

Annex G: Criminal Fees

2. Costs and Benefits

1. This Impact Assessment (IA) identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. IAs place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
2. This Annex assesses the cumulative impact of all the criminal fee changes. The 6 policies presented here are not assessed independently, but are assessed on the basis they are implemented together. The overarching IA summarises the cumulative impact of the Government's overall package of legal aid reforms. The policies in this Annex were implemented with effect from October 2011 by secondary legislation made under the Access to Justice Act 1999 (and amendment to LSC contracts) and not implemented by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act. This Annex has therefore been included for completeness.
3. The financial estimates presented in this document are based on the most mature samples of data available at the time of publication of the June 2011 IA, for both advocates and litigators, to ensure that the data takes account of past reforms and changes to fee structures. For advocates, a sample of 2009-10 data has been extrapolated to represent a full year, and some further adjustments have been made to account for reforms announced in the past but yet to be implemented. For litigators, both at the Magistrates' Court and the Crown Court, samples of 2010-11 data have been used, and extrapolated to represent a full year. All numbers and percentages have been rounded.
4. The implemented fee structure is set out in the Criminal Defence Service (Funding) Order 2007. The policies presented throughout this Impact Assessment are summarised in the table 1 below presenting their cumulative financial impacts.

Table 1: Summary of policies 1 to 6 and cumulative financial impact

	Description	Measures	Overall Cumulative Saving
Option 1	<i>Reform fee structures for cases heard in the Crown Court that were determined in the Magistrates' Court to be suitable for summary trial (elected 'either way' cases).</i>	<i>Introduce new litigator and advocates fixed fees for either way cases suitable for summary trial that result in a cracked trial or a guilty plea; raise Lower and Higher Standard Fees for either way category 1 cases at the Magistrates' Court; no longer pay the committal fees which applies when cases move from the Magistrates' Court to the Crown Court.</i>	£25 million
Option 2	<i>Reform fee structures for cases which go straight to the Crown Court ('indictable only' cases) and for either way cases found by the Magistrates' Court to be unsuitable for summary trial (committed 'either way' cases).</i>	<i>For litigators (solicitors), the fees for cracked cases would be reduced by 25% across the whole set of fees. For advocates, an 11% reduction in the AGFS fee for cases that crack would apply and harmonisation of all the Prosecution Pages of Evidence (PPE) fees paid for all cases with PPE between 1,000 and 10,000 which crack.</i>	£40 million
Option 3a	<i>Align the fees paid for murder and manslaughter to the same level as those paid in serious sexual cases</i>		£15 million
Option 3b	<i>Amalgamate two of the fee groups for cases of dishonesty to form a single group based on the value of the dishonest act(s) below £100,000</i>		£4 million
Option 4	<i>Align Magistrates' court fees in London with other major urban areas</i>		£6 million
Option 5	<i>Reduce ancillary payments to advocates ("bolt on" payments);</i>		£9 million
Option 6	<i>Harmonise payments in Very High Cost Cases (VHCC) for cases expected to take up to 60 days at trial</i>		£3 million

Option 0: Do nothing

Description

5. Under this policy no intervention would be made and the current fee structures in the Crown Court and the Magistrates' Court would remain:
 - a. At the Crown Court, there are currently three sets of fees payable for advocates and litigators and the rates differ. These three sets of fees are paid on whether the case pleads guilty early, cracks, or goes to trial. More detail is provided in the description sections of the policies presented.
 - b. At the Magistrates' Court, there are broadly three sets of fees paid currently for litigators. These are the Lower Standard Fee, the Higher Standard Fee, and the Non-Standard Fee. These rates differ, depending on whether the category of the case is an early guilty plea, a trial, or a committal. Further detail is provided in the description section of the policies presented.
6. This is a do-nothing base case policy included for comparative purposes. Because its costs and benefits are compared against itself, these are necessarily zero, as is its Net Present Value (NPV).

Option 1: Introduce new litigator and advocates fixed fees for either way cases suitable for summary trial that result in a cracked trial or a guilty plea. (Raise Lower and Higher Standard Fees for either way category 1 cases at the Magistrates' Court).

Description

7. There are broadly three sets of fees payable currently to cases in the Crown Court with payments relating mainly to the offence type, disposal type, pages of documentation per case and other elements. These are made to advocates and litigators separately and the rates differ. These three sets of fees are:
 - a. Fees paid for early guilty plea cases, including for advocates those trials that 'crack' in the time period known as the 'first third'¹ (essentially that means cases that crack early in the life of a case);
 - b. Fees paid for trials that crack in the second or final third (essentially this means cases that crack later in the life of a case);
 - c. Fees paid for cases which proceed to trial.
8. The fee scheme is graduated in the sense that the fees increase with the workload, and also graduate in the sense that for early guilty plea cases, fees are lower than those for cracked cases which in turn are usually lower than those for cases that proceed to trial. In addition a committal fee is paid for either way cases

¹ AGFS payments for cracked trials vary according to the point in the life of a case when the crack occurred. The period between the date after a case is either fixed or placed into a warned list and the fixed date or the beginning of the warned list is divided into three equal periods ('thirds'), and any additional days are added to the final third.

when they move from the Magistrates' Court to the Crown Court, irrespective of whether the case was committed by the Magistrates' or instead whether the defendant elected for the case to be heard in the Crown Court.

9. Either way cases which are heard in the Magistrates' Court rather than in the Crown Court attract a different set of standard fees for litigators which may be lower or higher than the fees paid in the Crown Court, depending upon the type and nature of the case, though they are usually significantly lower. In the Magistrates' Court there are broadly three sets of fees payable that differ for the three categories of cases, which are early guilty pleas, trials, or committals. The three sets of fees are:
 - a. A Lower Standard Fee applying to simpler cases where the hours worked do not exceed the Lower Standard Fee limit;
 - b. A Higher Standard Fee applying to cases where the hours worked exceed the limit for a Lower Standard Fee but do not exceed the Higher Standard Fee limit
 - c. A Non-Standard Fee which is paid at an hourly rate and where fee totals are not capped. This applies to the more complex and longer duration cases.
10. Most either-way cases that are heard in the Crown Court are deemed unsuitable for summary trial by the Magistrates' because they are more serious or complex. However some defendants choose to elect to go the Crown Court even where Magistrates determine that the case would be suitable for summary trial (i.e. for trial at the Magistrates' Court). Reforming the Crown Court fee scheme for such cases may result in more early guilty pleas in the Magistrates' Court.
11. The policy (which has now been implemented) is to:
 - a. Pay a fixed fee to litigators of £362, and a fixed fee to advocates of £203, for either-way cases where the defendant elects to go to the Crown Court but the case subsequently does not reach trial. Such cases might either crack or be subject to an early guilty plea at the Crown Court;
 - b. No longer pay the committal fee which applies when cases move from the Magistrates' Court to the Crown Court (in all either way cases);
 - c. Increase the Lower Standard Fee for early guilty pleas in the Magistrates' Court by 23%, and increase the Higher Standard Fee for early guilty pleas in the Magistrates' Court by 8%, to bring it up to the level of the Higher Standard Fee limit.

Option 1: Costs

12. The analysis of financial costs does not take into account behavioural responses. While these are possible, they are difficult to predict due to the ambiguity in possible outcomes, and may not be quantifiable. In light of this, qualitative assessments are provided.

Legal aid fund costs

13. The policy set out in paragraph 11 includes raising the Lower Standard Fee by 23%, and the Higher Standard Fee by 8%, paid for early guilty pleas in the Magistrates' Court. This is estimated to cost the legal aid fund around £8m. This relates to raising fees to the current volume of cases that plead guilty early in the Magistrates' Court. The policy at paragraph 11 responds to concerns that the current system of fees does not sufficiently support the aim of quick and efficient justice and may discourage early resolution of cases at the Magistrates' Court. The Government considers that, in the particular group of cases affected by the policy, it is inappropriate for the taxpayer to pay significantly more for a guilty plea by reason of the venue in which the proceedings take place. Some evidence² suggests that advice from solicitors/barristers can be pivotal in some offenders' decisions whether or not to plead guilty. However, this evidence is not considered representative of all defendants. Furthermore, it would be difficult to quantify such behavioural change, and therefore the £8m cost does not assume any additional volume of cases becoming an early guilty plea at the Magistrates' Court.
14. Possible outcomes may be for defendants and their legal services providers coming to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court. Quantitative assessments of these are not possible due to difficulties in estimating behavioural impacts, and due to insufficient robust evidence. Therefore, qualitative assessments of the possible additional risks and costs scenarios are:
- a. As standard fees increase for either way cases in the Magistrates' Court, there may be an incentive for cases that currently elect to the Crown Court and enter an early guilty plea, or crack, to remain in Magistrates' Court in future, and attract the Non-Standard Fee in the Magistrates' Court. If this occurred, it could raise some additional cost to the legal aid fund.
 - b. Another risk is that cases which previously were cracked cases or early guilty pleas at the Crown Court move to being full trials at the Crown Court, or contested cases at the Magistrates' Court. If this was to occur then there would be increased costs for the legal aid fund and increased Legal Services Commission (LSC) administration costs.
15. The impact of the fee increases for cases where previously the defendant would have elected to go to the Crown Court reduce the benefits of diverting such cases away from the Crown Court and into the Magistrates' Court. This impact is captured in the benefits section of this IA.

Net costs related to legal aid clients

16. The policies support quick and efficient justice by ensuring that the fee scheme does not discourage defendants and their legal services providers from coming to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court. While there is some evidence² that suggests

²[http://sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Guilty_Plea_Sentence_Reductions_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Guilty_Plea_Sentence_Reductions_(web).pdf)

that advice from solicitors/barristers can be pivotal in some offenders' decision on whether or not to plead guilty, this is not considered representative of all defendants. However, for defendants where this may be the case, a qualitative assessment of the risks and costs scenarios would be:

- a. For cases that previously were cracked cases or early guilty pleas at the Crown Court, the defendants' legal advisers may encourage them to move to being full trials at the Crown Court, or full trials at the Magistrates' Court. If this was to occur then there could be increased sentences to clients who are found guilty following a trial. This is because these defendants could have been subject to a discount if an early guilty plea had been entered, but lose this discount when they go to trial.
- b. A possible risk to clients may be that providers encourage clients to enter an early guilty plea, but the clients may otherwise not have been found guilty. This is in particular in respect of cases that may later have cracked because, for example, prosecution witnesses did not attend.

Costs for legal services providers

17. There are estimated to be around 15,200³ either-way defendants per year where the defendant elects to go to the Crown Court. Providers will be affected through receiving lower remuneration than they would have received under the current fee regime. In particular:
 - a. Providers will no longer receive the committal fee in all either way cases. The cost to providers of this is estimated to be around £25m. This relates to the current volume of cases which move from the Magistrates' Court to the Crown Court.
 - b. Providers will receive £362 for litigation work, and £203 for advocacy work, if the case proceeds to the Crown Court and cracks or is subject to an early guilty plea. This would replace the Crown Court guilty plea fee or the Crown Court cracked trial fee which the provider would have received before. The cost to providers of this is estimated to be around £9m. This relates to the current volume of either-way cases which proceed to the Crown Court and which do not reach a full trial.
18. In response to this fee change it is possible that providers might seek to reduce their costs if the case is weaker and unlikely to go to trial. The fee reforms may result in providers forming an earlier judgement about the strength of the case and to consider the question of plea with their client at an earlier point in the life of the case.
19. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income. This is discussed in more detail in the risks and uncertainties section of this document.

³ Historically there have been on average 1.2 defendants per solicitor bill.

LSC administration costs

20. The one-off costs from the reduction in rates are likely to be negligible. These relate to amending IT systems and training to take account of the changes. The ongoing costs are likely to be insignificant as there is no impact on volume changes.

HMCTS costs

21. A possible outcome may be that cases shift from the Crown Court to the Magistrates' Court, which is cheaper to operate. In principle this should yield a benefit to HMCTS overall. However, the impacts here may be ambiguous. Crown Court centres currently operate at full capacity with case backlogs, and therefore, savings there may not be realised. Conversely, Magistrates' Courts operate below, but close to, capacity and shifts of cases into the Magistrates' Courts may realise some costs.
22. A possible risk is that cases which previously were cracked cases or early guilty pleas at the Crown Court move to being full trials at the Crown Court, or full trials at the Magistrates' Court. If this was to occur then there would be an increase in Crown Court costs, or in Crown Court backlogs.

NOMS costs

23. One possible outcome if cases shift from the Crown Court to the Magistrates' Court is that cases may be listed earlier, and processed more quickly, due to the differences in court capacities. Assuming the sentences given remain the same, this may increase the overall volume of clients using National Offender Management Services (NOMS). Furthermore, although an unlikely outcome, a possible risk may be an increase in early guilty pleas for cases which may otherwise not have been found guilty. These changes may raise NOMS costs.
24. An unlikely possibility is that cases which previously were cracked cases or early guilty pleas at the Crown Court move to being full trials at the Crown Court, or full trials at the Magistrates' Court. If this was to occur then there would be increased costs for offender management in relation to sentencing of cases which are found guilty following a trial and which would have been subject to an early guilty plea beforehand.

Costs to victims and witnesses

25. There may be costs to victims and witnesses if clients and providers come to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court:
- a. If a case proceeds to become an early guilty plea, it may be the case that victims incur a cost as they may be dissatisfied that the defendants may not be sufficiently punished. However, this may be ambiguous as it may also be that victims might think an earlier guilty plea should get some merit too. Therefore, on the cost side these behavioural impacts may be ambiguous.
 - b. If a case proceeds to trial, there may be additional costs to victims and witnesses through prolonging the ordeal and distress that cases may cause, as well as distress to witnesses sitting for the trial and going through the evidence. It may also raise costs through work forgone for witnesses who sit through the trial. Some of the costs for victims,

however, may be offset by benefits of seeing defendants receiving longer punishments.

Option 1: Benefits

26. The analysis of financial benefits does not take into account behavioural responses. While these are possible, they are very difficult to predict due to the ambiguity in possible outcomes, and may not be quantifiable. In light of this, qualitative assessments are provided.

Legal aid fund

27. The policies are estimated to realise an overall saving of £25m for the legal aid fund once the policies have fully taken effect. This saving for the legal aid fund accords with the net loss of revenue for legal services providers and would relate to:

- a. No longer paying the committal fee for all cases which move from the Magistrates' Court to the Crown Court, estimated to save around £25m. This relates to the current volume of cases which move from the Magistrates' Court to the Crown Court;
- b. Benefits from paying fixed fees of £362 to litigators and £203 to advocates if the case (despite being ruled suitable for summary trial) goes to the Crown Court and cracks or is subject to an early guilty plea, instead of paying the Crown Court early guilty plea fee or the Crown Court cracked trial fee which the provider would have received before. This relates to the current volume of either-way cases that defendants elect to take to the Crown Court and which do not reach a full trial. It is estimated to save approximately £9m, however it is also expected to be offset by the increases in fees paid in the Magistrates' Court, estimated to cost approximately £8m.

28. The policies support quick and efficient justice by ensuring that the fee scheme does not discourage early resolution of cases at the Magistrates' Court. Possible outcomes may be for defendants and their legal services providers coming to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court. While there is some evidence² that suggests that advice from solicitors/barristers can be pivotal in some offenders' decision on whether or not to plead guilty, this is not considered representative of all defendants. Although a quantitative assessment is not possible, a qualitative assessments of the possible additional risks and benefits is that as standard fees increase for either way cases in the Magistrates' Court, there may be an incentive for cases that currently elect to the Crown Court and enter an early guilty plea, or crack, to remain in Magistrates' Court in future, and enter an early guilty plea at the Magistrates' Court. If these cases attract the Lower or Higher Standard Fees in the Magistrates' Court, then there may be some additional savings for the legal aid fund.

Benefits for legal aid clients

29. One possible outcome of fee restructuring may lead to defendants and their legal services providers coming to an earlier view about whether the cases should elect to the Crown Court or enter an early guilty plea at the Magistrates' Court. If

cases shift to enter an early guilty plea at the Magistrates' Court, there may be benefits related to sentencing discounts to the clients.

Benefits for legal services providers

30. There were 260,000 Lower Standard Fee cases of which an estimated 145,000 were either-way cases, and 19,000 Higher Standard Fee cases of which an estimated 10,000 cases were either-way cases. There are estimated to be around 145,000 cases per year in the Magistrates' Courts subject to the Lower Standard Fee involving approximately 2,040 legal services providers. These providers would benefit by being paid 23% more for the cases receiving the Lower Standard Fee and 8% more for cases receiving the Higher Standard Fee than under the current fee regime. The increase in revenue is estimated to be around £8m. This sum accords to the increased costs applying to the legal aid fund.
31. The policies support quick and efficient justice by ensuring that the fee scheme does not discourage early resolution of cases at the Magistrates' Court. A possible outcome may be for defendants and their legal services providers coming to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court. Some evidence² suggests that advice from solicitors/barristers can be pivotal in some offenders' decision on whether or not to plead guilty. Although this evidence is not considered representative of all defendants, it may be that legal services providers encourage defendants to go for a trial, or attract a Non-Standard Fee at the Magistrates' Court. If this was to occur then legal services providers would benefit from the increase in business.

LSC administration benefits

32. There are no LSC one-off benefits, and any on-going benefit from processing a reduced set of fees in future is likely to be insignificant.

HMCTS benefits

33. HM Court and Tribunal Service implications may be ambiguous. These could decline overall if there were more guilty pleas and therefore shorter cases, or if cases shift from the Crown Court to the Magistrates' Court. However, due to existing backlogs, in particular in the Crown Court, such impacts may not materialise in real terms. The beneficial impact would then be a reduction in existing backlogs.

NOMS benefits

34. NOMS benefits might rise if sentencing discounts are given due to guilty pleas being entered earlier, or shifted from the Crown Court to the Magistrates' Court.
35. An unlikely outcome is that providers may advise clients to go for a trial in the Crown Court, or Magistrates' Court. There would be a decrease in offender management costs for cases which would have been subject to a guilty plea beforehand but which are found not guilty following a trial.

Benefits to victims and witnesses

36. There may be benefits to victims and witnesses if clients and providers come to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court:
- a. If a case proceeds to become an early guilty plea, then victims may incur benefits through earlier conclusion to the possible ordeal and distress that the case, as well as the crime itself, may have caused.
 - b. If a case proceeds to trial, there may be benefits to victims from seeing defendants receive longer punishments. Some of this benefit, however, may be offset by additional costs to victims and witnesses through prolonging closure to the cases, which may cause distress to victims, as well as witnesses sitting for the trial.

Wider economic benefits

37. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.

Option 2: Reduce the cracked trials fees for cases which go straight to the Crown Court ('indictable only' cases) and for either way cases found by the Magistrates' Court to be unsuitable for summary trial (committed 'either way' cases).

Description

38. There are broadly three sets of fees payable currently to cases in the Crown Court with payments relating mainly to the offence type, disposal type, pages of documentation per case and other elements. These are made to advocates and litigators separately and the rates differ. These three sets of fees are:
- a. Fees paid for early guilty plea cases, including for advocates those trials that 'crack' in the time period known as the 'first third'⁴ (essentially that means cases that crack early in the life of a case);
 - b. Fees paid for trials that crack in the second or final third (essentially this means cases that crack later in the life of a case);
 - c. Fees paid for cases which proceed to trial.
39. The fee scheme is graduated in the sense that the fees increase with the workload, and also graduate in the sense that for early guilty plea cases, fees are lower than those for cracked cases which in turn are lower than those for cases that proceed to trial. In addition a committal fee is paid for either way cases when they move from the Magistrates' Court to the Crown Court, irrespective of whether the case was committed by the Magistrates or whether the defendant elected for the case to be heard in the Crown Court.

⁴ AGFS payments for cracked trials vary according to the point in the life of a case when the crack occurred. The period between the date after a case is either fixed or placed into a warned list and the fixed date or the beginning of the warned list is divided into three equal periods ('thirds'), and any additional days are added to the final third.

40. This policy (which has now been implemented) proposes to reduce the Crown Court fees payable for cracked trials in indictable-only cases and to either-way cases committed to the Crown Court by the Magistrates' Court. For litigators (solicitors), the fees would be reduced by 25% across the whole set of fees (the base fee and Prosecution Pages of Evidence fees) for all categories of crime. For advocates (barristers and Higher Court Advocates), the fee cuts will be done in two stages:

- a. Harmonise all the Prosecution Pages of Evidence (PPE) fees paid for all cases with PPE between 1,000 and 10,000 which crack after the first 'third'⁵. The PPE fee for these cases will be the same as the current PPE fee paid for cases with PPE between 1,000 and 10,000 which crack in the second 'third' and
- b. An 11% reduction in the AGFS fee (base fee and PPE).

Option 2: Costs

41. The analysis of financial costs does not take into account behavioural responses. While these are possible, they are very difficult to predict due to the ambiguity in possible outcomes, and may not be quantifiable. Furthermore, many financial impacts arising from behavioural changes may not be realisable due to courts capacity. In light of this, qualitative assessments are provided.

Legal aid fund costs

42. This policy responds to concerns that the current system of fees does not sufficiently support the aim of quick and efficient justice and may discourage early resolution of cases. Possible outcomes may be for defendants and their legal services providers coming to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court. Some evidence² suggests that advice from solicitors/barristers can be pivotal in some offenders' decision on whether or not to plead guilty. However, this evidence is not considered representative of all defendants, and quantitative assessments of these are not possible due to difficulties in estimating behavioural impacts and insufficient robust evidence. Therefore, a qualitative assessment of the possible additional risks and costs could be that cases which previously were cracked cases move to being full trials at the Crown Court. If this was to occur then there would be increased costs for the legal aid fund. This may also raise LSC administration costs, although these are expected to be negligible.

Net costs related to legal aid clients

43. One possibility is that fee restructuring may lead to defendants and their legal services providers coming to an earlier view about whether the case should proceed to trial or submit an early guilty plea. A possible risk on clients may be that providers encourage clients to enter an early guilty plea, which may otherwise not have been found guilty. This is in particular in respect of cases that may later have cracked because for example prosecution witnesses did not attend.

44. Another risk, and possible cost, is that cases which previously were cracked cases at the Crown Court move to being full trials. If this was to occur then there would be increased costs to clients in relation to sentencing of cases which are

⁵ This is estimated as approximately a third between the Plea and Case Management Hearing (PCMH) but before the start of the trial.

found guilty following a trial and which would have been subject to an early guilty plea beforehand.

Costs for legal services providers

45. There are estimated to be around 42,000 cracked litigation payments per year in the Crown Court. These providers would receive £40m less remuneration than they would have received under the current fee regime. In particular litigators will receive an overall reduction of 25% in fees for cases which crack, and advocates fees for cases that crack will be cut by 11%, with the PPE fees for PPE between 1,000 and 10,000 that crack in the second, and final 'third' will be harmonised at the lower rates.
46. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income, especially if coupled with changes to the scope of legal aid. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration costs

47. The one-off costs from changing the fee rates are likely to be negligible. These relate to amending IT systems and training to take account of the changes in fees. There are no ongoing costs.

HMCTS costs

48. A possible risk and associated cost is that cases which previously were cracked cases at the Crown Court move to being full trials as providers and defendants may come to an earlier view about the course of their case. If this was to occur then there would be an increase in Crown Court costs, however due to capacity constraints, these would not be realised, and may only raise Crown Court backlogs.

NOMS costs

49. One possible outcome, although an unlikely one, is a possible risk may be an increase in early guilty pleas for cases which may otherwise not have been found guilty. These changes could raise NOMS costs, however due to Crown Court capacity constraints and backlogs, the flow into NOMS is unlikely to change and therefore this cost cannot be materialised.
50. An unlikely possibility is that cases which previously were cracked cases move to being full trials. If this was to occur then there would be increased costs for offender management in relation to sentencing of cases which are found guilty following a trial and which would have been subject to an early guilty plea beforehand.

Costs to victims and witnesses

51. There may be costs to victims and witnesses if clients and providers come to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court:
- a. If a cases proceeds to become an early guilty plea, it may be the case that victims incur a cost as may be dissatisfied that the defendants may not be sufficiently punished. However, this may be ambiguous as it may also be that victims might think an earlier guilty plea should get some merit too. Therefore, on the cost side these behavioural impacts may be ambiguous.
 - b. If a case proceeds to trial, there may be additional costs to victims and witnesses through prolonging the ordeal and distress that cases, may cause, as well as distress to witnesses sitting for the trial and going through the evidence. It may also raise costs through work forgone for witnesses who sit through the trial. Some of the costs for victims, however, may be offset by benefits of seeing defendants receiving longer punishments.

Option 2: Benefits

52. The analysis of financial benefits does not take into account behavioural responses. While these are possible, they are very difficult to predict due to the ambiguity in possible outcomes, and may not be quantifiable. Furthermore, many financial impacts arising from behavioural changes may not be realisable due to courts capacity. However, qualitative assessments are provided.

Legal aid fund

53. The policies are estimated to realise a net saving of £40m for the legal aid fund once the policies have fully taken effect. This relates to cases that are being paid the cracked fee rate which in future;
- a. For litigators this will be cut by an overall 25%; and
 - b. For advocates this will be cut by 11%, and the PPE fees for PPE between 1,000 and 10,000 that crack in the second, and final 'third' will be harmonised at the lower rates received in the second third.

54. One possible outcome of fee restructuring may lead to defendants and their legal services providers coming to an earlier view about whether the case should go to trial, or should enter and early guilty plea. As fees for cracked trials at the Crown Court are reduced, there may be an incentive for cases to shift to an early guilty plea. If such behaviour was to materialise, then there would be further savings.

Benefits for legal aid clients

55. One possible outcome of fee restructuring may lead to defendants and their legal services providers coming to an earlier view about whether cases should enter an early guilty plea or go to a full trial. If cases shift to enter an early guilty plea at the Magistrates' Court, there may be benefits related to sentencing discounts to the clients.

Benefits for legal services providers

56. Possible outcomes may be for defendants and their legal services providers coming to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court. Some evidence² suggests that advice from solicitors/barristers can be pivotal in some offenders' decision on whether or not to plead guilty. Although this evidence is not considered representative of all defendants, it may be that legal services providers encourage defendants to go for a trial. If this was to occur then legal services providers would benefit from the increase in business.

LSC administration benefits

57. There are no LSC one-off benefits, and any on-going benefit from processing a reduced set of fees in future is likely to be insignificant.

HMCTS benefits

58. HM Court and Tribunal Service implications may be ambiguous. Caseload could decline overall if there were more guilty pleas and therefore shorter cases. However, due to existing backlogs in the Crown Court, such impacts may not materialise in real terms. The beneficial impact would then be a reduction in existing backlogs.

NOMS benefits

59. National offender management benefits might rise if sentencing discounts are given due to guilty pleas being entered earlier.

60. An unlikely outcome is that providers may advise clients to go for a trial in the Crown Court, or Magistrates' Court. There would be a decrease in offender management costs for cases which would have been subject to a guilty plea beforehand but which are found not guilty following a trial.

Benefits to victims and witnesses

61. There may be benefits to victims and witnesses if clients and providers come to an earlier view about whether the case should be contested, enter an early guilty plea, or elect to the Crown Court:

- a. If a case proceeds to become an early guilty plea, then victims may incur benefits through earlier conclusion to the possible ordeal and distress that the case, as well as the crime itself, may have caused.
- b. If a case proceeds to trial, there may be benefits to victims from seeing defendants receive longer punishments. Some of this benefit, however, may be offset by additional costs to victims and witnesses through prolonging closure to the cases, which may cause distress to victims, as well as witnesses sitting for the trial.

Option 3A: Align the fees paid for murder and manslaughter to the same level as those paid in serious sexual cases.

Description

62. Fees paid in cases of murder and manslaughter attract a higher fee than those paid for other very serious offences. Other crimes that are also considered very serious, such as rape, attract lower fees. A rape case typically attracts fees that

are 24% lower for litigators and 12% lower for advocates than a murder or manslaughter case.

63. This is a policy which has now been implemented) is to change the fees paid under the Litigators Graduated Fee Scheme (LGFS) and the Advocate Graduated Fee Scheme (AGFS) for murder and manslaughter, i.e. LSC category A cases, so that they are paid at the same rates as cases of rape and other serious sexual offences, i.e. LSC category J cases.

Option 3A: Costs

Legal aid fund costs

64. There are no anticipated additional costs for the legal aid fund under this policy.

Net costs related to legal aid clients

65. It has been assumed that there will be no direct client impacts. In terms of risks, a possible impact on clients may be a reduction in client choice of suppliers, or a reduction in service, if suppliers' fees are reduced.

Costs for legal services providers

66. Legal services providers will see an estimated reduction in their income of around £15m due to lower fees paid to category A cases. This will affect both litigators and advocates. This assumes no change in current case volumes.
67. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income, especially if coupled with changes to the scope of legal aid. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration costs

68. The one-off costs from reducing murder (category A) rates are likely to be negligible. These relate to amending IT systems and training to take account of the changes in fees. There are no ongoing costs.

HMCTS costs

69. There are no anticipated additional costs for the courts under this policy.

NOMS costs

70. There are no anticipated additional offender management costs under this policy.

Option 3A: Benefits

Legal aid fund

71. This policy is estimated to realise a saving of £15m for the legal aid fund once it is implemented and fully taken effect.

Benefits for legal aid clients

72. It is assumed that there will be no direct client impacts.

Benefits for legal services providers

73. There are no expected benefits to legal services providers arising from this policy.

LSC administration benefits

74. There are no one-off, nor ongoing, administration benefits from reducing murder (category A) rates as the measure does not impact upon the volume of cases.

HMCTS benefits

75. There are no anticipated benefits for the Courts under this policy.

NOMS benefits

76. There are no anticipated offender management benefits under this policy.

Wider economic benefits

77. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.

Option 3B: Amalgamate two of the fee groups for cases of dishonesty to form a single group based on the value of the dishonest act(s) below £100,000.

Description

78. There are currently three categories of dishonesty in the Crown Court where the fee levels of the AGFS and the LGFS differ, depending on the seriousness of the offences concerned.

79. The Government policy (which has now been implemented) is to remove the distinction between two of the categories and pay for the more serious offences of dishonesty, i.e. LSC category G cases, at the same rates as the LSC category F cases. These are typically 50% lower for litigators and 35% lower for advocates.

Option 3B: Costs

Legal aid fund costs

80. There are no anticipated costs for the legal aid fund under this policy.

Net costs related to legal aid clients

81. It has been assumed that there will be no direct client impacts. In terms of possible risks, a possible impact on clients may be a reduction in client choice of suppliers, or a reduction in service, if suppliers' fees are reduced.

Costs for legal services providers

82. Legal services providers will see an estimated reduction in their income of £4m due to lower fees paid to category G cases. This will affect both litigators and advocates. This assumes no change in current case volumes.

83. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income, especially if coupled with changes to the scope of legal aid. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration costs

84. The LSC will incur negligible one-off costs from combining the dishonesty group. These relate to amending IT systems and training to take account of the changes. There are no on-going costs.

HMCTS costs

85. There are no anticipated costs for the courts under this policy.

NOMS costs

86. There are no anticipated offender management costs under this policy.

Option 3B: Benefits

Legal aid fund Benefits

87. This policy is estimated to realise a saving of £4m for the legal aid fund once it is implemented and fully taken affect.

Benefits for legal aid clients

88. It is assumed that there will be no direct client impacts.

Benefits for legal services providers

89. There are no expected benefits to legal services providers arising from this policy.

LSC administration benefits

90. There are no one-off, nor ongoing, administration benefits from changing fee rates as the measure does not impact upon the volume of cases.

HMCTS benefits

91. There are no anticipated benefits for the courts under this policy.

NOMS benefits

92. There are no anticipated offender management benefits under this policy.

Wider economic benefits

93. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.

Risks and uncertainties: Specific to option 3 if behaviours change

94. These costs and benefits may differ if provider behaviours changed as a result of option 3 reforms, although these are expected to be minimal as there is limited scope of how providers could change their behaviour. In this IA such changes should be regarded as possible risks which are difficult to quantify but are being identified for completeness.

95. A possible risk under this option is that legal services providers may devote less resource to cases in the current LSC categories A and G. This may lead to early guilty pleas arising in cases which would otherwise not be found guilty.

96. Another potential risk is that providers currently doing category A and G cases may choose to no longer provide services for these cases. This may lead to a reduction in client choice of providers.

Option 4: Align Magistrates' Court fees in London with other major urban areas.

Description

97. Currently there are three different sets of fees payable for Magistrates' Court work depending on location (i.e. Rural Areas⁶, Urban Areas and London). The fees in London are the highest of the three sets of fees. For example, the Lower Standard Fee for a guilty plea is £221.59 in urban areas and £284.35 in London and the Higher Standard Fee for a contested trial is £792.71 in urban areas and £1,005.49 in London.

98. The Government policy (which has now been implemented) is to remove the distinction in Magistrates' Courts fees payable in London, bringing them into line with the fees paid in other urban areas.

⁶ Travel and waiting is paid separately in rural areas only.

Option 4: Costs

Legal aid fund costs

99. There are no anticipated costs for the Legal Aid Fund under this policy.

Net costs related to legal aid clients

100. It has been assumed that there will be no direct client impacts. In terms of possible risks, a possible impact on clients may be a reduction in client choice of suppliers, or a reduction in service, if suppliers' fees are reduced.

Costs for legal services providers

101. Legal services providers would see an estimated reduction in their income of £6m due to lower fees paid to Magistrates' Court cases. This would affect both litigators doing work in the Magistrates' Court and assumes no change in current case volumes.

102. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration costs

103. The LSC will incur negligible one-off costs from changing fee rates. These relate to amending IT systems and training to take account of the changes. There are no on-going costs.

HMCTS costs

104. There are no anticipated costs for the courts under this policy.

NOMS costs

105. There are no anticipated offender management costs under this policy.

Option 4: Benefits

Legal aid fund Benefits

106. This policy is estimated to realise a saving of £6m for the legal aid fund once it is implemented and fully taken effect.

Benefits for legal aid clients

107. It is assumed that there will be no direct client impacts.

Benefits for legal services providers

108. There are no expected benefits to legal services providers arising from this policy.

109. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income, especially if coupled with changes to the scope of legal aid. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration benefits

110. There are no one-off, nor ongoing, administration benefits from aligning London rates with other urban area rates as the measure does not impact upon the volume of cases.

HMCTS benefits

111. There are no anticipated benefits for the Courts under this policy.

NOMS benefits

112. There are no anticipated offender management benefits under this policy.

Wider economic benefits

113. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.

Risks and uncertainties: Specific to option 4 if behaviours change

114. These costs and benefits may differ if provider behaviours changed as a result of option 4 fee cuts. In this IA such changes should be regarded as possible risks which are very difficult to quantify but are being identified for completeness.

115. A possible risk under these options is that legal services providers may devote less resource to cases in London. This may lead to guilty pleas arising in cases which would otherwise not be found guilty, or clients receiving higher sentences where cases proceed to trials which would otherwise receive a reduced sentence.

116. Another potential risk arising out of options 3 and 4 is that providers currently doing cases in London may choose to no longer provide services in London. This may lead to a reduction in client choice of providers. The figures presented here assume there will be no changes between cases receiving Higher Standard Fees and Lower Standard Fees.

117. There may be a risk associated with the current hourly split attracting the two fees between fees paid for London rates and those paid in other major urban areas.

Option 5: Reduce Advocates Graduated Fees: Ancillary Payments

Description

118. The AGFS includes a number of ancillary payments, or “bolt ons”, for specific tasks payable to advocates. The Crown Prosecution Service (CPS) scheme rates⁷ are lower than the defence rates.
119. A sentencing hearing under AGFS is currently paid at £114 to junior counsel on top of the base fee. The CPS pays £60 for sentencing hearings for the same grade of advocate. Furthermore, AGFS currently pays £91 for each standard appearance after the fifth standard appearance, whereas the CPS pays £46.50.
120. The Government policy (which has now been implemented) is to remove the separate payment for sentencing hearings. Instead, sentence hearings payments will be included within the definition of standard appearances. As now, a sentencing hearing will attract additional remuneration if it is a sixth or subsequent standard appearance⁸ in a case.

Option 5: Costs

Legal aid fund costs

121. There are no anticipated costs for the legal aid fund under this policy.

Net costs related to legal aid clients

122. It has been assumed that there will be no direct client impacts. In terms of possible risks, a possible impact on clients may be a reduction in client choice of suppliers, or a reduction in service, if suppliers’ fees are reduced.

Costs for legal services providers

123. Legal services providers would see an estimated reduction in their income of £9m due to removing the sentencing hearing fees. This would affect advocates doing work in the Crown Court and assumes no change in current case volumes.
124. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration costs

125. The LSC will incur negligible one-off costs from changing fee rates. These relate to amending IT systems and training to take account of the changes. There are no on-going costs.

⁷ Most CPS Ancillary Fees attract a 10% uplift per each additional defendant.

⁸ Including the Plea and Case Management Hearing.

HMCTS costs

126. There are no anticipated costs for the courts under this policy.

NOMS costs

127. There are no anticipated offender management costs under this policy.

Option 5: Benefits

Legal aid fund Benefits

128. This policy is estimated to realise a saving of £9m for the legal aid fund once it is implemented and fully taken effect.

Benefits for legal aid clients

129. It is assumed that there will be no direct client impacts.

Benefits for legal services providers

130. There are no expected benefits to legal services providers arising from this policy.

131. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration benefits

132. There are no one-off, nor ongoing, administration benefits from aligning London rates with other urban area rates as the measure does not impact upon the volume of cases.

HMCTS benefits

133. There are no anticipated benefits for the courts under this policy.

NOMS benefits

134. There are no anticipated offender management benefits under this policy.

Wider economic benefits

135. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.

Option 6: Harmonise payments in Very High Cost Cases (VHCC).

Description

136. Very High Cost Criminal Cases (VHCCs), defined as cases expected to last more than 40 days at trial for litigators and more than 60 days⁹ for advocates, are managed and paid under individual contracts.
137. The policy (which has now been implemented) is 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.

Option 6: Costs

Legal aid fund costs

138. There are no anticipated costs for the Legal Aid Fund under this policy.

Net costs related to legal aid clients

139. It has been assumed that there will be no direct client impacts. In terms of possible risks, a possible impact on clients may be a reduction in client choice of suppliers, or a reduction in service, if suppliers' fees are reduced.

Costs for legal services providers

140. There are approximately 100 VHCCs per year, involving approximately 300 litigator organisations, for VHCCs that last between 40 days and 60 days. These will be paid according to the provisions in the LGFS rather than negotiated VHCC payments. The loss of income to existing VHCC providers working on new 40 to 60 day cases is expected to be around £3m.
141. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income, especially if coupled with changes to the scope of legal aid. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration costs

142. The one-off costs from the extending LGFS payments to trials with durations of up to 60 days, are likely to be negligible. These relate to amending IT systems to take account of the changes and training. There are some marginal costs in relation to additional resource required for producing the additional assessment.

HM Court and Tribunal Service costs

143. There are no anticipated costs for the courts under this policy.

National Offender management costs

⁹ Applies to representation orders dated on or after 14th July 2010.

144. There are no anticipated offender management costs under this policy.

Option 6: Benefits

Legal aid fund Benefits

145. The policy is estimated to realise a saving of £3m for the legal aid fund once the policy has fully taken effect.

Benefits for legal aid clients

146. It is assumed that there will be no direct client impacts.

Benefits for legal services providers

147. There are no expected benefits to legal services providers arising from this policy.

148. The overall impact on providers will depend upon how they adjust to these changes in remuneration and to any changes in case flow and case duration. There is a risk that some providers may reduce the amount of legal aid work they supply, or refocus their legal aid work into the most profitable categories. They may also become more efficient in their processes as a result of the cut. All these may lessen the stated impact on legal services providers. However, providers who are heavily dependent on legal aid funding may be particularly affected by this reduction in income. This is discussed in more detail in the risks and uncertainties section of this document.

LSC administration benefits

149. There are no LSC one-off benefits from this option however there will be some on-going savings in relation to the LGFS payments paid in Crown Court cases being less resource intensive than VHCC negotiated payments.

HMCTS benefits

150. There are no anticipated additional benefits for the courts under this policy.

NOMS benefits

151. There are no anticipated additional offender management benefits under this policy.

Wider economic benefits

152. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.

Risks and uncertainties

153. There is limited information on the legal service market in England and Wales. Our assessment of the available evidence¹⁰ has highlighted that between 1995 and 2008 there has been significant growth in the UK legal services market, with increases of 34% in the number of legal service enterprises and nearly 300% in terms of turnover. At least one in four of all solicitors firms in the UK undertook some legal aid work in 2008/9, with English and Welsh legal aid expenditure representing around 10% of the total turnover for solicitors in the UK. Additionally, the ratio of lawyers per head of population has increased from around 1:1000 to 1:400 in the last 20 years. However, there has been a downward trend in the overall number of providers dealing with criminal legal aid work. This is attributed to the continuing process of providers that do small amounts of legal aid work leaving the market or merging with other firms, in addition to the LSC terminating dormant accounts where no work was being done.
154. While previous fee cuts to date do not appear to have had an adverse impact on market sustainability, 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 period¹¹. This suggested that while the proposed fee cuts are likely to be broadly sustainable, the market may not be able to sustain the proposed additional civil and family scope cuts, with particular risks for smaller criminal concerns in London. 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 a confirmed increase in solicitors' firms registered to provide legal aid services, despite cuts in legal aid fees paid to suppliers in Scotland¹², however we cannot assume that the market in England and Wales will behave in the same way.
155. 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.

¹⁰ Office for National Statistics and Legal Services Reforms: Catalyst, Cataclysm or Catastrophe? Professor Stephen Myerson, Legal Services Policy Institute speech, 21 March 2007.

¹¹ Otterburn (2011) Law Society: Impacts of the MOJ Green Paper proposals on legal aid firms

¹² Scottish Legal Aid Board (2011) Press release, February 17 2011. <http://www.slab.org.uk/news/index.html> Accessed 23 May 2011.

3. Enforcement and Implementation

156. All policies in this IA were implemented in October 2011.

4. Specific Impact Tests

Equality Impact Assessment

157. The published accompanying Equality Impact Assessment (EIA) details the equality impacts.

Competition Assessment

158. The policies to reform criminal legal aid fee schemes could directly limit the number, and possibly the range, of legal aid providers. However, this is very much dependent on the size of the overall impact of the legal aid fee changes and the reaction of the legal aid service providers.

159. The impact on the incentive to compete vigorously is dependent upon provider reaction to the proposed reform.

Small Firms Impact Test

160. Small firms will be affected by the policy to reform criminal legal aid fees. The majority of legal aid providers are small firms therefore, when comparing to the legal services population as whole, small legal aid providers are likely to be disproportionately affected by the proposed reforms. However, if the impact of the policy on small legal aid providers is compared to the legal aid service provider population only, then small firms are unlikely to be disproportionately affected.

161. Overall, due to the dominance of small legal services providers in the legal aid market, a large number of small legal aid service providers are likely to be negatively impacted by this policy.

Carbon Assessment

162. We do not consider that there will be any significant change in Greenhouse Gas emissions as a consequence of this policy. The policies may lead to clients having to travel further for legal assistance, although this is dependent upon the impact on the number and range of providers which is subject to uncertainty.

Other Environment

163. We do not anticipate any significant impact on the environment as a consequence of this policy.

Health Impact Assessment

164. Clients who no longer receive legal aid might potentially experience a negative impact on their health. This may stem from the outcomes of prosecutions being resolved differently.

Human Rights

165. The policies in this IA have been subjected to a Human Rights screening to ensure they are compliant with the Human Rights Act.

Justice Impact Test

166. The overall impact on the Justice System is outlined in the evidence base of this Impact Assessment.

Rural Proofing

167. From the providers which could be matched against their geographical location, LSC data indicates that around 94% are based in urban areas and around 6% in rural areas. An initial assessment suggests that the policies could lead to around a 3% decrease in income from legal aid for providers in rural areas and to around a 5% decrease in income urban areas.
168. This impact on the rural providers might result in providers either leaving the market if they are not able to find alternative sources of revenue or moving their businesses out of rural communities. This might have implications for the ease with which people in rural areas might access legal services in future.

Sustainable Development

169. The proposed scope reforms set out in this Impact Assessment are consistent with the principles of sustainable development. In particular, the policies on scope lead to a sustainable economy and a just society. They are designed to ensure only the highest priority cases are provided with public funds, therefore discouraging excessive litigation.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

It is intended to review each policy between three and five years after the implementation date. The review will form part of a wider review of the entire package of Legal Aid Reform policies implemented following the June 2011 Consultation Response on the Legal Aid Reforms and Legal Aid Sentencing and Punishment of Offenders Act 2012..

Review objective:

To ascertain whether the legal aid measures outlined above achieve the savings estimated in this IA.

Review approach and rationale:

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, HMCTS and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility improving data coverage and quality in the medium and longer term. We will complement use of administrative data with bespoke research exercises where appropriate. 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, including protected characteristics and income and capital to inform our review of the implementation of these reforms. We are also working with the Legal Services Board (LSB) and the Law Society to produce further research on providers.

Baseline:

All policies will be assessed against the baseline data used, specified in paragraph 3 of this IA, which all costs and savings figures in this IA are based on

Success criteria:

Whether the objectives of the reforms outlined in the IAs and in the Consultation Response document have been met.

Monitoring information arrangements:

It is intended to make use of the data LSC systems routinely collect in addition to existing administrative data sources, including HMCTS and providers. As set out above we will explore the feasibility of addressing some of the known limitations of the existing data.

Reasons for not planning a PIR:

N/A

