fees between guilty pleas and cracked trials, and thus remain consistent with the rationale behind the original proposal. But it also addresses the key concern expressed in consultation, namely the impact on the more complex cases, as there would continue to be additional remuneration for work in the run-up to trial. We therefore propose to reduce payments for cracked trials under the Litigators Graduated Fees Scheme (LGFS) by 25%.

5.49 However, a simple reduction would not work for the AGFS as some cracked trial fees would pay less than the fees for an early guilty plea. To the June 2011 consultation response therefore confirmed that we would reduce the value of pages of evidence under the AGFS for trials that crack in the final 'third' to the same level as trials that crack in the second third and then reduce all cracked trial base fees by 11%. This achieves an overall reduction of 25% in AGFS payments. For payments under both AGFS and LGFS the amended approach produces a higher payment than under our original proposal for the most complex and paper heavy cases that crack late. Fees for guilty pleas and trials that crack in the first third are unaffected.

5.50 These changes were implemented in October 2011.

#### **Fees in cases of murder and manslaughter**

5.51 The Government accepts that murder is a unique crime, but notes that many respondents also acknowledged that a complex rape case could be more demanding than a 'routine' murder. It might be the case that murder cases do tend to be more paper heavy than serious sexual offences and that the same may be true of unused material. However, paper-heavy cases do get paid more under the existing

graduated fees schemes, as both take pages of prosecution evidence into account in the fees payable.

- 5.52 The Government also accepts that a more limited cadre of judges is authorised to try murder cases, although this does not necessarily mean that there is more work to do to defend in a murder case. Many of the factors highlighted in cases of murder (gangs carrying firearms, CCTV, cell-site analysis, several victims, numerous witnesses and legal issues such as joint enterprise) often also arise in cases other than murder.
- 5.53 In addition, we believe that the argument made about “equality of arms” with the prosecution is misplaced. The AGFS payments proposed for murder will still exceed the payments under the CPS graduated fees scheme for prosecutors. On top of this, there will continue to be a fee payable to the defence litigator, plus arrangements to ensure that where necessary in the circumstances of a specific case the defence can gain access to appropriate expert advice. When taken together, we believe that these continue to provide reasonable assurance as to equality of arms.
- 5.54 For these reasons, the June 2011 consultation response confirmed that the Government would implement the reform to align fees for murder with fees for rape and other serious sexual offences, as proposed in the consultation. This was implemented in October 2011.

#### **Fees in cases of dishonesty**

- 5.55 The Government notes the alternative proposals put forward by respondents to the consultation, but we believe that there would be benefits from the simplification that the proposal would bring. Moreover, we continue to believe that the value of an offence does not provide a particularly reliable proxy indicator for the complexity of the case, and that the enhancement available for pages of prosecution evidence provides a reasonable and adequate remuneration for case complexity, as more complex cases will generally have a greater number of pages of evidence.
- 5.56 For the reasons set out above, the June 2011 consultation response confirmed that the Government would proceed with the implementation of this proposal as set out in the consultation. This was implemented in October 2011.

#### **Fees in the magistrates’ courts in London**

- 5.57 The Government accepts that overheads tend to be higher in London. However, fees for Crown Court work and for Very High Cost Cases are uniform across England and Wales, although police station work in London incurs higher fees than elsewhere in the country. Approximately 21% of criminal legal aid firms are based in London. In 2009-10, however, London represented only 17% of the total of representation orders in England and Wales. This may indicate that there is some oversupply of criminal legal aid providers in London compared to the rest of the country, or simply that there are on average more cases per provider outside London for other reasons. While some firms may wish to leave the market if fees are reduced, our assessment is that it is likely that sufficient suppliers will remain to meet demand (see Annex F of the consultation response for further consideration of market sustainability).
- 5.58 For these reasons, the June 2011 consultation response confirmed that the Government would proceed with the proposal in the consultation and reduce all magistrates’ courts fees in London in line with other urban areas, including the underlying hourly rates used to determine whether or not a standard fee or non-standard fee is payable. This was implemented in October 2011.

### **Ancillary Payments (bolt-ons)**

- 5.59 The Carter review recommended in July 2006 that ancillary payments should be subject to a fixed budget of just over £10m, and that if that budget were exceeded, ancillary payments should cease and be absorbed into the base fee. The previous Government accepted this recommendation, reserving the right to return to the issue if there was an overspend. As the cost of “bolt-ons” is currently well in excess of that limit, even after taking account of the reductions to the AGFS implemented by the previous administration in April last year, there are good grounds for reviewing them.
- 5.60 The Government accepts, however, that there is some force to the argument that the proposed 50% across-the-board cut was too crude an approach, given the great variety in nature of the hearings involved. An amended approach, which (as confirmed in the June 2011 consultation response) the Government concluded as the appropriate way forward, is to retain ‘bolt-on’ fees for those cases which normally raise genuinely complex or lengthy legal arguments, but to remove them for those which do not. This would see ‘bolt-ons’ retained at current levels for all hearings other than sentencing hearings. We propose to treat sentencing hearings as one of the five appearances covered within the standard graduated fee. These hearings take place in around 85% of Crown Court cases, and do not routinely raise novel, complex or lengthy arguments. This is analogous to the position with Plea and Case Management Hearings (PCMH), which take place in almost every case, and are included as one of the standard appearances within the base fee. However, an additional appearance fee would be payable separately for sentencing if that hearing was a sixth or subsequent standard appearance.
- 5.61 As with the original proposal in the consultation paper, payments for committals for sentence and appeals from the magistrates’ courts would remain, as these are fixed fees for stand-alone pieces of work rather than “bolt-ons” to the overall graduated fee. We are also not proposing to make changes to fees for committals for sentence or deferred sentence hearings.
- 5.62 This reform was implemented in October 2011.

### **Very High Cost (Criminal) Cases**

- 5.63 There is already a significant number of cases paid through the LGFS where the original trial estimate was less than 41 days but the trials have in practice taken longer. In spite of this, firms do not make very heavy use of the existing provisions within the LGFS to make interim payments in the case of financial hardship. Given this, and that there is a safety net in cases of genuine financial hardship, the potential risks to provider cash flows do not appear to outweigh the substantial operational benefits for the LSC of aligning the LGFS and AGFS so that VHCCs are standardised as cases with an estimated trial length of over 60 days. There is, in our view, an adequate mechanism for remunerating viewing of electronic documents by way of special preparation.
- 5.64 The June 2011 consultation response confirmed that the Government remains of the view that, consistent with the approach currently in place at the time for advocates, only cases due to last above 60 days at trial should continue to be paid at VHCCs rates and that payment for all work on cases due to last under 60 days should therefore be at levels set out in the litigators graduated fees scheme. We decided that the most straightforward way to achieve this is by continuing to provide for individual case contracts for cases due to last 41 to 60 days, but to be paid at the rates set out in the litigators graduated fees scheme, rather than VHCC rates.

- 5.65 Cases classified as VHCCs with estimated trial lengths of over 60 days will continue to be remunerated under the current VHCCC fee scheme (hourly rate, stage negotiations).
- 5.66 This reform was implemented in October 2011.

### **Conclusion**

- 5.67 Having considered carefully the responses received on the consultation, the June 2011 consultation response confirmed that the Government decided that it would implement the following reforms to criminal remuneration:
- to implement an overall fee of £565 for either way cases deemed suitable for summary trial, but with the fee split between litigation and advocacy; and to enhance the lower and higher standard fee in the magistrates' court, and to abolish the committal hearing fee, as set out in the consultation paper;
  - to reduce Crown Court fees for cracked cases by 25%, leaving the fees for guilty pleas unaltered;
  - to align the fees paid in cases of murder and manslaughter with those paid in cases of rape and other serious sexual offences, as proposed in the consultation paper;
  - to remove the distinction between cases of dishonesty based on the value of the dishonest act(s) below £100,000, as proposed in the consultation paper);
  - to remove the premium paid for magistrates' courts cases in London, as proposed in the consultation paper;
  - to remove separate ancillary payments (or "bolt-on" fees) for sentencing hearings and to subsume sentencing hearings within the standard graduated basic fee as one of the five standard appearances included within the base fee; and
  - to pay litigators in all cases with an estimated trial length of between 41 and 60 days under individual contracts at rates specified under the Litigators' Graduated Fee scheme, rather than at Very High Cost (Criminal) Case rates.
- 5.68 These changes were implemented in October 2011.

### **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

- 5.69 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out the legal duties section of the introduction to this EIA.
- 5.70 As noted in paragraph 26 above, these reforms apply to all people, irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they will give rise to any direct discrimination. We also do not consider it likely that they give rise to discrimination arising as a consequence of an individual's disability or require any reasonable adjustments to be made. The form of prohibited conduct which is potentially most relevant to the reforms of fees for criminal legal aid is therefore indirect discrimination, and we have identified the potential for some groups which might be put at a particular disadvantage by these reforms above. However, for the reasons set out in the introductory section of this document, from paragraph 5.68 below and elsewhere, we consider it is unlikely that these reforms would put people in those protected groups at a particular disadvantage and we

consider that the reforms would be a proportionate means of meeting our legitimate aims.

- 5.71 While we believe that changes to criminal legal aid remuneration might be considered provisions, we do not believe that these will give rise to any particular disadvantage based on any of the protected characteristics. We hold data for the protected characteristics of sex, race, disability and age, and this is set out above. For the protected characteristics of marriage and civil partnership, pregnancy or maternity, gender reassignment, religion and belief and sexual orientation, we do not consider that the nature of the reforms would be likely to have any disproportionate effect.

### **Consideration of potential impacts and justification**

- 5.72 Respondents to the consultation suggested that these impacts might deter people from entering the publicly-funded legal professions and result in a reduction of diversity in the provider base. At the Bar, some respondents to the consultation were concerned the changes would affect BAME and female barristers to a greater extent, particularly those with childcare costs. Some respondents also suggested that this would have a knock-on effect on diversity in the judiciary.
- 5.73 Respondents to the consultation made a number of alternative proposals, including those considered above. However, for the reasons set out in that section we do not consider that these proposals would meet our aims. Respondents also made suggestions as to how the proposals could be altered to reduce the impact on providers, and we have incorporated some of these into the reforms for implementation.
- 5.74 We amended the proposal to pay a single fee in the Crown Court in either way cases that the magistrates' court has determined as suitable for summary trial, to increase the higher standard fees for either way guilty pleas and scale back the enhancement to the lower standard fee, and to divide the fee into separate fixed fees payable for litigation and advocacy.
- 5.75 We also decided to leave guilty plea fees in the Crown Court at current levels while reducing the fees for cracked trials by 25% overall, rather than the 33% implied by harmonisation at early guilty plea level, and to reduce the value of pages of evidence under the AGFS for trials that crack in the final 'third' to the same level as trials that crack in the second third and then reduce all cracked trial base fees by 11%.
- 5.76 In relation to 'bolt-on' fees, we will retain fees for those cases which normally raise genuinely complex or lengthy legal arguments, but not for sentencing hearings.
- 5.77 The impact of the proposals on providers will therefore be mitigated, although the overall savings and so impact across all providers will be the same as if we had implemented the proposals as consulted upon.
- 5.78 As set out above, we consider the need to make savings from legal aid justifies the reforms to criminal remuneration, and that they are a proportionate means of achieving this legitimate aim. We have also designed the changes to criminal fees to achieve additional policy objectives, and the rationale for the reforms is set out from paragraph 5.35 above, and in the relevant sections of the consultation response document.
- 5.79 In respect of fees for guilty pleas in either way cases in the Crown Court deemed suitable for summary trial, this includes the consideration that 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. In the Crown Court, we also remain concerned that the current system of fees does not sufficiently support the aim of speedy and efficient justice and may discourage the defence team from giving early consideration of plea given the great disparity in fees depending upon the timing of the plea.

- 5.80 Taking into account these factors, we consider that the criminal legal aid fee reforms and the impacts that they will have on providers, are justified and proportionate in light of the need to achieve our legitimate aims.

#### **Advancement of equality of opportunity, fostering of good relations**

- 5.81 As set out in paragraph 26 of the introductory section of this EIA, we have considered whether these reforms have implications for the advancement of equality of opportunity and the fostering of good relations.
- 5.82 We do not consider that the changes to criminal legal aid remuneration would affect the participation of persons who share a relevant protected characteristic and who are under-represented in public life.

#### **Next steps**

- 5.83 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.
- 5.84 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single mandatory gateway for specific types of law and the removal of legal aid for some types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.

## 6. Community Legal Advice Telephone Helpline

### Description

6.1 The following options were consulted upon regarding the future provision of legal aid advice by telephone:

- Establishing the Community Legal Advice Helpline as sole gateway to legal aid services
  - Establishing the CLA helpline as a mandatory single gateway to civil legal aid services for all areas of law remaining in scope
  - Expanding the range of areas of law for which specialist advice is offered through the CLA helpline to cover all areas remaining in scope
- Enabling access to paid advice services for non-eligible clients
  - Offer callers who are ineligible or who are out of scope access to a paid-for advice service through the CLA helpline

6.2 In its consultation response, the Government announced revised proposals to:

- implement a mandatory single telephone gateway limited initially to the following four areas of law: debt, community care, discrimination (claims relating to a contravention of the Equality Act 2010) and Special Educational Needs.

- introduce a phased expansion of the provision of specialist telephone advice into the areas of law remaining in scope, except asylum matters.

- run a pilot scheme to further examine the feasibility of offering the option to clients ineligible or out of scope for legal aid to pay for advice over the telephone.

6.3 The Government announced on 14 March 2012 its decision not to continue with the proposal to include community care as one of the initial gateway areas of law. (Reasons for the decision are explained below.)

### Legal Duties

6.4 The legal duties that apply to MoJ are set out in full in the introduction to this document.

### EIA-specific issues raised in consultation responses

6.5 A significant number of consultation respondents raised equalities-based concerns in relation to the original telephone proposals, though thematically these were all very similar. One of the primary issues raised concerned the ability of BAME individuals who have difficulty speaking or understanding English, or have difficulty reading in English, to engage with telephone-based services. Issues of privacy were also raised in relation to BAME clients accessing services via telephones.

6.6 The issue of privacy was also raised in relation to women experiencing abuse. It was suggested that women might not be able to disclose domestic violence issues over the telephone without placing themselves at risk, with this risk being particularly acute in BAME communities. Concerns were also raised about women's willingness to discuss their domestic violence issues with a male operator. In scenarios where domestic violence is present, it was also suggested that the proposal could have a

serious adverse effect on children. Privacy was also an issue for people in detention, hospitals and residential care.

- 6.7 The other common theme in responses concerned disabled clients, where as a consequence of a physical, cognitive or mental health impairment their ability to engage with telephone-based services are severely restricted. This was also stated as being relevant to those clients who suffer a hearing impairment, or use British Sign Language (BSL) as their primary form of communication or who face difficulties communicating and explaining.
- 6.8 This proposal was also discussed at length with the LSC's client diversity focus group. They were particularly concerned about the capacity of individuals with severe learning disabilities to engage with services exclusively on the telephone, to the extent that such individuals would be entirely excluded without alternative provision being put in place for them. This point was echoed by other respondents.
- 6.9 Other respondents also raised concerns around the impacts this proposal would have on young people. It was suggested that young people prefer to access services via face to face provision, and as such mandating the use of a telephone gateway had the potential to prevent them obtaining advice and assistance, and ultimately justice. It was also suggested that a significant minority of the most disadvantaged young people did not have access to a telephone.
- 6.10 Issues were also raised around the practicalities of the service; it was suggested that the most financially disadvantaged groups, which contain disproportionate numbers of young people, BAME people and women, would be unlikely to be able to afford the costs of calling the telephone line.

## **Analysis of Statistical Impacts**

### ***Clients***

- 6.11 Under an expanded telephone gateway service it was intended that clients would still receive legal aid for cases within the scope of the scheme but they would be required to access this advice through the telephone gateway. The Government revised proposals were that the gateway should initially be established in only four areas of law: community care, Special Educational Needs (SEN), debt and discrimination. As explained above, community care is no longer being included in the initial gateway categories (see decision section below).
- 6.12 Tables 4 – 7 provide data on the characteristics of clients who currently receive face-to-face services in the three initial areas of law (SEN, debt and discrimination) to show which clients may be affected by the proposal.
- 6.13 In the area of debt 53% of clients are female and 47% are male, in line with the population of England and Wales, which is 51% female and 49% male. .
- 6.14 BAME people are over-represented among debt clients, making up 17% of clients for whom we hold data and 12% of the population of England and Wales. Ill or disabled people are also over-represented among debt clients, as 27% of those for whom we hold data were ill or disabled, compared with 19% of the general population in Great Britain.
- 6.15 Debt clients are more likely to be aged between 25 and 64 than the population of England and Wales as a whole (86% compared with 53%) however, the age profile

of debt clients is representative of legal aid clients as a whole, 86% of whom are aged between 25 and 64.

- 6.16 Data in relation to claims regarding to a contravention of the Equality Act 2010 are not available, as currently while these case are eligible for legal aid they are dealt with within the category of law within which they currently fall i.e. education or employment, and they are not separately classified as discrimination cases.
- 6.17 In relation to SEN cases, it is difficult to judge impacts fully as the clients are unlikely to be the children. The person contacting the current telephone line is likely to be the parent or carer, and data is only available for clients (i.e. the parent or carer and not the child). As such, it is not possible to accurately identify the equalities characteristics of service users and therefore judge impacts.
- 6.18 Overall therefore, if the policy were to have an impact on clients, there is the potential for that impact to be primarily on BAME people, ill or disabled people and those aged 25 and 64.

### ***Solicitor and NfP providers***

- 6.19 LSRC supplier diversity survey data includes equalities data for approximately 1,200 providers that would be affected by the reform, representing around 70% of the total.
- 6.20 Of the providers for whom data is available (see Table 25) Solicitor providers were more likely to have majority male ownership and control than NfP providers (64% and 29% respectively). The majority of NfP providers for which equalities data is available had majority female ownership and control (54%) while only 16% of solicitor providers had a majority of female managers.
- 6.21 Providers with majority White British ownership and control represented 84% of those providers for whom data is available, with 12% having BAME majority ownership and control. These figures are similar across NfP and solicitor providers (see Table 25).
- 6.22 Of those for which equalities data is available, 93% did not employ an ill or disabled manager. However, NfP providers were more likely to employ an ill or disabled manager (15%) compared with solicitor providers (5% - see Table 25).
- 6.23 Overall, on current workloads it is estimated that NfP providers will see higher average impacts than solicitor providers. NfPs with majority White British ownership and control see an average reduction in legal aid income of 45% as a result of the proposal, and those with majority BAME ownership and control an average 13% reduction. NfP providers with majority female ownership and control experience a higher average reduction in legal aid income than those with majority male ownership and control (45% compared with 31%) and those that do not employ an ill or disabled manager are likely to experience a similar average reduction (42%) as those that do (38%). This analysis is shown in Table 25 and reflects the changes made in the area of community care during the LASPO Bills passage through Parliament.

### **Comparison with initial EIA**

- 6.24 While moving the provision of legal aid from a face-to-face service to the telephone need not have a negative impact on clients, the initial EIA identified an over-representation of BAME people and ill or disabled people among those who might be affected by this reform.

- 6.25 The analysis set out above for the final gateway policies to be implemented show that BAME people, ill or disabled people, and older people are over-represented among those who could potentially be affected.

### **Modification of proposals in respect of Community Care cases**

- 6.26 The Government revised its proposal for the inclusion of community care in the initial gateway categories of law. The Government always recognised that Community Care is a complex area of law and that around half of clients in this area would require face-to-face meetings with legal representatives even where only Legal help was being provided. Our ongoing engagement with a range of groups (including equality organisations) highlighted the challenges that would be faced in delivering a quality service to community care clients.
- 6.27 As a result of this and further analysis the Government concluded that the numbers of Community Care clients requiring face-to-face advice is likely to be significantly higher than original estimates and will not be including this area of law in the initial mandatory telephone gateway areas.
- 6.28 Original estimates showed that 50% of Community Care cases would be able to go through the mandatory gateway. On that assumption, the cost of removing Community Care from the mandatory gateway would result in a loss in estimated savings of £0.6m per annum in steady-state. However, the revised assessment is that significantly fewer cases will be able to be dealt with on the telephone, with perhaps as few as 20-30% being able to be handled by telephone advice only, reducing the estimated savings from £0.6m to £0.3m if Community Care remains a mandatory category.

### **Decision in June 2011 consultation response**

#### **Establish the Community Legal Advice (CLA) helpline as the mandatory single gateway to civil legal aid services**

- 6.29 In the Consultation Paper, *Proposals for the Reform of Legal Aid in England and Wales* the Government proposed that the CLA helpline should be the mandatory single gateway to civil legal aid services. The mandatory single gateway means that if a person wants legally aided advice in a particular area of law, subject to some exceptions he or she will be required to telephone or electronic mail the helpline in order to apply for legal aid and, if they qualify for legal aid and are suitable for telephone advice, advice will be provided over the telephone.
- 6.30 The Government agrees that a telephone gateway could in principle present a barrier for some people applying for legal aid advice services. However, we believe that the design of the existing CLA service and our proposed future gateway service will ensure that these barriers can be removed sufficiently for the effective delivery of the required service. Some specific examples of existing adaptations to the CLA service for both the operator service and specialist advice that will continue and will mitigate against many of the potential barriers highlighted by respondents include:
- three-way translation services for clients with limited or no spoken English or Welsh;
  - a British Sign Language (BSL) Service available via webcam, Minicom, and Typetalk for deaf and deafened callers;
  - where clients give approval, friends, family members or other professionals can call the service on their behalf;

- extended opening hours, including evenings and weekends, to give callers greater choice over when to access the service, to help ensure they can do so in comfort and in private. Both call operators and specialist advisors will be expected to check with clients that they can gain sufficient privacy for their call. However, callers who are in detention will be exempted from any requirement to contact the gateway in order to apply for legal aid;
- delivery of suitable induction and ongoing training for all call operators to help ensure that they can effectively show empathy and build rapport with all callers and provide additional support where this is needed. This includes specific training on domestic abuse and child protection issues;
- various call back facilities are available to help to minimise the cost of contacting the service. These include call operators and specialist advisors offering to call people back, a 'text for a call back' service and an online call back request service that enables callers to request a call at a time and in a language of their choice. Where ongoing contact is required, specialist advisors will agree the best approach with clients. Where needed, clients are also given a direct telephone number for their specialist advice service, so they will not be required to go through the gateway if they need to speak to their advisor again in the future;
- data from Ofcom suggests that very few people have no access to either a landline or mobile phone. But in such circumstances a caller could ask someone else to call on their behalf. All callers in these circumstances will be routinely offered an immediate call back. As noted above there is also a facility to book a call back online through DirectGov or text for a call back;
- finally both gateway call operators and specialist advisors will assess the specific needs of all callers on a case by case basis and will as appropriate refer them to a face-to-face advice service if this is considered necessary.

6.31 The Government has already clarified in the document of 7 January 2011<sup>26</sup> that there will be an exception to the mandatory single gateway in cases of emergency. In addition, the Government intends to make the following further exceptions to the mandatory gateway:

- cases where the client has previously been assessed by the mandatory single gateway as requiring advice face-to-face, has accessed face-to-face within the last 12 months and is seeking further help to resolve linked problems from the same face-to-face provider;
- clients who are in detention (including prison, a detention centre or secure hospital);
- children (defined as being under 18).

6.32 In the event that a client visits a face-to-face provider who recognises that the case will not be within scope for legal aid but may be eligible for exceptional funding, the application can be made straightaway without the client first phoning the helpline.

6.33 The Government has decided that the telephone helpline should extend initially to three areas of law.

6.34 The three initial areas of law are:

- debt (insofar as it remains in scope);

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<sup>26</sup> See <http://www.justice.gov.uk/downloads/consultations/rpovision-advice-telephone.pdf>

- Special Educational Needs cases;
  - discrimination cases (claims relating to a contravention of the Equality Act 2010 and other discrimination legislation).
- 6.35 The commitment was made to Parliament that the mandatory telephone gateway will be the subject of a review which will monitor its implementation and operation. The report of that review will be published within 2 years of the implementation and before any decision about any possible extension of the mandatory gateway to others areas of law is taken.
- 6.36 The Government is confident that implementing the telephone gateway in the limited areas of law will enable better monitoring of the impact on clients and providers in order to inform future decisions regarding any potential further expansion of the gateway.
- 6.37 In selecting the areas of law most appropriate for this initial stage of the mandatory single gateway we have considered:
- whether there was any increased risk within each area of law of clients' needs not being met by a telephone service;
  - the likely frequency of the need for Legal Representation or Controlled Legal Representation in an area of law;
  - the likely frequency of emergency cases in the area of law;
  - whether the existing Community Legal Advice (CLA) helpline service had any previous experience of delivering advice in the area of law.
- 6.38 For all these areas of law, we believe that it would generally be unusual for clients to require Legal Representation, Controlled Legal Representation or emergency advice. In addition, whilst we recognise that all problems can be sensitive to the individual client, we believe that the issues covered by the areas of law we have chosen are less likely to present particular concerns when compared with other case types such as domestic abuse or asylum cases, which were specifically raised as a concern by many respondents.
- 6.39 The existing CLA service already provides advice in debt and education cases, including Special Educational Needs and advice in claims under the Equality Act 2010 across all the areas of law currently available, in particular employment and education.
- 6.40 The Government believes that the potential opportunities that the gateway presents for streamlining the process for accessing help, the consistency of services available to support people with specific needs, and the safeguard that all clients will be assessed to determine whether face-to-face advice would be more appropriate and referred on as necessary to mitigate this.
- 6.41 As soon as it becomes clear that a caller requires Legal Representation or Controlled Legal Representation they will be given the option of seeking advice from a face-to-face advice provider.
- 6.42 The provider of the gateway Operator Service will continue to be required to meet appropriate quality standards. Currently they are expected to meet the Community Legal Service (CLS) General Help Quality Mark and the overall CLA service has achieved the Customer Service Excellence standard.

- 6.43 The provider of the gateway Operator Service will also continue to be required to ensure that all call operators have completed an adequate induction programme before answering any live calls. The current Operator Service contract specifies the initial training required and the standard of individual performance required. This includes specific training for dealing with callers with particular needs, and conducting the means assessment. The operators do not simply follow a script but must be able to demonstrate that they can identify key words or issues from a client's description of a problem to ensure an accurate diagnosis of their legal problem. They are also expected to understand the different areas of law, including those areas within each category where a Specialist Telephone Advisor is able to advise. Additional specific training will be required to ensure that Operators are able to determine which matters are within the scope of legal aid.
- 6.44 Where an operator is in any doubt about whether a caller's problem is in scope, whether telephone advice is appropriate, or whether the caller is financially eligible for legal aid, he or she will be referred to a specialist advisor. The gateway operators will not offer the callers any advice specifically tailored to their circumstances so legal qualifications will not be a contractual requirement.
- 6.45 The current Operator Service provider is required to carry out routine call monitoring, assessment and performance management. This includes the regular review of calls by CLA specialists and these requirements will continue to be included within the contract for the future gateway operator service. The LSC will continue to monitor the performance of all contract holders appropriately.
- 6.46 With regard to the screening of callers, the gateway operator will continue to be expected to explore the caller's problem to a level sufficient to effectively refer the caller onto a suitable specialist legal advisor. Where they have any concerns about a caller's welfare they will be expected to highlight this to the specialist telephone advisor and to follow relevant protection policies (for example, the child protection policy). The gateway provider will also continue to be expected to provide adequate training to equip call operators to identify risks and support clients with specific needs, including victims of abuse.
- 6.47 The gateway will continue to complete an initial financial assessment of eligibility. Where they are assessed as eligible, callers will still need to provide evidence of their identity (or for the person on whose behalf they are calling) and means to both face-to-face and specialist telephone advice providers. Some respondents were concerned that providing such evidence to a phone service would be difficult. At present clients must submit evidence of means, usually by post, to the specialist telephone advice provider. However, clients can receive up to two hours of advice before this evidence is submitted. A sample of specialist provider files are regularly audited to ensure that the rules are being applied appropriately and action taken if they are not. The Government recognises that this is a different approach to the one used for face-to-face advice providers who must ensure that clients provide evidence of means before giving advice. However, it ensures that telephone clients can access advice without delay. It will not be the responsibility of the gateway operator service to conduct the conflict of interest test (which will be undertaken by the specialist telephone or face-to-face advice provider).
- 6.48 The Government firmly believes that a good quality service is offered through the existing CLA helpline and that face-to-face contact is not critical to providing a good quality service. The key consideration will be whether the individual client is able to give instructions and act on the advice given over the telephone.

- 6.49 The Government agreed with respondents that there is some benefit to a client receiving advice from an organisation with which they have past experience and with whom they have already developed a relationship. Where a caller has previously been advised by a specific CLA provider within the last twelve months and makes a request to speak to them again for a new issue, this will be accommodated, where possible. Similarly the gateway will seek to accommodate reasonable requests by callers to speak to specific types of CLA advisors, for example where a female caller would prefer to speak to a female advisor.
- 6.50 Some representative bodies suggested that there will be lack of client choice, which will breach article 6 of the ECHR. Article 6(3)(c) of the ECHR provides that everyone charged with a criminal offence has rights including the right “to defend himself in person or through legal assistance of his own choosing”.
- 6.51 The mandatory gateway and access to specialist legal aid advice services over the telephone will apply to civil cases rather than criminal cases. Where it is determined that face-to-face advice would be more appropriate for the caller they will be given a choice (where possible) of face-to-face advice provider either from a list of suitable advice providers or a specific suitable provider known to the client. Where a client has previously been assessed by the gateway as requiring face-to-face advice, having seen a specific advice provider within the last 12 months and they would like further assistance from the same provider for a linked problem the client will be exempted from the need to access this advice initially via the gateway.
- 6.52 The Government does not believe that there will be any significant delay to an individual receiving the help they need, or any increased bureaucracy caused by the introduction of the gateway. In some cases (for example, where a client does not know which provider will be able to help) we believe that telephone advice is likely to be quicker, even where a referral to a face-to-face provider is required. The Government believes that the diagnostic and routing service offered by the gateway will be of value to many.
- 6.53 During any initial implementation there may be some circumstances where clients may first attempt to access advice through a face-to-face advice provider rather than directly through the gateway. We will work closely with existing providers to communicate the actions to be taken in these circumstances. The Law Society included a case study regarding an instance where a child with an urgent case was referred to a telephone specialist initially. Ultimately the client was referred to a face-to-face provider but there was a concern that there was a delay in their receiving the help that they needed. Given the facts of the case the client should have been referred to a face-to-face provider at the earliest opportunity. We are satisfied that occurrences of this nature are rare within the current service and (as set out above) children will be exempt from the requirement to first contact the CLA helpline in order to apply for civil legal aid.
- 6.54 The clarification issued on 7 January 2011 after the consultation was published made it clear that people with emergency cases will not be required to access services through the gateway. We have considered the views expressed in the consultation responses regarding a definition of ‘emergency cases’. Many of the consultation responses suggested that the definition of emergency cases should include many matters which we have decided for now to exclude from the mandatory single telephone gateway, such as private family law cases involving domestic violence. Taking into account the range of responses, as well as the current definition of emergency cases in the LSC Funding Code, we have decided that the ‘emergency cases’ exception should include the following circumstances:

- 6.55 'A client needs Legal Representation or Controlled Legal Representation and
- i) there is a need for an urgent injunction or other emergency judicial procedure and the advisor will be required to represent the client in person, either at a court, tribunal or other location for procedural reasons; and
  - ii) there is an imminent risk to the life, liberty, or physical safety of the client or his / her family or the roof over their heads; or
  - iii) any delay will cause a significant risk of miscarriage of justice, or unreasonable hardship to the client or irretrievable problems in handling the case and there are no other appropriate options to deal with the risk.'
- 6.56 Where it becomes clear that Legal Representation or Controlled Legal Representation will be necessary, clients will not be required to use the mandatory gateway.
- 6.57 In addition to emergency cases, the Government has decided to apply the exceptions to the requirement to use the mandatory single gateway set out at paragraph 6.31 above and in the response to consultation.
- 6.58 The Government believe that in the majority of circumstances the gateway and systems in place will offer sufficient support for callers to access the most suitable advice service. However, the needs of all callers will be assessed on a case-by-case basis and where appropriate, callers will be referred to a face-to-face advice service. The key consideration will be whether the individual client is able to give instructions and act on the advice given.
- 6.59 The Government considers that issues about equalities legislation and anti-discrimination law are largely addressed by the many measures that the helpline already has in place to assist all callers, including disabled people, to access the service. Prior to implementation, we will engage with a range of groups (including those which represent disabled people) to identify any additional ways to provide reasonable adjustments for callers with specific needs. There is always a risk that some clients may not access help and advice whether by telephone or face-to-face. We will monitor levels of people accessing the gateway in comparison with current and future services.
- 6.60 The Government agrees that children (defined as being those under 18) should be afforded special protection and be exempted from the need to access advice via the gateway. Similarly, people in detention should be exempted as at present due to the particular difficulties they may face in freely accessing a private and secure phone line.
- 6.61 Several respondents suggested that there was insufficient detail in the consultation document to allow for meaningful comment. The Government addressed this concern by publishing the document referred to above, which clarified that the helpline would not be the mandatory single gateway for emergency cases and set out further information on the operation of the current CLA helpline.
- 6.62 The Government has revised the Impact Assessment to take account of the revised reform programme, using more recent (2009/10) data. In the analysis, we have allowed for the possibility that the average call length at the Operator Service may increase when compared with the existing service.

- 6.63 The Government agrees that taken together with the proposed changes to scope, the telephone proposals will have a significant impact on current legal aid advice providers. However, the Government believes that any concerns relating to the restriction of free trade and the potential to create a monopoly will be addressed by the fact that contracts for both telephone (Operator Service and Specialist) and face-to-face services will be subject to tender processes compliant with EU regulations. The decision to limit the initial scope of the helpline gateway to a restricted number of areas of law will significantly reduce the impact when compared to the original proposal set out in the consultation paper. These changes will, we believe, also help to retain sufficient face-to-face legal aid advice services for those clients that need them.
- 6.64 The Government recognises that there may be some benefits to local knowledge in helping people to resolve their problems. However the Government believes that the telephone gateway (and the CLA helpline generally) will provide a consistent level of service to all callers irrespective of where they are located and will be of added benefit to those who cannot easily access face-to-face advice. In addition, even where the gateway is the initial entry point, appropriate cases will still be referred on to face-to-face providers where this is necessary in the interests of the client.
- 6.65 The Government agrees that there is benefit in providing access to services through a variety of channels (for example telephone, on-line and email) and we continue to examine the way in which this can best be achieved.
- 6.66 Whether a caller is referred to a specialist telephone advisor or a face-to-face advisor, a clear and consistent referral process will be used to ensure fairness and transparency. The Government has addressed the issues regarding the processes for signposting and referral in the response to consultation and at paragraphs 6.41 to 6.44 above and will to engage with legal aid providers further on this issue.
- 6.67 Both the gateway provider and all specialist advice providers will be required to have a clear complaints process that will be made available to all callers who wish to see it. The process will make it clear how complaints will be addressed by the individual provider and the circumstances when a complaint should be escalated to the LSC or other regulatory body. We will give further consideration to how requests for a review of a decision not to refer to a face-to-face provider will be accommodated.
- 6.68 The Government already works with many of the organisations listed by respondents to question 10 as strategic partners and will consider how best to engage with those organisations with which the CLA does not currently have a relationship.
- 6.69 We believe that the existing service is operating well. Results for the latest available automated survey of the CLA operator service showed that 96% of callers found the Operator Service helpful and 97% of callers would recommend the service to a friend. The 2010 survey of clients advised by the specialist service showed that 90% of clients found the advice given by the CLA helpline helpful.

**Expand the range of areas of law for which specialist advice is offered through the CLA helpline to cover all areas remaining in scope**

- 6.70 The Government will ensure that clients who require representation will always be given the choice to see a face-to-face advice provider where available. However, the Government is of the view that an ongoing casework service can be offered through the specialist telephone advice service and that specialist telephone advice providers can handle both complex matters and cases where there is a lot of documentation. The CLA helpline already offers this service.

- 6.71 The Government recognises that case complexity and level of documentation could present issues for some callers. For example, some clients may have greater difficulty understanding complex issues over the phone or they may lack easy means of sharing documents with their advisor. We will explore various options to mitigate the issues around handling documentation to reduce the burden and cost on the client. This will include the option for specialist advisors to refer the client to face-to-face advice services where considered necessary.
- 6.72 The Government believes that a specialist telephone advice service can offer the same level of quality service to clients as face-to-face advice providers. The existing CLA specialist telephone advice providers are required to meet the same quality standards, including supervision standards, as face-to-face advice providers and contractually a higher minimum level of achievement via peer review. It is the Government's intention that quality will continue to form part of the selection criteria for any new specialist telephone advice tender process. We will also continue to consider other appropriate standards that should be required of the providers of the CLA helpline service.
- 6.73 In the unlikely event that a client who lacks mental capacity, as defined under the Mental Capacity Act 2005, contacts the specialist telephone advice service (or the advisor believes that they may lack such mental capacity) the advice provider will need to follow relevant professional standards. However, the specialist advice service will be able to provide advice to an authorised third party (such as an attorney or court appointed deputy) who should in the majority of cases be able to access telephone advice on behalf of the client.
- 6.74 We would not expect to see any increase in claims for negligence against individual providers or the state. Specialist advice providers will continue to be required to hold suitable professional indemnity insurance and indemnify the LSC against any claims of negligence.
- 6.75 During the course of the consultation period and after, the assumptions informing the Impact Assessment were fully re-examined and have been revised, taking into account the modifications to the proposals and the most recent available data ensuring that the risks to the assumptions raised by respondents have been reflected in the savings range. These figures incorporate upper and lower estimates which are both estimated to achieve a net saving. The lower estimates take into account the risks associated with the savings, including the assumptions made around average case costs of telephone advice when compared with face-to-face advice and the proportion of current face-to-face clients likely to be suitable to receive telephone advice. The additional cost of the gateway service has been taken into account when revising the figures.
- 6.76 There may be some situations where the specific local knowledge of advisors may be of benefit to callers. However, we do not believe that it will be a significant issue for the effective operation of the specialist telephone advice service as a whole. One of the benefits of the service will be the ability to provide a consistent level of service to all callers irrespective of where they are located. The Government recognises the importance of local referral networks. However, these do not exist in every locality. In addition, it is likely that for many advice agencies it will be easier to refer to the CLA helpline than to maintain a full list of local legal aid links for referral purposes.
- 6.77 As confirmed in the June 2011 consultation response, the Government decided that the CLA helpline will continue to offer specialist legal advice by telephone in the six areas of law that it does at present (debt, welfare benefits, housing, family, education and employment) until the proposed changes to the scope of legal aid are

implemented. At that point the CLA helpline will offer specialist legal advice in the following areas of law:

debt (insofar as it remains in scope)

Special Educational Needs

discrimination (claims relating to a contravention of the Equality Act 2010)

family;

housing.

- 6.78 Where clients access the CLA helpline through the mandatory single gateway in debt, Special Educational Needs and Discrimination (claims relating to a contravention of the Equality Act 2010), clients who are eligible for legal aid will be transferred to CLA specialist telephone advisors. We have explained above the circumstances in which callers would instead be referred to face-to-face legal aid services. For example, where Legal Representation or Controlled Legal Representation is required or where the client requires face-to-face support. But subject to these exceptions, legal aid specialist advice will only be available on the telephone. In family and housing cases callers will be able to express a preference for face-to-face or telephone services. Over time, specialist telephone advice services will be available in other areas of law remaining within the scope of legal aid. However, we will not provide specialist telephone advice in asylum matters. The Government accepts that it is likely that very few asylum cases would be suitable for telephone advice as many of the cases concern people who are detained.
- 6.79 As explained in paragraph 6.35, the mandatory single gateway will be subject to a review that will be published within 2 years of the implementation and before any decision about any possible extension to other areas of law. In this event, subject to the exceptions, as explained above, legal aid specialist advice in those areas of law would only be available on the telephone.

**Offer callers who are ineligible or who are out of scope access to a paid-for advice service through the Community Legal Advice helpline**

- 6.80 The Government carefully considered the issues raised. The proposals represented a new approach for the LSC but the purpose behind them was to help people to access affordable paid-for advice services, alongside existing free advice services, in a seamless manner. This is likely to be of particular benefit to clients who, after contacting the helpline, find out that they are not eligible for legal aid. There is no intention to market the CLA helpline as being primarily a way of accessing paid-for-services.
- 6.81 The proposal was that clients who are eligible for legal aid and whose case is within scope will continue to receive legal aid services. As at present, those who are ineligible or have problems that are outside of the scope of legal aid will be given a range of options by the CLA Operator Service, including both paid-for and free services. The facility to be referred directly to paid-for advice would be an additional service for those that would find it helpful.
- 6.82 The Government decided that the risk of eligible clients being deterred from calling the CLA helpline could be mitigated by providing clear messages about the role of the service, emphasising that no charge will be made for callers for initial help or for specialist advice where callers are eligible for legal aid. We envisage that the range of rates payable should be transparent with indicative ranges detailed in the relevant tender documents. We envisage that the tender process would enable advice providers to bid to provide legal aid services only or both legal aid and paid-for

services. However, we do not envisage that the Government would direct particular providers to offer services at a set rate.

- 6.83 The Government carefully considered the issues raised regarding competition issues. The service would only be available for clients that call CLA directly and are willing to pay for advice. The Government anticipates that the impact on the overall private client market would therefore be limited. Any provider who is able to meet the published criteria (including not-for-profit providers) would be free to bid for the relevant contracts when tendered and the tender process would need to meet EU procurement regulations and be in accordance with competition law requirements. Paid-for advice providers would be chosen following a tender process based not only on cost to clients but also the same quality requirements as those expected of legal aid providers.

### **Conclusion**

- 6.84 The Government decided to:
- implement a mandatory single telephone gateway limited to the following areas of law: debt (insofar as it remains in scope), discrimination (claims relating to a contravention of the Equality Act 2010) and Special Educational Needs subject to the exceptions set out at paragraph 6.31; and
  - made the Parliamentary commitment to conduct a review which will monitor its implementation and operation. The report of that review will be published within 2 years of the implementation and before any decision about any possible extension of the mandatory gateway to others areas of law is taken to introduce a phased expansion of the provision of specialist telephone advice into the areas of law remaining in scope, except asylum matters.
  - run a pilot scheme to further examine the feasibility of offering the option to clients ineligible or out of scope for legal aid to pay for advice over the telephone.

### **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

- 6.85 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out the legal duties section of the introduction to this EIA.
- 6.86 As noted above, these changes will apply to all people irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they are likely to give rise to any direct discrimination. It is possible that this proposal could (if not formulated in the way in which it has been) give rise to unfavourable treatment to those with disabilities or those with little or no spoken English which would prevent them from accessing this service. The adjustments made to the policy following consultation further reduce any such possibility. Also potentially relevant to the proposals to reform the provision of telephone advice are indirect discrimination and the duty to make reasonable adjustments. However for the reasons set out in the introductory section of this document, from paragraph 6.87 below, and elsewhere we do not consider them to give rise to discrimination arising as a consequence of particular disabilities as:
- protected groups are not put at a particular disadvantage, in light of the full details of the proposals;

- the proposals are a proportionate manner of achieving the legitimate aims set out above;
- the duty to make reasonable adjustments is being complied with, including by assisting disabled callers and other vulnerable individuals through the provision of British Sign Language, Typetalk and Minicom services and a variety of free-to-enquirer call back services. Children (under 18) and those in detention (for example in hospital or prison) need not use the line;
- all gateway operators undertake a full induction and training programme including specific training for dealing with callers with specific needs. The reformed service will continue to make such adjustments to ensure that disabled people are not placed at any disadvantage (regardless of whether it is substantial or not), and are fully able to access legal aid services and participate in public life; and
- all clients that cannot be reasonably be accommodated via the telephone advice service, including those with cognitive, communication or learning disabilities, will be referred to a face to face advice provider; and
- where an individual potential claimant is a child or has severe learning disabilities, first contact with the telephone advice line may be made by third party (such as a carer or relative) subject to the claimant having given appropriate authority to the caller.

6.87 We hold data for the protected characteristics of sex, race, disability and age, and this is set out above. For the protected characteristics of marriage and civil partnership, pregnancy or maternity, gender reassignment, religion and belief and sexual orientation, we do not consider that the nature of the reforms would be likely to have any disproportionate effect.

### **Consideration of statistical impacts and justification**

6.88 The equality impact assessment of the mandatory gateway reforms, and a comparison with the impacts identified in the initial EIA is set out above.

6.89 Following consultation we have amended the proposals for a telephone gateway, to include a smaller number of areas of law and so cases than originally proposed, as set out above. Further investigation also resulted in community care not being included in the initial areas of law.

6.90 While we do not consider that changing the channel of provision from face-to-face to telephone need have a negative impact on clients, the revised policy mean that fewer people will now be affected by this reform, than if it had been implemented in the form it was originally consulted on.

6.91 Delivering a greater proportion of advice by telephone may cause access problems for some clients, for example due to literacy issues, language barriers, problems acting on advice given, or an inability to pick up on non-verbal cues. However, there are also a range of facilities to aid access to the service, including a free translation service and facilities for British Sign Language, Minicom and Typetalk, which are not routinely available at face-to-face advice providers. In addition those people assessed as unable to receive advice over the telephone and act on advice over the telephone will be referred to face to face advice.

- 6.92 Respondents to the consultation suggested mitigations and reasonable adjustments that would ensure that people affected by the expansion of telephone advice could continue to access legal aid services effectively, including that:
- the helpline should be clearly signposted
  - helpline operators should be trained in learning disability awareness.
- 6.93 As noted in this EIA and the consultation response, we are pursuing a range of measures, including those above, to ensure that clients are fully able to access legal aid services.
- 6.94 Respondents to the consultation also suggested that rather than being a compulsory gateway for access to legal aid services clients should be able to choose whether to receive advice through an expanded telephone service or through existing face to face services. Some respondents also suggested that there should be further consultation before any expanded telephone service was implemented. As noted above, the Government addressed this concern by publishing the document referred to above, which clarified that the helpline would not be the mandatory single gateway for emergency cases and set out further information on the operation of the current CLA helpline.
- 6.95 Following consultation the Government has decided that there should be exceptions to the mandatory gateway, in addition to emergency cases. These would include: where the client is a child or where the client is in detention. However, we consider that a mandatory gateway is appropriate and a proportionate means of achieving our ends.
- 6.96 As outlined in the introductory section of this EIA we consider that the overarching need to make savings from legal aid means that the proposals are justified. Following amendments to the reforms for implementation based on consultation feedback, we remain of the view that expanding the telephone helpline as the mandatory single gateway for legal aid advice is a proportionate means of meeting our legitimate ends.

### **Advancement of equality of opportunity, fostering of good relations**

- 6.97 We have considered whether these proposals have implications for the advancement of equality of opportunity and the fostering of good relations.
- 6.98 We do not consider that expanding the telephone advice service would affect the participation of persons who share a relevant protected characteristic and who are under-represented in public life, and indeed some respondents to the consultation commented that providing the expanded telephone helpline might support some people, such as those with disabilities that restrict their mobility, to access advice. In addition, we consider that continuing to provide advice for people to challenge alleged discriminatory behaviour goes to the heart of the duty described above.

### **Consideration of reasonable adjustments**

- 6.99 We have also taken account of our duty to make reasonable adjustments for individuals with disabilities. As set out in greater detail in the consultation response :
- text phone, minicom, BSL service, and translation services and the facility by which callers can authorise third parties to call on their behalf are currently available and will continue to be provided;

- all clients that cannot be reasonably accommodated via the telephone advice service, including cognitive, communication or learning disabilities, will be referred to a face-to-face advice provider;
- operators and specialist advisors are trained to identify cases where telephone advice would not offer the help that the caller needs. This could be because of the circumstances of the case – for example because representation is needed – or because of the circumstances of the client (for example because it is clear to the Operator that the caller will not be able to adequately give or receive instructions by telephone); and
- both the gateway provider and all specialist advice providers will be required to have a clear complaints process that will be made available to all callers that wish to see it. The process will make it clear how and when complaints will need to be resolved by the individual provider and the circumstances when a complaint should be escalated to the LSC or other regulatory body.

### **Next steps**

- 6.100 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.
- 6.101 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single mandatory gateway for specific types of law and the removal of legal aid for some types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.

## 7. Alternative sources of funding

### Description

- 7.1 The following options were consulted upon:
- Securing the interest on client accounts
  - A Supplementary Legal Aid Scheme
- 7.2 Following consultation the June 2011 consultation response confirmed that the Government intends to introduce a Supplementary Legal Aid Scheme (SLAS).
- 7.3 The policy remained unchanged during the passage of the LASPO Bill through Parliament.
- 7.4 The Government has recently carried out an engagement exercise with key stakeholders on detailed issues regarding the practical application of the SLAS. We are currently in the process of considering the issues raised in that exercise.

### Legal Duties

- 7.5 The legal duties that apply to MoJ are set out in full in the introduction to this document.

### EIA-specific issues raised in consultation responses

- 7.6 No comments were received from respondents to the June 2011 consultation response on equalities in relation to the proposal to secure interest on client accounts. In relation to the proposed Supplementary Legal Aid Scheme (SLAS), some respondents raised the risk of particular or substantial disadvantage to disabled people insofar as a SLAS scheme would apply to damages awarded in clinical negligence cases.

### Analysis of Statistical Impacts

- 7.7 We do not collect information on the amount of the specific type of damages awarded to legally aided claimants, to which a SLAS would apply. It has not therefore been possible to match damages payments with clients in order to undertake a full analysis of the impact of this proposal on equalities.
- 7.8 Our approach to analysing the potential equalities impacts of the proposals has therefore been to identify the characteristics of clients who may receive legal aid for legal representation for cases in the five existing categories of law most likely to result in an award of damages, as these are the categories where the SLAS levy is most likely to apply. Only a proportion of cases in those categories will be affected. The categories are:
- Actions against the police (which includes wrongful arrest);
  - Housing (which includes unlawful eviction);
  - Clinical negligence;
  - Personal injury; and

- Public law (which includes damages awarded in negligence claims against public authorities).

- 7.9 For actions against the police, housing and public law we have presented the characteristics of those clients who secured legal aid funding for legal representation in 2009/10, which assumes that they will be representative of the characteristics of clients remaining in scope of the civil legal aid scheme contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 7.10 Clinical negligence cases are to be removed from the scope of legal aid funding under the 2012 Act, with the exception of certain obstetrics cases involving infants who have suffered serious neurological injury as described earlier in this EIA. In addition, it is expected that a number of out of scope cases will attract legal funding under the exceptional funding scheme. Due to limitations in the available data, it has not been possible to identify the characteristics of those clients who may be funded under this scheme, or those clients otherwise retained in the scope of the 2012 Act. In this EIA, we have presented the characteristics of those clients who secured legal aid funding for legal representation in 2009/10 for clinical negligence cases. However, we acknowledge that in relation to age and disability, in particular, the characteristics of those being retained in the scope of the Act may be somewhat different.
- 7.11 Personal injury cases (including Criminal Injuries Compensation Authority matters, some claims against public authorities and Tort matters) are also generally to be removed from the scope of legal aid funding. Due to limitations in the data available, it has not been possible to identify the characteristics of those clients who may remain in scope, either through exceptional case funding or otherwise remaining in the scope of the 2012 Act. In this EIA, we have assumed that the characteristics of those clients who secured legal aid funding for legal representation in 2009/10 for personal injury cases are representative of those who may secure funding in the future.
- 7.12 The characteristics of clients who may receive legal aid for legal representation in cases involving discrimination have also been presented. These cases also feature in the broader categories of law explored throughout this EIA, and have been presented separately to aid understanding of potential equality impacts.
- 7.13 We expect that the majority of SLAS levy payments, in terms of amounts, will come from clinical negligence cases, as the average damages (excluding future care and loss) are likely to be higher in that category.

### ***Clients***

- 7.14 Table 33 shows that clients aged 25 to 64 years may be over-represented in actions against the police (89 %), housing (88 %), personal injury (68 %) and public law (74 %), as well as in cases involving discrimination (82 %). This is in comparison to the general population of England and Wales, where 53 % are aged between 25 and 64 years.
- 7.15 In clinical negligence law, there is little difference between the age of clients receiving legal aid for legal representation and the age of the general population of England and Wales. As a result of the modification to bring into scope cases involving infants who have suffered serious neurological injury clients aged 17 years or younger may be over-represented within clinical negligence law.

- 7.16 Table 34 shows disabled clients may be over-represented in clinical negligence (63 % of known cases) housing (34 % of known cases) and public law (36 % of known cases). The volume of unknown disability status amongst potential actions against the police (58 %), and personal injury law clients (98 %) means conclusions cannot be drawn about disability in these particular categories. The Office for Disability Issues estimates that 19 % of those in Great Britain have a longstanding illness, disability or infirmity, and have a significant difficulty with day-to-day activities.
- 7.17 Table 35 shows that BAME clients may be over-represented in actions against the police (69 % of known cases) housing (42 % of known cases) and public law (37 % of known cases). BAME clients may be also over-represented in cases involving discrimination law (63 % of known cases). In comparison, 12 % of the population of England and Wales are BAME. Ethnicity is unknown in many of the records held by the LSC and this means results should be treated with caution. The proportion of unknown ethnicity status amongst potential personal injury law clients is 77 %, and this means conclusions cannot be drawn in this particular category.
- 7.18 The proportion of BAME clients affected is expected to be at least at the level of the general population in clinical negligence cases (15 % of known cases). However, the ethnicity of clients who received legal aid for legal representation in clinical negligence cases was unknown in 27 % of the 2009/10 LSC caseload. For this reason we cannot rule out a differential impact on BAME clients in clinical negligence law.
- 7.19 Table 36 shows that women may make up a smaller proportion of potential clients in actions against police (32 % of cases excluding unknown), personal injury (40 % of cases excluding unknown) and public law (27 % of cases excluding unknown) categories, as well as a smaller proportion of cases involving discrimination (38 % of known cases). Women may be over-represented in housing law (57 % of cases excluding unknown) when compared to the general population (51 %).
- 7.20 There is little difference in the percentage of female clients for clinical negligence cases (53 %) compared to the general population (51 %).

### ***Impacts on providers***

- 7.21 The proposal in principle to implement a SLAS was not expected to have a major impact on providers as the proposal concerned the client's damages rather than payment to providers. That remains the position now the Governments policies are confirmed. However, it is acknowledged that the SLAS levy may place minor administrative burdens on providers working on such cases. In this full EIA we have considered the equality impacts of these.
- 7.22 To do so we refer to the LSRC survey data used earlier to analyse the impacts of the scope proposals, by comparing the characteristics of providers likely to be working in the same five categories of law with the characteristics of providers who worked across all categories of law in 2009/10.
- 7.23 Table 13 shows that 16 % of NfP providers have one or more long-term ill or disabled managers in the housing law category, similar to the proportion of ill or disabled managers employed by NfP providers across all categories of law (15 %). In public law, 21 % of NfP providers employ ill or disabled managers, an over-representation when compared to ill or disabled managers employed across all categories of law. To protect the privacy of providers, disability for NfP providers in the actions against the police and personal injury law categories are not presented.

- 7.24 Table 14 shows that the percentage of solicitor providers with one or more long-term ill or disabled manager is 7 % for actions against the police, 5 % for housing, and 8 % for both personal injury and public law. In clinical negligence law, 12 % of solicitor providers employ ill or disabled managers, an over-representation when compared to ill or disabled managers employed across all categories of law (5 %).
- 7.25 Table 11 shows that 12 % of NfP providers in the housing law category have majority BAME ownership and control. This proportion is similar to the ethnicity of majority ownership and control of NfP providers working across all categories of law. To protect the privacy of providers, the ethnicity of majority ownership amongst actions against the police, education and public law NfP providers are not presented.
- 7.26 Table 12 shows that 8 % of solicitor providers in the actions against the police category, 13 % in housing and 8 % of public law have majority BAME ownership and control. These proportions are similar to the ethnicity of majority ownership and control of solicitor providers working across all categories of law (10 % for BAME majority). There is an under-representation of BAME majority owned and controlled solicitor providers working in clinical negligence (2 %) and personal injury law (3 %) when compared to the average across all categories of law (10 %), though the proportions of mixed majority ownership and control in both categories are similar.
- 7.27 Table 9 shows that female majority-owned NfP providers represent 48 % of housing law NfPs. This proportion is similar to that of female-majority owned NfP providers working across all categories of law (53%). To protect the privacy of providers, the gender of majority ownership amongst actions against the police, education and public law NfP providers are not presented.

Table 10 shows that females majority own 14 % of solicitor providers in actions against the police, clinical negligence, housing and public law categories, and 13 % in the personal injury law category. These proportions are similar to the proportion of female majority-owned solicitor providers working across all categories of law (17 %)

### **Summary**

In summary, the available evidence suggests that there is potential for the SLAS levy to have a differential impact upon clients in relation to age, disability, race and sex. There is also the potential for a differential impact upon providers in relation to disability, sex and race.

### **Comparison with earlier EIAs**

- 7.28 The initial and consultation response EIAs noted that civil legal aid clients are more likely to be female, ill or disabled and BAME than in the general population. They are also more likely to be aged between 25 and 64. These earlier EIAs did not rule out the possibility that the SLAS could have a disproportionate impact on these groups.
- 7.29 Since publication of the initial and consultation response EIAs we have extended our analysis on the potential equality impacts of the SLAS and how it would work in practice to focus on cases most likely to be affected by the SLAS. This analysis has been presented above, and the proportions of particular client characteristics may slightly differ from those presented in the earlier EIAs. This is in part due to the focus on clients who secure funding for legal representation as opposed to all civil legal aid clients, and in part due to the focus on the specific categories of law that may be affected by the SLAS.

- 7.30 The updated analysis does not however alter the overall impact suggested in previous EIAs. As noted above, we do not collect information on the amount of the specific type of damages awarded to legally aided claimants, to which a SLAS would apply. Therefore analysis on the potential impact of the SLAS should be treated with caution

### **Decision in June 2011 consultation response**

#### **Interest on Lawyers Trust Accounts (IOLTA)**

- 7.31 IOLTA schemes are not a new idea, and other countries, including the United States of America, Australia and France have similar schemes. It is evident, however, that the amounts generated by an IOLTA scheme vary with interest rates and the state of the economy generally. This is borne out by the experience of other countries, such as the USA, where income from their IOLTA scheme was as much as \$370 million in 2007, before falling to around \$92 million in 2009.<sup>27</sup>
- 7.32 Following the global economic crisis and the impact this has had on the financial sector, we were particularly sympathetic to the argument that having a choice of bank in which to place client monies helped firms to secure better rates and services for both their clients and themselves.
- 7.33 Having considered carefully the arguments put forward on the consultation, the Government has concluded, on balance, not to pursue an IOLTA scheme for England and Wales at this time.

#### **Supplementary Legal Aid Scheme**

- 7.34 The Government acknowledges that the number of respondents supporting the SLAS was lower than those who opposed the proposal. Some respondents (both supporters and opponents of the proposal) indicated that they were not sure how the SLAS would operate, particularly, in light of the proposed scope changes. It was also notable that a higher number and proportion of respondents supported the concept of the SLAS recouping a percentage of damages than those who expressed support for the SLAS itself.
- 7.35 The Government recognises that the SLAS proposal represents a new and unfamiliar way of funding some civil cases in England and Wales, but is of the view that no compelling argument against the SLAS was presented. At a time when the public purse is constrained, the partially self-funding SLAS represents an important innovative measure to enable legal aid funding for civil cases. The funds raised by the partially self-funding SLAS will supplement the legal aid fund thereby supporting members of the public to pursue civil cases. Failure to innovate when public funding is limited is likely to result in greater pressure on the legal aid fund. This measure, along with others adopted by the Government, is intended to put legal aid on a sustainable footing and to ensure that those most in need receive legal aid funding.
- 7.36 Several respondents questioned the viability of the SLAS proposal should clinical negligence, education damages and housing damages cases be removed from scope. The Government has decided to proceed to remove clinical negligence, education damages and housing damages cases from legal aid scope. While the SLAS would apply to out-of-scope cases funded through exceptional funding, we recognise that respondents' concerns are well-founded in the context of a SLAS that is fully self-funding. In addition to the risk that SLAS funds would be easily depleted

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<sup>27</sup>See: [http://www.brennancenter.org/content/resource/the\\_economy\\_and\\_civil\\_legal\\_services/](http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services/)

and difficult to replenish, a self-funding SLAS has the additional burden of requiring different percentages of damages to be recouped from different cases depending on risk and therefore would entail significant administration.

- 7.37 The Government's view is that this proposal should be consistent with the wider reforms to the costs and funding of civil litigation and that legal aid should generally be no more attractive than CFAs or other forms of funding.
- 7.38 Under the Jackson CFA reforms to be implemented which the Government announced on 29 March, the success fee which a solicitor may claim from a successful client in personal injury cases (including clinical negligence cases) will be capped at 25% of all damages, other than those for future care and loss, that can be taken as a success fee in personal injury cases (including clinical negligence cases). Solicitors will be able to charge a success fee which is less than 25%, and the Government anticipates that market forces will encourage this.
- 7.39 As confirmed in the June 2011 consultation response, the Government has decided to implement a partially self-funding SLAS. The funds recouped will supplement the legal aid fund and therefore the funding of civil cases. This partially self-funding model is not only viable in light of the Government's changes to legal aid scope, it also ensures that the level of damages recouped to the legal aid fund can be set at a fixed percentage rather than the variable rates that the self-funding SLAS would entail. The partially self-funding model also facilitates a consistent approach with the wider reforms to the costs and funding of civil litigation.
- 7.40 Consequently, the Government decided to introduce a SLAS which is partially self-funding and takes for the legal aid fund a percentage of all damages other than damages for future care and loss, in a way that is consistent, so far as possible, with the reforms to civil litigation costs in personal injury cases.

### **The percentage of damages**

- 7.41 The Government recognises that in damages cases other than personal injury cases, the SLAS may, in some cases, be more attractive than a CFA because: there will be no cap on the CFA success fee; a legally aided claimant is protected from having costs awarded against him if he loses the case; and will not need to take out After the Event (ATE) insurance (although he may be required to make a contribution to the costs of his case). However, the Government has concluded that the recovery level for the SLAS should be consistent with the Jackson reforms to ensure, in so far as it is possible to do so, that CFAs are no less attractive than legal aid. The Government has decided to set the level of recovery at 25% of all damages successfully claimed, other than any damages for future care and loss.

### **Conclusion**

- 7.42 Having considered the responses to the consultation questions on alternative sources of funding, the June 2011 consultation response confirmed the Government's decision to introduce a Supplementary Legal Aid Scheme, under which 25% of all damages successfully claimed, other than damages for future care and loss, in cases funded by legal aid will be recovered by the legal aid fund. This will include cases funded through the exceptional funding mechanism.

## **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

- 7.43 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out the legal duties section of the introduction to this EIA.
- 7.44 As noted in paragraph 26 above, these changes will apply to all people, irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they will give rise to any direct discrimination. We also consider it unlikely to amount to disproportionate unfavourable treatment arising out of a person's disability or to give rise to a duty to make reasonable adjustments. The form of prohibited conduct which is potentially most relevant to the introduction of a SLAS is therefore indirect discrimination. However, for the reasons set out in the introductory section of this document, we consider that the proposed reforms are a proportionate means of meeting our legitimate policy objectives and we are doubtful as to whether these proposals will have a particularly disadvantageous effect on members of a protected class.
- 7.45 While we hold data on the protected characteristics of sex, race, disability and age, as set out above it has not been possible to use this data to assess the potential impact of introducing a SLAS. We do not hold data on the protected characteristics of marriage and civil partnership, pregnancy or maternity, gender reassignment, religion and belief and sexual orientation, and we do not consider that a SLAS would be likely to have any disproportionate effect on people based on having any of these protected characteristics.
- 7.46 While we consider that introducing a SLAS is likely to be a provision or give rise to a practice, we do not consider that it would have any disadvantageous effect on people based on any of the protected characteristics.

## **Consideration of potential statistical impacts and justification**

- 7.47 The impact assessment for the introduction of a SLAS is set out above. Following consultation we have decided not to proceed with the additional option of introduction a Interest on Lawyers Trust Accounts (IOLTA) scheme. Therefore, the solicitors' firm which would have been affected by this proposal, including those that do not undertake legal aid work, will not be impacted by the implementation of these reforms.
- 7.48 As set out in the introductory section of this EIA and elsewhere, we consider that the overarching need to reduce the cost of legal aid justifies the reform proposals, and that they are proportionate to the need to achieve this aim. With relation to a SLAS it is also the Government's view that legal aid should generally be no more attractive than CFAs or other forms of funding in cases involving damages cases, and introducing a SLAS is a proportionate way of achieving this.

## **Advancement of equality of opportunity, fostering of good relations**

- 7.49 As set out in paragraph 95 of the introductory section of this EIA, we have considered whether these proposals have implications for the advancement of equality of opportunity and the fostering of good relations.
- 7.50 We do not consider that introducing a SLAS would affect the participation of persons who share a relevant protected characteristic and who are under-represented in public life.

## Next steps

- 7.51 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.
- 7.52 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single mandatory gateway for specific types of law and the removal of legal aid for some types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.
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## 8. Expert fees

8.1 The following options were consulted upon:

- Codify expert 'benchmark' hourly rates and reduce them by 10%

8.2 This policy remained unchanged during the passage of the LASPO Bill through Parliament.

### **EIA-specific issues raised in consultation responses**

8.3 No EIA-specific issues were raised by respondents in relation to experts' fees.

### **Legal Duties**

8.4 The legal duties that apply to MoJ are set out in full in the introduction to this document.

### **Analysis of Statistical Impacts**

8.5 It is not possible to assess the impact of the proposed reforms to experts' fees, as no equalities data is held for this particular group and it is not possible to identify clients and so providers in cases where experts are instructed - no additional data on this was provided via the consultation exercise. However, given that the proposal is to fix rates and reduce these by 10%, our best estimate is that all affected groups, irrespective of equality characteristics, would experience a 10% reduction in legal aid income as against the proposed remuneration rates.

### **Comparison with initial EIA**

8.6 As noted above, because of a lack of data it is not possible to identify the individuals who would be affected by changes to experts' fees, and the position remains unchanged from the initial EIA.

### **Decision in June 2011 consultation response**

#### **Clear structure for the fees to be paid to experts from legal aid**

8.7 Separate work, along the lines suggested by many respondents, is already being undertaken by the Government to examine and challenge the use of experts in the justice system. The Family Justice Review (FJR) recently recommended in its interim report (published on 31 March 2011) that the family justice system should reduce reliance on expert reports overall and make the criteria for their appointment more explicit and strict. The FJR also recommended the use of multi-disciplinary teams to provide expert services to the courts. The use of multi-disciplinary expert teams to provide jointly instructed health expert witness services to family courts in public law child care proceedings was explored in the recent Alternative Commissioning of Experts (ACE) pilot. A draft evaluation of the pilot is expected to be delivered to the LSC in late summer this year.

8.8 As most respondents strongly agreed with the need for a recognised fee structure, it is the Government's view that, in the short term, the introduction of codified rates is a reasonable first step towards providing a clear structure for the fees to be paid to experts from legal aid. The separate workstreams to examine and challenge the use of experts in the justice system – along the lines suggested by respondents - will

continue and are likely to inform the development of the more detailed experts' payment scheme in future.

**In the short term the current benchmark hourly rates, reduced by 10%, should be codified.**

- 8.9 The Government acknowledges that the data captured by the LSC's earlier file reviews are not exhaustive and has limitations. The LSC does not hold or separately collect information on the number of experts paid from legal aid, the value of payments to them and the work that these payments bought. Neither is there sufficient equalities information available to enable a detailed assessment of the potential for this proposal to have a disproportionate impact on people based on the groups having the characteristics protected by the Equality Act 2010.
- 8.10 This position has not significantly changed following consultation as no additional data was provided via the consultation exercise. However, the benchmark rates (in their current form) have been applied by the LSC for some time and there are only limited anecdotal reports of problems with access to experts. In London, in particular, the LSC has been able to apply lower rates than in the regions due to the level of competition for the work.
- 8.11 Given the clear need to make savings, the June 2011 consultation response confirmed that the Government had therefore decided to proceed with codifying and reducing the current LSC guidance rates by 10%. There will however be a 'safety valve' in the system, in that the LSC will be able to authorise increased rates in exceptional cases where required. This was implemented in October 2011.
- 8.12 During the course of implementation, the MoJ worked with the LSC to ensure that a proportionate but effective monitoring mechanism has now been put in place to enable a better understanding of the effect of the introduction of the reduced, codified rates on all affected groups.
- 8.13 Further work and consultation with affected groups will be undertaken on the back of this as part of the ongoing development of a more detailed scheme based on fixed fees, graduated fees (where specific totals are set for particular activities), and a limited number of hourly rates.

**In the longer term, the structure of experts' fees should include both fixed and graduated fees and a limited number of hourly rates.**

- 8.14 It would be difficult to devise or initiate a competitive tendering process at this stage. It has already been acknowledged that insufficient data exists on expenditure to inform a very detailed scheme, and therefore defining the activities for which bids would be made, and comparing bids with current prices for those activities would be difficult. By introducing the proposed schemes and better monitoring of expenditure, the Government hopes to be in a position in the future to work towards a more tailored payment scheme where a move towards a competitive scheme could then also be considered. The Government thinks that the LSC contracting with or paying experts directly for legal aid work would lead to a reduction in savings given the increased costs to the LSC that administering such contracting would entail.
- 8.15 The June 2011 consultation response therefore confirmed that the Government therefore intends to proceed with longer term plans to work towards putting in place a more detailed and prescriptive scheme of fixed and graduated fees (where specific totals are set for particular activities) and a limited number of hourly rates. This will,

however, be in the context of any changes that, for example, come out of the Family Justice Review.

### **The categorisations of fixed and graduated fees (shown in Annex J of the consultation paper)**

- 8.16 Given the lack of consensus and contrasting views expressed by respondents, the Government is satisfied that the categorisations and graduated fees are a reasonable starting point, but acknowledges that further data collection and work with the profession will need to be undertaken to evidence any future fixed and graduated fee scheme.

### **The proposed provisions for 'exceptional' cases**

- 8.17 As 'exceptional' cases are likely to be more expensive, it is important that the LSC are able to retain the ability to assess that value for money is being achieved – even where exceptional expense can be justified.
- 8.18 'Exceptional' circumstances are currently defined as those where: the experts' evidence is key to the client's case; and either the complexity of the material is such that an expert with a high level of seniority is required or the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.
- 8.19 The 2011 consultation response confirmed the Government's view that the provisions for 'exceptional' cases remain as set out in the consultation paper, for the present. This will be considered further during the development of a more complex fixed and graduated fee scheme in the longer term.

### **Conclusion**

- 8.20 Having considered the responses to the consultation, the June 2011 consultation response confirmed that the Government had decided to:
- codify the benchmark rates for experts, reduced by 10%, with provision for exceptional cases; and
  - continue to develop the longer term framework for expert fees as set out in the consultation.
- 8.21 The proposals relating to codification of benchmark rates were implemented with effect from October 2011.

### **Elimination of discrimination, harassment, victimisation and other prohibited conduct**

- 8.22 The definitions of discrimination, harassment, victimisation and other prohibited conduct are set out the legal duties section of the introduction to this EIA.
- 8.23 As noted in paragraph 24 above, these changes will apply to all people, irrespective of whether they have one of the protected characteristics, and we do not therefore, consider that they will give rise to any direct discrimination. We also consider it unlikely to amount to disproportionate unfavourable treatment arising out of a person's disability or to give rise to a duty to make reasonable adjustments. The form of prohibited conduct which is potentially most relevant to changes in experts' remuneration is therefore indirect discrimination. However, for the reasons set out in the introductory section of this document, from paragraph 8.24 below, and

elsewhere, we consider that the proposed reforms are a proportionate means of meeting our legitimate policy objectives and we are doubtful as to whether these proposals will have a particularly disadvantageous effect on members of a protected class.

- 8.24 While we consider that codifying expert's rates is likely to be a provision, we do not consider that it would have any disadvantageous effect on people based on any of the protected characteristics.

#### **Consideration of potential statistical impacts and justification**

- 8.25 As noted above, it is not possible to carry out a statistical impact assessment for changes to experts' remuneration due to a lack of data.
- 8.26 In light of the pressing need to make savings from legal aid we consider that the policy to reform experts' remuneration are proportionate and justified. We also believe that issues with reforming fees identified by respondents to the consultation can be explored more fully once a recognised set of rates are in place and can be effectively monitored, and that further data collection and work with the profession will need to be undertaken to evidence any future fixed and graduated fee scheme.

#### **Advancement of equality of opportunity, fostering of good relations**

- 8.27 As set out in paragraph 95 of the introductory section of this EIA, we have considered whether these proposals have implications for the advancement of equality of opportunity and the fostering of good relations.
- 8.28 We do not consider that reforming experts' fees would affect the participation of persons who share a relevant protected characteristic and who are under-represented in public life.

#### **Next steps**

- 8.29 The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, Her Majesty's Courts and Tribunals Service (HMCTS) and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility of improving data coverage and quality in the medium and longer term. We will also complement the use of administrative data with bespoke research exercises where appropriate.
- 8.30 For example, we are currently exploring administrative data collected by LSC on the characteristics of legal aid clients, including income and capital to inform our review of the implementation of these reforms. This may lead to survey work in order to address gaps in our knowledge. We will also be collecting data to assess the single mandatory gateway for specific types of law and the removal of legal aid for some types of immigration cases. In addition, we will work with the Legal Services Board (LSB) and the Law Society to produce further research on providers prior to the reforms and following their implementation.

## Data section

Table 1: Sex – legal aid client base, 2008/09 and 2009/10

Caseload type	2008/09*			2009/10		
	Female	Male	Unknown	Female	Male	Unknown
Affected caseload	57%	42%	0%	56%	43%	0%
Unaffected caseload	56%	43%	1%	51%	48%	1%
Total caseload	57%	43%	1%	55%	45%	1%

Source: Legal Services Commission

Table 2: Race – legal aid client base, 2008/09 and 2009/10

Category of law	2008/09*			2009/10		
	BAME	White	Unknown	BAME	White	Unknown
Affected caseload	27%	63%	9%	23%	69%	9%
Unaffected caseload	23%	64%	13%	34%	50%	15%
Total caseload	26%	64%	11%	26%	63%	11%

Source: Legal Services Commission

Table 3: Disability – legal aid client base, 2008/09 and 2009/10

Category of law	2008/09*			2009/10		
	Ill/disabled	Not ill/disabled	Unknown	Ill/disabled	Not ill/disabled	Unknown
Affected caseload	20%	62%	18%	21%	64%	15%
Unaffected caseload	24%	54%	22%	19%	55%	26%
Total caseload	21%	59%	20%	21%	61%	18%

Source: Legal Services Commission

\* Note: 2008/09 data do not include CLA clients

Figures may not add to 100% due to rounding

## Scope proposals

Clients:

**Note:** Volume reduction estimates have been rounded to the nearest 10 from 0 – 1,000, nearest 100 from 1,000 – 100,000 and nearest 1,000 for volume reductions in excess of 100,000.

Table 4: Sex – the clients affected by reduction in scope of legal help, legal representation and telephone services by category of law, 2009/10 data

Category of law	Estimated volume reduction	Estimated characteristics			Excluding unknown	
		Female	Male	Unknown	Female	Male
Actions against police	2,220	27%	73%	0%	27%	73%
Clinical Negligence	4,000	50%	49%	1%	50%	50%
Consumer	3,570	48%	51%	1%	48%	52%
Debt	105,050	53%	47%	0%	53%	47%
Education	2,870	72%	28%	0%	72%	28%
Employment	24,070	45%	55%	0%	45%	55%
Family	232,500	62%	37%	0%	63%	37%
Housing	53,200	61%	39%	0%	61%	39%
Immigration	53,290	46%	53%	0%	47%	53%
Miscellaneous	3,880	59%	40%	1%	60%	40%
Personal Injury	2,460	35%	59%	6%	37%	63%
Public Law	250	59%	35%	6%	63%	38%
Welfare Benefits	135,000	53%	47%	0%	53%	47%
<b>Total</b>	<b>623,000</b>	<b>56%</b>	<b>43%</b>	<b>0%</b>	<b>56%</b>	<b>44%</b>
England & Wales population	55,241,000	51%	49%	0%	51%	49%

Source: Caseload data from the Legal Services Commission, Mid-2010 Population Estimates for England and Wales, Office for National Statistics

Figures may not add to 100% due to rounding

Table 5: Ethnicity – the clients affected by reduction in scope of legal help, legal representation and telephone services by category of law, 2009/10 data

Category of law	Estimated volume reduction	Estimated characteristics			Excluding unknown	
		BAME	White	Unknown	BAME	White
Actions against police	2,220	23%	59%	18%	28%	72%
Clinical Negligence	4,000	12%*	65%	23%	16%	84%
Consumer	3,570	14%	70%	16%	17%	83%
Debt	105,050	16%	80%	4%	17%	83%
Education	2,870	34%	51%	15%	40%	60%
Employment	24,070	23%	72%	5%	24%	76%
Family	232,500	11%*	76%	13%	12%	88%
Housing	53,200	29%	62%	9%	32%	68%
Immigration	53,290	86%	7%	7%	92%	8%
Miscellaneous	3,880	9%*	73%	18%	11%	89%
Personal Injury	2,460	14%	51%	35%	22%	78%
Public Law	250	12%*	71%	18%	14%	86%
Welfare Benefits	135,000	26%	70%	4%	27%	73%
<b>Total</b>	<b>623,000</b>	<b>23%</b>	<b>69%</b>	<b>9%</b>	<b>25%</b>	<b>75%</b>
England & Wales population	54,809,000	12%	88%	0%	12%	88%

Source: caseload data from the Legal Services Commission, experimental Population Estimates by Ethnic Group in England and Wales for 2009, Office for National Statistics.

\* While the proportion of clients who are known to be BAME is in-line with the figure for the population of England & Wales the amount of missing data means that we cannot draw conclusions about whether BAME people are over or under-represented among legal aid clients

Figures may not add to 100% due to rounding

Table 6: Disability – the clients affected by reduction in scope of legal help, legal representation and telephone services by category of law, 2009/10 data

Category of law	Estimated volume reduction	Estimated characteristics			Excluding unknown	
		Ill/disabled	Not ill/disabled	Unknown	Ill/disabled	Not ill/disabled
Actions against police	2,220	17%*	56%	27%	24%	76%
Clinical Negligence	4,000	34%	25%	41%	57%	43%
Consumer	3,570	18%*	56%	26%	25%	75%
Debt	105,050	25%	68%	7%	27%	73%
Education	2,870	15%*	67%	18%	18%	82%
Employment	24,070	10%*	81%	9%	11%	89%
Family	232,500	7%*	74%	20%	8%	92%
Housing	53,200	24%	61%	15%	29%	71%
Immigration	53,290	4%*	72%	24%	5%	95%
Miscellaneous	3,880	17%*	52%	31%	24%	76%
Personal Injury	2,460	11%*	36%	53%	23%	77%
Public Law	250	29%	47%	24%	38%	62%
Welfare Benefits	135,000	54%	39%	7%	58%	42%
Total	623,000	21%	64%	15%	25%	75%
Great Britain population**	60,463,000	19%	81%	0%	19%	81%

Source: caseload data from the Legal Services Commission, Prevalence estimates 2009/10 for Great Britain, The Office for Disability Issues (ODI)

\* While the proportion of clients who are known to be ill or disabled is in-line or lower than the figure for the population of Great Britain the amount of missing data means that we cannot draw conclusions about whether ill or disabled people are over or under-represented among legal aid clients

\*\* Alternative population comparators were considered for disability, including those provided by ONS life opportunity and annual population surveys. These sources look at adults in the population of England and Wales. The ODI prevalence estimates look at all people (including children and adults) in Great Britain, estimating that 19 % have a longstanding illness, disability or infirmity, and have a significant difficulty with day-to-day activities.

Figures may not add to 100% due to rounding

Table 7: Age – the clients affected by reduction in scope of legal help, legal representation and telephone services by category of law, 2009/10 data

Category of law	Estimated volume reduction	Estimated characteristics			
		24 and under	25-64	65+	Unknown
Actions against police	2,220	12%	84%	4%	0%
Clinical Negligence	4,000	20%	67%	14%	0%
Consumer	3,570	5%	79%	16%	0%
Debt	105,050	7%	86%	6%	0%
Education	2,870	13%	85%	1%	1%
Employment	24,070	13%	85%	2%	0%
Family	232,500	9%	89%	2%	0%
Housing	53,200	10%	82%	7%	1%
Immigration	53,290	13%	84%	4%	0%
Miscellaneous	3,880	9%	74%	18%	0%
Personal Injury	2,460	17%	76%	7%	0%
Public Law	250	12%	82%	6%	0%
Welfare Benefits	135,000	6%	86%	7%	0%
Caseload affected	623,000	9%	86%	5%	0%
England & Wales population	55,241,000	31%	53%	17%	0%

Source: Caseload data from the Legal Services Commission, Mid-2010 Population Estimates for England and Wales, Office for National Statistics.

Technical note:

Client data is based on face-to-face cases (including legal help and legal representation) and telephone cases. Where data has not been available for the specific sub categories under consideration, we have assumed the characteristics of cases in the next higher category.

Figures may not add to 100% due to rounding

Table 8: Solicitor and NfP providers affected by the legal aid reforms and the number for which equalities data is available

	Affected providers	Equalities data held	%
<b>Civil providers</b>			
Solicitors	4,351	2,256	52%
NfPs	425	324	76%
<i>Total</i>	<i>4,776</i>	<i>2,580</i>	<i>54%</i>
<b>Crime providers</b>			
Solicitors	2,419	1,510	62%
<b>Civil and crime providers</b>			
Solicitors	5,528	2,902	52%
NfPs	425	324	76%
<i>Total</i>	<i>5,953</i>	<i>3,226</i>	<i>54%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

## Scope proposals

### Provider impacts

#### NFP providers

Table 9 – Average provider impact of reduction in legal aid income by category of law and sex of majority ownership and control – 2009/10

	Sex of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Actions against the police	Male	1	-	-
	Female	1	-	-
	Mixed	1	-	-
	<i>Total</i>	3	-	-
Consumer	Male	4	-	-
	Female	5	-	1%
	Mixed	3	-	-
	<i>Total</i>	12	-	2%
Debt	Male	60	25%	32%
	Female	134	57%	38%
	Mixed	42	18%	37%
	<i>Total</i>	236		36%
Education	Male	3	-	-
	Female	6	-	6%
	Mixed	2	-	-
	<i>Total</i>	11	-	11%
Employment	Male	31	44%	15%
	Female	29	41%	8%
	Mixed	10	14%	10%
	<i>Total</i>	70		11%
Housing	Male	53	34%	14%
	Female	75	48%	14%
	Mixed	29	18%	14%
	<i>Total</i>	157		13%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 9 Continued

	Sex of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Immigration	Male	25	53%	24%
	Female	17	36%	24%
	Mixed	5	11%	40%
	<i>Total</i>	47		26%
Family	Male	3	-	-
	Female	5	-	18%
	Mixed	0	-	-
	<i>Total</i>	8	-	12%
Clinical negligence	Male	0	-	-
	Female	0	-	-
	Mixed	0	-	-
	<i>Total</i>	0	-	-
Miscellaneous	Male	4	-	-
	Female	3	-	-
	Mixed	1	-	-
	<i>Total</i>	8	-	0%
Personal injury	Male	0	-	-
	Female	1	-	-
	Mixed	0	-	-
	<i>Total</i>	1	-	-
Public law	Male	7	-	0%
	Female	4	-	-
	Mixed	2	-	-
	<i>Total</i>	13	-	0%
Welfare benefits	Male	72	29%	36%
	Female	133	53%	39%
	Mixed	45	18%	37%
	<i>Total</i>	250		38%
All categories	Male	96	30%	66%
	Female	166	53%	72%
	Mixed	54	17%	73%
	<i>Total</i>	316		70%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

## Solicitor providers

Table 10 – Average provider impact of reduction in legal aid income by category of law and sex of majority ownership and control – 2009/10

	Sex of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Actions against the police	Male	145	69%	4%
	Female	30	14%	3%
	Mixed	35	17%	2%
	<i>Total</i>	<i>210</i>		<i>4%</i>
Consumer	Male	277	71%	3%
	Female	47	12%	2%
	Mixed	66	17%	1%
	<i>Total</i>	<i>390</i>		<i>2%</i>
Debt	Male	350	66%	2%
	Female	77	15%	3%
	Mixed	104	20%	2%
	<i>Total</i>	<i>531</i>		<i>2%</i>
Education	Male	53	62%	2%
	Female	14	16%	3%
	Mixed	18	21%	0%
	<i>Total</i>	<i>85</i>		<i>2%</i>
Employment	Male	182	66%	3%
	Female	41	15%	4%
	Mixed	52	19%	2%
	<i>Total</i>	<i>275</i>		<i>3%</i>
Housing	Male	502	66%	3%
	Female	109	14%	3%
	Mixed	153	20%	3%
	<i>Total</i>	<i>764</i>		<i>3%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

Table 10 Continued

	Sex of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Immigration	Male	72	47%	16%
	Female	39	26%	21%
	Mixed	41	27%	17%
	<i>Total</i>	152		18%
Family	Male	1277	66%	34%
	Female	331	17%	31%
	Mixed	336	17%	33%
	<i>Total</i>	1944		33%
Clinical negligence	Male	99	77%	18%
	Female	18	14%	24%
	Mixed	12	9%	22%
	<i>Total</i>	129		19%
Miscellaneous	Male	454	69%	3%
	Female	82	12%	1%
	Mixed	124	19%	2%
	<i>Total</i>	660		2%
Personal injury	Male	191	70%	5%
	Female	35	13%	3%
	Mixed	45	17%	1%
	<i>Total</i>	271		4%
Public law	Male	163	65%	0%
	Female	36	14%	0%
	Mixed	53	21%	0%
	<i>Total</i>	252		0%
Welfare benefits	Male	157	60%	4%
	Female	46	17%	8%
	Mixed	60	23%	5%
	<i>Total</i>	263		5%
All categories	Male	1459	65%	36%
	Female	388	17%	34%
	Mixed	393	18%	35%
	<i>Total</i>	2240		35%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

## NFP providers

Table 11 – Average provider impact of reduction in legal aid income by category of law and race of majority ownership and control – 2009/10

	Race of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Actions against the police	White British	3	-	-
	BAME	0	-	-
	Mixed	0	-	-
	<i>Total</i>	3	-	-
Consumer	White British	10	-	1%
	BAME	0	-	-
	Mixed	2	-	-
	<i>Total</i>	12	-	1%
Debt	White British	214	88%	38%
	BAME	15	6%	16%
	Mixed	13	5%	24%
	<i>Total</i>	242		36%
Education	White British	7	-	4%
	BAME	4	-	-
	Mixed	2	-	-
	<i>Total</i>	13	-	4%
Employment	White British	63	88%	11%
	BAME	7	10%	11%
	Mixed	2	3%	-
	<i>Total</i>	72		11%
Housing	White British	128	80%	13%
	BAME	19	12%	12%
	Mixed	13	8%	15%
	<i>Total</i>	160		13%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

Table 11 Continued

	Race of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Immigration	White British	27	54%	17%
	BAME	20	40%	35%
	Mixed	3	6%	-
	<i>Total</i>	<i>50</i>		<i>25%</i>
Family	White British	8	-	12%
	BAME	0	-	-
	Mixed	0	-	-
	<i>Total</i>	<i>8</i>	-	<i>12%</i>
Clinical negligence	White British	0	-	-
	BAME	0	-	-
	Mixed	0	-	-
	<i>Total</i>	<i>0</i>	-	-
Miscellaneous	White British	7	-	1%
	BAME	1	-	-
	Mixed	0	-	-
	<i>Total</i>	<i>8</i>	-	<i>0%</i>
Personal injury	White British	1	-	-
	BAME	0	-	-
	Mixed	0	-	-
	<i>Total</i>	<i>0</i>	-	-
Public law	White British	11	-	0%
	BAME	2	-	-
	Mixed	1	-	-
	<i>Total</i>	<i>14</i>	-	<i>0%</i>
Welfare benefits	White British	219	86%	37%
	BAME	21	8%	42%
	Mixed	15	6%	37%
	<i>Total</i>	<i>255</i>		<i>38%</i>
All categories	White British	273	85%	71%
	BAME	32	10%	67%
	Mixed	18	6%	67%
	<i>Total</i>	<i>323</i>		<i>70%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

## Solicitor providers

Table 12 – Average provider impact of reduction in legal aid income by category of law and race of majority ownership and control – 2009/10

	Race of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Actions against the police	White British	182	86%	4%
	BAME	16	8%	8%
	Mixed	13	6%	4%
	<i>Total</i>	<i>211</i>		<i>4%</i>
Consumer	White British	354	90%	2%
	BAME	30	8%	3%
	Mixed	8	2%	1%
	<i>Total</i>	<i>392</i>		<i>2%</i>
Debt	White British	477	89%	2%
	BAME	43	8%	2%
	Mixed	16	3%	4%
	<i>Total</i>	<i>536</i>		<i>2%</i>
Education	White British	76	89%	2%
	BAME	3	-	-
	Mixed	6	7%	0%
	<i>Total</i>	<i>85</i>		<i>2%</i>
Employment	White British	252	91%	2%
	BAME	20	7%	5%
	Mixed	6	2%	2%
	<i>Total</i>	<i>278</i>		<i>3%</i>
Housing	White British	635	83%	2%
	BAME	97	13%	7%
	Mixed	30	4%	6%
	<i>Total</i>	<i>762</i>		<i>3%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

Table 12 Continued

	Race of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Immigration	White British	48	33%	16%
	BAME	86	59%	19%
	Mixed	11	8%	21%
	<i>Total</i>	<i>145</i>		<i>18%</i>
Family	White British	1747	90%	34%
	BAME	131	7%	23%
	Mixed	66	3%	31%
	<i>Total</i>	<i>1,944</i>		<i>33%</i>
Clinical negligence	White British	120	96%	19%
	BAME	3	-	-
	Mixed	2	-	-
	<i>Total</i>	<i>125</i>		<i>19%</i>
Miscellaneous	White British	594	90%	3%
	BAME	44	7%	1%
	Mixed	25	4%	1%
	<i>Total</i>	<i>663</i>		<i>2%</i>
Personal injury	White British	257	95%	4%
	BAME	7	3%	11%
	Mixed	7	3%	1%
	<i>Total</i>	<i>271</i>		<i>4%</i>
Public law	White British	211	85%	0%
	BAME	21	8%	0%
	Mixed	17	7%	0%
	<i>Total</i>	<i>249</i>		<i>0%</i>
Welfare benefits	White British	220	82%	3%
	BAME	33	12%	13%
	Mixed	14	5%	10%
	<i>Total</i>	<i>267</i>		<i>5%</i>
All categories	White British	1925	86%	36%
	BAME	227	10%	28%
	Mixed	82	4%	33%
	<i>Total</i>	<i>2,234</i>		<i>36%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

## NFP providers

Table 13 – Average provider impact of reduction in legal aid income by category of law and employment of ill or disabled managers – 2009/10

	Employment of ill or disabled managers	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Actions against the police	No	2	-	-
	Yes	1	-	-
	<i>Total</i>	3	-	-
Consumer	No	9	75%	0%
	Yes	3	-	-
	<i>Total</i>	12	-	0%
Debt	No	205	85%	37%
	Yes	37	15%	34%
	<i>Total</i>	242		36%
Education	No	10	77%	4%
	Yes	3	-	-
	<i>Total</i>	13	-	4%
Employment	No	59	81%	12%
	Yes	14	4%	8%
	<i>Total</i>	73		11%
Housing	No	135	84%	13%
	Yes	25	16%	11%
	<i>Total</i>	160		13%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

Table 13 Continued

	Employment of ill or disabled managers	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Immigration	No	39	78%	28%
	Yes	11	22%	15%
	<i>Total</i>	<i>50</i>		<i>25%</i>
Family	No	8	100%	12%
	Yes	0	-	-
	<i>Total</i>	<i>8</i>	<i>-</i>	<i>12%</i>
Clinical negligence	No	0	-	-
	Yes	0	-	-
	<i>Total</i>	<i>0</i>	<i>-</i>	<i>-</i>
Miscellaneous	No	6	75%	1%
	Yes	2	-	-
	<i>Total</i>	<i>8</i>	<i>-</i>	<i>0%</i>
Personal injury	No	1	-	-
	Yes	0	-	-
	<i>Total</i>	<i>1</i>	<i>-</i>	<i>-</i>
Public law	No	11	79%	0%
	Yes	3	-	-
	<i>Total</i>	<i>14</i>	<i>-</i>	<i>0%</i>
Welfare benefits	No	214	84%	37%
	Yes	42	16%	43%
	<i>Total</i>	<i>256</i>		<i>38%</i>
All categories	No	275	85%	69%
	Yes	49	15%	74%
	<i>Total</i>	<i>324</i>		<i>70%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

## Solicitor providers

Table 14 – Average provider impact of reduction in legal aid income by category of law and employment of ill or disabled managers – 2009/10

	Employment of ill or disabled managers	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Actions against the police	No	198	93%	4%
	Yes	14	7%	1%
	<i>Total</i>	212		4%
Consumer	No	374	95%	2%
	Yes	21	5%	2%
	<i>Total</i>	395		2%
Debt	No	511	95%	2%
	Yes	28	5%	2%
	<i>Total</i>	539		2%
Education	No	75	88%	2%
	Yes	10	12%	2%
	<i>Total</i>	85		2%
Employment	No	266	95%	3%
	Yes	13	4%	3%
	<i>Total</i>	279		3%
Housing	No	731	95%	3%
	Yes	42	5%	5%
	<i>Total</i>	773		3%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

Table 14 Continued

	Employment of ill or disabled managers	Providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
Immigration	No	140	92%	18%
	Yes	13	8%	13%
	<i>Total</i>	<i>153</i>		<i>18%</i>
Family	No	1859	95%	33%
	Yes	100	5%	30%
	<i>Total</i>	<i>1959</i>		<i>33%</i>
Clinical negligence	No	114	88%	20%
	Yes	15	12%	13%
	<i>Total</i>	<i>129</i>		<i>19%</i>
Miscellaneous	No	630	95%	2%
	Yes	35	5%	1%
	<i>Total</i>	<i>665</i>		<i>2%</i>
Personal injury	No	250	92%	4%
	Yes	22	8%	1%
	<i>Total</i>	<i>272</i>		<i>4%</i>
Public law	No	232	92%	0%
	Yes	20	8%	0%
	<i>Total</i>	<i>252</i>		<i>0%</i>
Welfare benefits	No	256	95%	5%
	Yes	14	5%	6%
	<i>Total</i>	<i>270</i>		<i>5%</i>
All categories	No	2141	95%	36%
	Yes	115	5%	33%
	<i>Total</i>	<i>2256</i>		<i>36%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

\*Estimated impacts have been suppressed for categories with fewer than 5 observations.

Figures may not add to 100% due to rounding

Table 15 – Average provider impact of reduction in legal aid income by region and sex of majority ownership and control – 2009/10

Region	Sex of majority ownership and control	providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
London	Male	219	53%	30%
	Female	112	27%	31%
	Mixed	81	20%	32%
	Total	412		31%
non-London	Male	1,333	62%	39%
	Female	442	21%	48%
	Mixed	365	17%	41%
	Total	2,140		42%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 16 – Average provider impact of reduction in legal aid income by region and race of majority ownership and control – 2009/10

Region	Race of majority ownership and control	providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
London	White British	199	49%	30%
	BAME	167	41%	31%
	Mixed	41	10%	35%
	Total	407		31%
non-London	White British	1,996	93%	42%
	BAME	91	4%	37%
	Mixed	59	3%	42%
	Total	2,146		42%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 17 – Average provider impact of reduction in legal aid income by region and employment of ill or disabled managers – 2009/10

Region	Employment of ill or disabled managers	providers		Avg. reduction in legal aid income (%)
		No. of providers	Proportion of providers (%)	
London	No	394	94%	30%
	Yes	24	6%	45%
	Total	418		31%
non-London	No	2,018	94%	41%
	Yes	140	6%	45%
	Total	2,158		42%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

## Criminal remuneration proposals

**Note:** Case volumes have been rounded to the nearest 10 from 0 – 1,000, nearest 100 from 1,000 – 100,000 and nearest 1,000 for volume reductions in excess of 100,000.

Table 18 - Crime lower client equality characteristics 2009/10 data

<b>Sex</b>	<b>Clients</b>	<b>% clients</b>	<b>% excluding unknown</b>
Female	186,000	15%	15%
Male	1,087,000	85%	85%
Unknown	8,100	1%	
<i>Total</i>	<i>1,281,000</i>		
<b>Race</b>			
White	842,000	66%	81%
BAME	203,000	16%	19%
Unknown	237,000	18%	
<i>Total</i>	<i>1,281,000</i>		
<b>Disability</b>			
Not ill/disabled	907,000	71%	95%
Ill/disabled	50,100	4%	5%
Unknown	324,000	25%	
<i>Total</i>	<i>1,281,000</i>		

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 19 – Reduce the fees paid for a Crown Court guilty plea in an either way case which the magistrates' Court has determined is suitable for summary trial; enhance the lower standard fee (by 23.5%) and higher standard fee (by 8.3%) paid for cracked trials and guilty pleas under the magistrates' court scheme in either way case; and remove the separate fee for committal hearings under the Litigators' Graduated Fees Scheme to pay for the enhanced guilty plea fees;

Average provider impacts (legal aid income) by majority sex and race of ownership and control and employment of ill or disabled managers 2010/11

<b>Providers</b>			
<b>Sex of majority ownership or control</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. reduction in legal aid income (%)</b>
Male	1,056	70%	2%
Female	193	13%	2%
Mixed	250	17%	2%
<i>Total</i>	<i>1,499</i>		<i>2%</i>

<b>Providers</b>			
<b>Race of majority ownership or control</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. reduction in legal aid income (%)</b>
White British	1,140	76%	2%
BAME	269	18%	2%
Mixed	86	6%	1%
<i>Total</i>	<i>1,495</i>		<i>2%</i>

<b>Providers</b>			
<b>Employment of ill/disabled managers</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. reduction in legal aid income (%)</b>
No	1,438	95%	2%
Yes	72	5%	2%
<i>Total</i>	<i>1,510</i>		<i>2%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 20 – In indictable only cases and cases deemed suitable by magistrates for Crown Court trial, reduce cracked trial fees by 25%;

Average provider impacts (legal aid income) by majority sex and race of ownership and control and employment of ill or disabled managers 2010/11

<b>Providers</b>			
<b>Sex of majority ownership or control</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. reduction in legal aid income (%)</b>
Male	1,056	70%	3%
Female	193	13%	2%
Mixed	250	17%	2%
<i>Total</i>	<i>1,499</i>		<i>2%</i>

<b>Providers</b>			
<b>Race of majority ownership or control</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. reduction in legal aid income (%)</b>
White British	1,140	76%	2%
BAME	269	18%	3%
Mixed	86	6%	2%
<i>Total</i>	<i>1,495</i>		<i>2%</i>

<b>Providers</b>			
<b>Employment of ill or disabled managers</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. reduction in legal aid income (%)</b>
No	1,438	95%	2%
Yes	72	5%	3%
<i>Total</i>	<i>1,510</i>		<i>2%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 21 – Align LGFS fees for category A cases with those for category J

Average provider impacts (legal aid income) by majority sex and race of ownership and control and employment of ill or disabled managers 2010/11

<b>Sex of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
Male	1,056	70%	1%
Female	193	13%	1%
Mixed	250	17%	1%
<i>Total</i>	<i>1,499</i>		<i>1%</i>

<b>Race of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
White British	1,140	76%	1%
BAME	269	18%	1%
Mixed	86	6%	1%
<i>Total</i>	<i>1,495</i>		<i>1%</i>

<b>Employment of ill or disabled managers</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
No	1,438	95%	1%
Yes	72	5%	1%
<i>Total</i>	<i>1,510</i>		<i>1%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 22 – Align LGFS fees for category G cases with those for category F

Average provider impacts (legal aid income) by majority sex and race of ownership and control and employment of ill or disabled managers 2010/11

<b>Sex of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
Male	1,056	70%	1%
Female	193	13%	1%
Mixed	250	17%	1%
<i>Total</i>	<i>1,499</i>		<i>1%</i>

<b>Race of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
White British	1,140	76%	0%
BAME	269	18%	1%
Mixed	86	6%	0%
<i>Total</i>	<i>1,495</i>		<i>1%</i>

<b>Employment of ill or disabled managers</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
No	1,438	95%	1%
Yes	72	5%	0%
<i>Total</i>	<i>1,510</i>		<i>1%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 23 – Abolish London weighting in magistrates' court cases

Average provider impacts (legal aid income) by majority sex and race of ownership and control and employment of ill or disabled managers 2010/11

**London providers only**

<b>Sex of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
Male	198	61%	3%
Female	60	19%	3%
Split	64	20%	2%
<i>Total</i>	322		2%

<b>Race of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
White British	124	39%	3%
BAME	158	50%	2%
Split	36	11%	3%
<i>Total</i>	318		2%

<b>Employment of ill/disabled managers</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
No	311	96%	2%
Yes	12	4%	2%
<i>Total</i>	323		2%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 24 – Pay LGFS rates for VHCC cases between 40-60 days

Average provider impacts (legal aid income) by majority sex and race of ownership and control and employment of ill or disabled managers 2010/11

<b>Sex of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
Male	1,056	70%	0%
Female	193	13%	0%
Mixed	250	17%	0%
<i>Total</i>	<i>1,499</i>		<i>0%</i>

<b>Race of majority ownership or control</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%)</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
White British	1,140	76%	0%
BAME	269	18%	0%
Mixed	86	6%	0%
<i>Total</i>	<i>1,495</i>		<i>0%</i>

<b>Employment of Ill/Disabled managers</b>	<b>Providers</b>		<b>Avg. reduction in legal aid income (%) or control</b>
	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	
No	1,438	95%	0%
Yes	72	5%	0%
<i>Total</i>	<i>1,510</i>		<i>0%</i>

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

## CLA Helpline proposals

Table 25 – CLA Helpline - Average impact (legal aid income) by provider type and sex and race of majority ownership and control and employment of ill or disabled managers – 2009/10

Provider type	Race	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	White British	233	85%	45%
	BAME	26	9%	13%
	Mixed	15	5%	28%
	Total	274		41%
Solicitor	White British	776	84%	2%
	BAME	117	13%	2%
	Mixed	35	4%	3%
	Total	928		2%

  

Provider type	Sex	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	Male	77	29%	31%
	Female	145	54%	45%
	Mixed	46	17%	43%
	Total	268		41%
Solicitor	Male	589	64%	2%
	Female	149	16%	3%
	Mixed	188	20%	2%
	Total	926		2%

  

Provider type	Employment of Ill/Disabled managers	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	No	232	85%	42%
	Yes	42	15%	38%
	Total	274		41%
Solicitor	No	891	95%	2%
	Yes	46	5%	2%
	Total	937		2%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 26 – CLA Helpline - Average impact (legal aid income) by provider region and sex and race of majority ownership and control and employment of ill or disabled managers – 2009/10

Region	Race	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	White British	79	41%	6%
	BAME	89	46%	2%
	Mixed	26	13%	10%
	Total	194		5%
non-London	White British	930	92%	13%
	BAME	54	5%	5%
	Mixed	24	2%	12%
	Total	1,008		12%

  

Region	Sex	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	Male	90	46%	4%
	Female	50	26%	8%
	Mixed	55	28%	3%
	Total	195		5%
non-London	Male	576	58%	6%
	Female	244	24%	27%
	Mixed	179	18%	12%
	Total	999		12%

  

Region	Employment of Ill/Disabled managers	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	No	187	94%	5%
	Yes	13	7%	3%
	Total	200		5%
non-London	No	936	93%	12%
	Yes	75	7%	22%
	Total	1,011		12%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

## Cumulative civil legal aid impacts

Table 27 – Cumulative impact of the civil legal aid policies

Average provider impacts (legal aid income) by provider type, majority sex and race of ownership and control and employment of ill or disabled managers 2009/10

Provider type	Race	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	White British	273	85%	83%
	BAME	32	10%	74%
	Split	18	6%	77%
	Total	323		81%
Solicitor	White British	1,925	86%	43%
	BAME	227	10%	36%
	Split	82	4%	41%
	Total	2,234		42%

  

Provider type	Sex	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	Male	96	30%	76%
	Female	166	53%	84%
	Split	54	17%	84%
	Total	316		82%
Solicitor	Male	1,459	65%	43%
	Female	388	17%	41%
	Split	393	18%	42%
	Total	2,240		42%

  

Provider type	Employment of Ill/Disabled managers	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	No	275	85%	81%
	Yes	49	15%	84%
	Total	324		81%
Solicitor	No	2,141	95%	42%
	Yes	115	5%	40%
	Total	2,256		42%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 28 – Cumulative impact of the civil legal aid policies

Average provider impacts (legal aid income) by provider region, majority sex and race of ownership and control and employment of ill or disabled managers 2009/10

<b>Providers</b>				
<b>Region</b>	<b>Race</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. income reduction (%)</b>
London	White British	199	49%	39%
	BAME	167	41%	40%
	Split	41	10%	44%
	Total	407		39%
non-London	White British	1,996	93%	49%
	BAME	91	4%	44%
	Split	59	3%	50%
	Total	2,146		49%
<b>Providers</b>				
<b>Region</b>	<b>Sex</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. income reduction (%)</b>
London	Male	219	53%	39%
	Female	112	27%	40%
	Split	81	20%	39%
	Total	412		39%
non-London	Male	1,333	62%	46%
	Female	442	21%	57%
	Split	365	17%	48%
	Total	2,140		49%
<b>Providers</b>				
<b>Region</b>	<b>Employment of Ill/Disabled managers</b>	<b>No. of providers</b>	<b>Proportion of providers (%)</b>	<b>Avg. income reduction (%)</b>
London	No	394	94%	39%
	Yes	24	6%	52%
	Total	418		39%
non-London	No	2,018	94%	48%
	Yes	140	6%	54%
	Total	2,158		49%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011  
 Figures may not add to 100% due to rounding

## Cumulative criminal legal aid impacts

Table 29 – Cumulative impact of the criminal legal aid policies

Average provider impacts (legal aid income) by majority sex and race of ownership and control and employment of ill or disabled managers 2009/10

Race of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
	No. of providers	Proportion of providers (%)	
White British	1,140	76%	6%
BAME	269	18%	8%
Mixed	85	6%	6%
Total	1,494		6%

Sex of majority ownership or control	Providers		Avg. reduction in legal aid income (%)
	No. of providers	Proportion of providers (%)	
Male	1,056	70%	7%
Female	192	13%	6%
Mixed	250	17%	6%
Total	1,498		7%

Employment of Ill/Disabled managers	Providers		Avg. reduction in legal aid income (%)
	No. of providers	Proportion of providers (%)	
No	1,438	95%	7%
Yes	72	5%	7%
Total	1,510		7%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 30 – Cumulative impact of the criminal legal aid policies

Average provider impacts (legal aid income) by provider region, majority sex and race of ownership and control and employment of ill or disabled managers 2009/10

Region	Sex	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	Male	198	62%	10%
	Female	59	18%	7%
	Mixed	64	20%	6%
	Total	321		9%
non-London	Male	857	73%	6%
	Female	133	11%	6%
	Mixed	186	16%	6%
	Total	1,176		6%
Region	Race	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	White British	124	39%	9%
	BAME	158	50%	9%
	Mixed	35	11%	8%
	Total	317		9%
non-London	White British	1,015	86%	6%
	BAME	111	9%	6%
	Mixed	50	4%	4%
	Total	1,176		6%
Region	Employment of Ill/Disabled managers	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	No	310	96%	9%
	Yes	12	4%	10%
	Total	322		9%
non-London	No	1,126	95%	6%
	Yes	60	5%	6%
	Total	1,186		6%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

## Cumulative civil and criminal legal aid impacts

Table 31 – Cumulative impact of the civil and criminal legal aid policies

Average provider impacts (legal aid income) by provider type, majority sex and race of ownership and control and employment of ill or disabled managers 2009/10

Provider type	Sex	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	Male	96	30%	76%
	Female	166	53%	84%
	Mixed	54	17%	84%
	Total	316		82%
Solicitor	Male	1,892	66%	28%
	Female	487	17%	31%
	Mixed	499	17%	28%
	Total	2,878		28%

  

Provider type	Race	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	White British	273	85%	83%
	BAME	32	10%	74%
	Mixed	18	6%	77%
	Total	323		82%
Solicitor	White British	2,338	81%	30%
	BAME	400	14%	20%
	Mixed	132	5%	21%
	Total	2,870		28%

  

Provider type	Employment of Ill/Disabled managers	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
NfP	No	275	85%	81%
	Yes	49	15%	84%
	Total	324		81%
Solicitor	No	2,755	95%	28%
	Yes	147	5%	28%
	Total	2,902		28%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

Table 32 – Cumulative impact of the civil and criminal legal aid policies

Average provider impacts (legal aid income) by provider region, majority sex and race of ownership and control and employment of ill or disabled managers 2009/10

Region	Sex	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	Male	317	56%	24%
	Female	142	25%	31%
	Mixed	110	19%	28%
	Total	569		27%
non-London	Male	1,668	64%	31%
	Female	511	19%	48%
	Mixed	442	17%	35%
	Total	2,621		35%

  

Region	Race	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	White British	242	43%	29%
	BAME	255	46%	25%
	Mixed	63	11%	27%
	Total	560		27%
non-London	White British	2,366	90%	36%
	BAME	176	7%	23%
	Mixed	87	3%	28%
	Total	2,629		35%

  

Region	Employment of ill/disabled managers	Providers		Avg. income reduction (%)
		No. of providers	Proportion of providers (%)	
London	No	546	95%	26%
	Yes	30	5%	39%
	Total	576		27%
non-London	No	2,480	94%	35%
	Yes	166	6%	43%
	Total	2,646		35%

Source: Routine Diversity Monitoring of the Supplier Base, LSRC 2011, LSRC and MoJ modelling, 2011

Figures may not add to 100% due to rounding

## Supplementary Legal Aid Scheme (SLAS)

Table 33 Age - potential clients affected by the introduction of a Supplementary Legal Aid Scheme (SLAS) by category of law (legal representation)

Category of law	Estimated characteristics: Age		
	0-24	25-64	65+
Actions against police	0%	89%	11%
Clinical Negligence	32%	55%	13%
Housing	7%	88%	5%
Personal Injury	15%	68%	16%
Public Law	16%	74%	10%
<i>Total discrimination cases*</i>	14%	82%	4%
England & Wales population	31%	53%	17%

Source: Caseload data from the Legal Services Commission, Mid-2010 Population Estimates for England and Wales, Office for National Statistics

\*Discrimination cases have been presented in an additional category to monitor potential equality impacts. These cases are counted in the broader categories of law above

Figures may not add to 100% due to rounding

Table 34 Disability - potential clients affected by the introduction of a Supplementary Legal Aid Scheme (SLAS) by category of law (legal representation)

Category of law	Estimated characteristics			Excluding unknown	
	Ill/disabled	Not ill/disabled	Unknown	Ill/disabled	Not ill/disabled
Actions against police	5%	37%	58%	-	-
Clinical Negligence	36%	21%	43%	63%	37%
Housing	25%	48%	27%	34%	66%
Personal Injury	1%	1%	98%	-	-
Public Law	21%	38%	42%	36%	64%
<i>Total discrimination cases*</i>	<b>34%</b>	<b>37%</b>	<b>29%</b>	<b>48%</b>	<b>52%</b>
Great Britain population	19%	81%	0%	19%	81%

Source: Caseload data from the Legal Services Commission, Prevalence estimates 2009/10 for Great Britain, The Office for Disability Issues Disability (ODI)

\*Discrimination cases have been presented in an additional category to monitor potential equality impacts. These cases are counted in the broader categories of law above

Figures may not add to 100% due to rounding

Table 35 Race - potential clients affected by the introduction of a Supplementary Legal Aid Scheme (SLAS) by category of law (legal representation)

Category of law	Estimated characteristics			Excluding unknown	
	White	BAME	Unknown	White	BAME
Actions against police	21%	47%	32%	31%	69%
Clinical Negligence	62%	11%	27%	85%	15%
Housing	47%	34%	19%	58%	42%
Personal Injury	4%	19%	77%	-	-
Public Law	46%	27%	28%	63%	37%
<i>Total discrimination cases*</i>	28%	48%	23%	37%	63%
England & Wales population	88%	12%	0%	88%	12%

Source: Caseload data from the Legal Services Commission, experimental Population Estimates by Ethnic Group in England and Wales for 2009, Office for National Statistics.

\*Discrimination cases have been presented in an additional category to monitor potential equality impacts. These cases are counted in the broader categories of law above

Figures may not add to 100% due to rounding

Table 36 Sex - potential clients affected by the introduction of a Supplementary Legal Aid Scheme (SLAS) by category of law (legal representation)

Category of law	Estimated characteristics			Excluding unknown	
	Female	Male	Unknown	Female	Male
Actions against police	32%	68%	0%	32%	68%
Clinical Negligence	52%	46%	2%	53%	47%
Housing	55%	42%	3%	57%	43%
Personal Injury	33%	49%	18%	40%	60%
Public Law	26%	72%	2%	27%	73%
<i>Total discrimination cases*</i>	37%	61%	2%	38%	62%
England & Wales population	51%	49%	0%	51%	49%

Source: Caseload data from the Legal Services Commission, Mid-2010 Population Estimates for England and Wales, Office for National Statistics

\*Discrimination cases have been presented in an additional category to monitor potential equality impacts. These cases are counted in the broader categories of law above

Figures may not add to 100% due to rounding