

Title: Legal Aid Reform in England and Wales Cumulative Legal Aid Reforms Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	IA No: MoJ090
	Date: 13/07/2012
	Stage: Enactment
	Source intervention: Domestic
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Summary: Intervention and Options

What is the problem under consideration? Why is Government intervention necessary?

Legal aid has expanded far beyond its original intentions and is available for a wide range of issues, many of which need not be resolved through the courts. This has encouraged people to bring their problems to court when the courts are not well placed to provide the best solutions. Expansion of the legal aid scheme has had inevitable consequences on costs, with legal aid now costing over £2 billion each year.

The Government is responsible for the terms and conditions of access to legal services funded by the legal aid budget, hence government intervention is necessary in order to make any changes.

What are the policy objectives and the intended effects?

The Governments' view is that the legal aid scheme needed fundamental reform. We therefore intend to implement a substantial programme of reform in order to a) discourage unnecessary and adversarial litigation at public expense; b) target legal aid to those who need it most; c) make significant savings in the cost of the scheme; d) deliver better overall value for money for the taxpayer.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The following option, in addition to 'do nothing', has been assessed against the base case of 'no change':

Option 1: Implement the following policies; (i) no longer cover particular types of case, i.e. limit the scope of legal aid in terms of the types of case which attract legal aid; (ii) reform the financial eligibility criteria which determine whether a person might receive legal aid and, if so, whether and how much of a contribution they might pay; (iii) provide more legally aided legal advice over the telephone rather than in person; (iv) secure additional income for the legal aid fund by the Government recouping a percentage of clients' damages; (v) reform fees paid to legal services providers for civil and family legal aid; (vi) reform fees paid to expert witnesses; (vii) reform fees paid to legal services providers for criminal legal aid work.

The Government's June 2011 consultation response confirmed that the preferred choice was to adopt all aspects of Option 1. Part (i) was enacted in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (some modifications were made to detail of the June 2011 scope proposals during the passage of the Bill). Parts (ii) to (iv) will be implemented by regulations made under the 2012 Act. Parts (v)-(vii) were implemented by way of secondary legislation made under the Access to Justice Act 1999.

When will the policy be reviewed to establish the actual cost and benefits and the achievements of the policy objectives?	2016
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 13 July 2012

Summary: Analysis and Evidence

Policy Option 1

Description: Implement all legal aid policies

Price Base Year 09/10	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: N/Q

COSTS (£m)	Total Transition		Average Annual (excl. Transition)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	£5m		£410m legal aid reduction	N/Q

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

Legal aid clients: In aggregate would no longer receive an estimated £250m worth of legal services funded by the legal aid budget per year. This total would relate to an estimated £240m (scope net of mediation & eligibility) of services which are no longer received and to an estimated £10m (SLAS, i.e. income from client's damages, & eligibility) of increased financial contributions from clients.

Legal aid providers: In relation to legal services which continue to be funded by legal aid, it is estimated that legal aid providers would receive around £400m less income from the legal aid budget per year (£240m from scope/eligibility reductions and £160m for remuneration cuts).

HMCTS: It is estimated that HMCTS might receive an estimated £10m less per annum in court fees previously paid from the legal aid fund for legal aid cases.

LSC: One-off costs are estimated to be approximately £5m and ongoing admin costs are estimated to be approximately £0.5m

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

Client related: In some instances there might be reductions in the efficiency of dispute resolution and wider social and economic costs might arise if disputes are resolved with different outcomes to before.

Legal aid providers: Would experience a reduction in legal aid business. The net costs to providers would depend upon how they adjust to this changing pattern of demand, e.g. in terms of reducing costs or moving into other business areas

Offender management: more cases might be found guilty.

BENEFITS (£m)	Total Transition		Average Annual (excl. Transition)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		£410m	N/Q

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

Legal aid fund: In aggregate the package of measures would save the legal aid fund an estimated £410m per year once full steady-state savings have been realised.

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

Wider economic benefits: The reforms would contribute to reducing the Government's fiscal deficit.

LSC: Some potential for reductions in administrative costs as a result of reduced case volumes.

HMCTS: Potential reduced costs from reduced volume of cases.

Offender management: Cases which were previously found guilty might plead guilty earlier in the process with sentencing implications.

Key assumptions/sensitivities/risks

- Estimates are based on data relating to the 2009/10 position to allow an appropriate comparison to the LASPO Bill Impact Assessments published before it entered Parliament;
- Impacts on offender management services are considered not to be significant;
- Impact on HMCTS - there may be a reduction in total case volumes and court fee income and, for those cases remaining, an increase in the relative proportion of cases where people represent themselves (litigants in person).

Impact on admin burden (£m):	Impact on policy costs (£m):	In scope
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Costs: N/Q	Benefit: N/Q	Net: N/Q	Costs: N/Q	Benefits: N/Q	Net: N/Q	No
What is the geographic coverage of the policy/option?					England and Wales	
From what date will the policy be implemented?					N/A	
Which organisation(s) will enforce the policy?					Ministry of Justice / Legal Services Commission	
What is the total annual cost (£m) of enforcement for these organisations?					N/Q	
Does enforcement comply with Hampton principles?					Yes	
Does implementation go beyond minimum EU requirements?					No	
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)					Traded: N/Q	Non-traded: N/Q
Does the proposal have an impact on competition?					Yes	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/Q	< 20 N/Q	Small N/Q	Medium N/Q	Large N/Q	
Are any of these organisations exempt?	No	No	No	No	No	

Specific Impact Tests: Checklist

Set out in the table below where information on any specific impact tests undertaken as part of the analysis of the policy options can be found in the evidence base.

	Impact	Page ref within IA
Statutory equality duties? Women Equality Unit: Gender Impact Assessment (PDF) Disability Rights Commission: Disability Equality Scheme Commission for Race Equality: Race equality impact assessment: a step-by-step guide	Yes	Separately published
Economic impacts		
Competition? Competition Impact Assessment	No	p17
Small firms? Small Firms Impact Test	Yes	p17
Environmental impacts		
Carbon emissions? http://www.defra.gov.uk/environment/index.htm	Yes	p17
Wider environmental issues? Guidance has been created on the Defra site	No	p17
Social impacts		
Health and well-being? Health: Health Impact Assessment	Yes	p17
Human rights? Ministry of Justice: Human Rights	No	p18
Justice? http://www.justice.gov.uk/guidance/justice-impact-test.htm	Yes	p18
Rural proofing? Commission for Rural Communities	Yes	p18
Sustainability? Defra: Think sustainable	No	p18

Evidence Base

No.	Legislation or publication
1	<i>Reform of Legal Aid in England and Wales: the Government Response.</i>
2	<i>Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.</i>
3	<i>Otterburn (2011) Law Society: Impacts of the MOJ Green Paper proposals on legal aid firms</i>
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Annual profile of monetised costs and benefits* - (£m)

(2009/10 Prices and Volumes)	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	6									
Annual recurring cost	10	80	260	360	390	400	410	410	410	410
Total annual costs	16	80	260	360	390	400	410	410	410	410
Transition benefits										
Annual recurring benefits	10	80	260	360	390	400	410	410	410	410
Total annual benefits	10	80	260	360	390	400	410	410	410	410

Annual profile of monetised costs and benefits with Optimism Bias Applied* - (£m)

(2009/10 Prices and Volumes)	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	6									
Annual recurring cost	10	70	230	320	360	370	370	370	380	380
Total annual costs	10	70	230	320	360	370	370	370	380	380
Transition benefits										
Annual recurring benefits	10	70	230	320	360	370	370	370	380	380
Total annual benefits	10	70	230	320	360	370	370	370	380	380

* For non-monetised benefits please see summary pages and main evidence base section

1. Introduction

1. This Enactment stage Impact Assessment (IA) is an updated version of the Final stage IA (published in June 2011) which estimated the impacts of the Government's legal aid reforms including legal aid related sections (Part 1 and 2) of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act. The Bill was given Royal Assent on 1st May 2012. This Enactment stage IA takes the same 2009/10 baseline as the Final stage IA and therefore facilitates comparison of the estimated impacts of the reforms before and after their Parliamentary passage.
2. The key changes to the Bill that entered Parliament are as follows and have been quantified in the costs and benefits section where possible:
 - The following case types will remain within the scope of legal aid:
 - Clinical negligence cases involving negligent treatment or care taking place during pregnancy or shortly after birth that has resulted in serious neurological injury to the child.
 - 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 i.e. legal aid for the recovery of a child who has been unlawfully removed within the United Kingdom.
 - Human Trafficking i.e. 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 cases for 16-24 year olds;
 - 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.

Background

3. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services. Legal aid fund expenditure was just over £2.1bn in 2009/10, approximately 25% of the Ministry of Justice's (MoJ) budget. Approximately £1.2bn was spent on criminal legal aid and the remaining £0.9bn was spent on civil legal aid, including private family matters. Legal aid may take the form of pre-court advisory support ('Legal Help') or court-based support ('Legal Representation'). The Legal Services Commission (LSC) is responsible for administering the legal aid scheme in England and Wales and the LSC is overseen by the MoJ.
4. The policies in this IA relate to the legal aid related measures in Part 1 and 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. It includes the policies relating to financial eligibility and the policy to introduce a Supplementary Legal Aid Scheme, albeit those policies remained unchanged during the passage of the Act and are therefore included here for completeness. It also includes, for completeness, reforms to the Civil, Family and Criminal remuneration policy changes, including changes to fees for expert witnesses, implemented in October 2011 and February 2012. However, this IA does not cover policy changes to Central Funds and the Abolition of the LSC – these are included in separate IAs, as was the case with the Final stage IAs.

Economic rationale for government intervention

5. The economic rationale for government intervention may relate to securing macroeconomic objectives, especially in relation to fiscal policy, as well as to microeconomic considerations. On the macroeconomic side, the policies in this Impact Assessment (IA) involve reducing the scale of government expenditure. This will contribute to the Government's objective of reducing the size of the budget deficit.
6. On the microeconomic side, the conventional economic rationale for government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).
7. Legal aid may be regarded as a redistributive transfer of resources from taxpayers to those who are most needy, in relation to both the nature and merits of their case and also to their financial position. The policies in this IA involve reducing the scale of these redistributive transfers. This will help the Government secure the wider macroeconomic benefits associated with reducing the fiscal deficit. The policies aim to do this whilst minimising the impact of these reductions on clients.
8. Legal aid does not involve providing direct financial transfers to clients but instead involves providing legal services which are funded, to differing extents, by the legal aid budget. As such, legal aid subsidises a particular type of service. The policies in this IA involve reducing the scale of this subsidisation. This may generate improvements in the efficiency of resource use.
9. The reduction in legal aid may lead to behavioural changes in the way people address their disputes. For example people no longer in receipt of legal aid might seek an alternative means of resolving their dispute. If the alternative means involved securing the same dispute outcome whilst using less overall resource then an economic efficiency gain would be generated. The policies take into account the availability of alternative means of resolution.
10. On the other hand it is possible that these behavioural changes might be associated with net losses. For example, for people no longer in receipt of legal aid, less resource may be devoted to resolving their dispute, delivering a resource saving. But if dispute outcomes differed and were associated with wider overall costs then there might be a net increase in total costs. The policies in this IA aim to minimise such instances. Our analysis of the equality impacts of the policies in *Reform of Legal Aid in England and Wales: the Government Response* and the LASPO Act 2012 can be found at www.justice.gov.uk.

Policy objectives

11. Reducing expenditure on legal aid was one of the key drivers for reform. 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 need not be resolved through the courts. This has encouraged people to bring their problems to court when the courts are not well placed to provide the best solutions.
12. Legal aid 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. 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).¹
13. There have been many attempts to reform legal aid, with over thirty separate consultations over the last five years. This piecemeal approach has not helped to encourage sensible resolution of disputes

¹ Sept 2011, *International Comparisons of Public Expenditure on legally aided services*, MoJ, London

and conflict. Neither has it provided a solid foundation to allow lawyers to manage their practices stably, and the Government to manage public spending.

14. Overall it remains the Government's view that the legal aid scheme needs fundamental reform 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.

15. We therefore confirmed in the June 2011 consultation response that, subject to Parliamentary approval, we would take forward the programme of reform set out in the Government response.

Policies

16. This IA considers the cumulative effect of all the legal aid reform policies as modified during the passage of the 2012 Act (including to Civil, Family and Criminal remuneration implemented in October 2011 and February 2012), on the basis that all measures form an overall package. The individual policies are summarised below, however the relevant Annex should be referred to for details of the options:

- Scope, i.e. what types of subject matter to cover:
 - (i) No longer cover the following types of case/proceeding; ancillary relief and private family cases (unless domestic violence or child abuse is present); clinical negligence (except cases involving negligent treatment or care taking place during pregnancy or shortly after birth that has resulted in serious neurological injury to the child); consumer and general contract; legal help for Criminal Injuries Compensation Authority; specified debt, education (except special educational needs), employment, specified housing; most non-asylum immigration matters; welfare benefits (except applications for accommodation for asylum seekers and Legal aid advice and assistance for welfare benefits appeals on a point of law in the Upper Tribunal and higher courts, and representation for welfare benefits appeals in the higher courts); miscellaneous matters (unless specifically retained in scope); public interest; tort and other general claims; and Upper Tribunal Appeals.
 - (ii) Continue to operate an 'exceptional funding' scheme for excluded cases, so that legal aid is provided for cases excluded under the proposed revised scope, if specified criteria are met.
 - (iii) Retain legal aid for victims of Domestic Violence (DV) in private family law cases and for the protective party in private law children cases involving child abuse, where the specified evidence is provided.
 - (iv) Continue to fund mediation for private family law cases as now.
- Financial eligibility, i.e. when might a person be financially eligible to receive legal aid, and how much might they contribute to their legal aid if anything:
 - (i) Abolish 'capital passporting' ('passporting' is a term used to describe the automatic eligibility for legal aid if a client is in receipt of particular income-related state benefits, even where the client possesses a certain level of capital).
 - (ii) Retain the 'subject matter of the dispute' disregard for contested property cases, capped at £100,000 for all levels of service.
 - (iii) Increase income contributions for all legally aided clients who make contributory payments.
- Provision of telephone advice:
 - (i) Establishes the Community Legal Advice helpline as the primary gateway to civil legal aid services regarding issues concerning debt (to the extent that these matters remain within the scope of legal aid), Special Education Needs and discrimination. To extend the provision of specialist telephone advice to a wider range of categories of law than now, with the exception of asylum issues;

- (ii) As in (i), but to examine the feasibility of some limited testing of a scheme to offer access to paid-for advice services to clients not eligible for legal aid services, with a view to wider implementation should this testing be successful.
- Supplementary Legal Aid Scheme (SLAS) - introduce a partially self-funding scheme in which a percentage (25%) of all damages (other than for future care and loss) are taken from cases where successful claims for damages have been made and the claimant was in receipt of legal aid.
- Civil legal aid fee reforms:
 - (i) Reduce all fees paid in civil & family matters by 10%.
 - (ii) Cap enhancements payments to the hourly rates payable to solicitors in civil cases.
 - (iii) Codify barrister rates in civil non-family matters and reduce by 10%.
 - (iv) Cap enhancements to the hourly rates payable to solicitors in family cases.
 - (v) Restrict the use of Queen's Counsel (QCs) in family cases.
- Expert fee reforms:
 - (i) Codify benchmark hourly rates for experts and decrease them by 10%. In the longer term, introduce a system of fixed and graduated fees.
- Criminal legal aid fee reforms:
 - (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).
 - (ii) 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).
 - (iii) Align the fees paid for murder and manslaughter to the same level as those paid in serious sexual cases.
 - (iv) Combine two of the fee groups for dishonesty offences to form a single group paid at the lower level.
 - (v) Align Magistrates' Court fees in London with other major urban areas.
 - (vi) Reduce ancillary payments to advocates ("bolt on" payments).
 - (vii) Harmonise payments in Very High Cost Cases (VHCC) for cases expected to take up to 60 days at trial.
- In the longer term the Government intends to replace the current system of administratively set rates for providers with a model of competitive tendering. The Government has not reached any firm conclusions on the exact structure of the competitive process. Therefore this IA has not included the cumulative impact of introducing such price competition.

Main affected groups

17. The following key groups are likely to be affected by the policies:

- legal aid clients;
- legal services providers. These may include; legal firms contracted with the LSC for publicly funded work; not for profit organisations contracted with the LSC for publicly funded work; advocates conducting Legal Representation for clients who are legally aided, and; expert witnesses;
- the LSC, which is responsible for administering legal aid;
- Her Majesty's Court and Tribunals Service (HMCTS), through potential changes in court business.
- National Offender Management Service (NOMS), through the potential increase in guilty pleas.

2. Costs and Benefits

18. This 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 policies. The costs and benefits of each policy are compared to the do nothing option. IA 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 policy impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
19. The LASPO Bill that entered Parliament in June 2011 and was given Royal Assent to become the LASPO Act on 1st May 2012. The total savings estimated here reflect the amendments made during the parliamentary process and have been quantified where possible. This IA also captures the impacts of the remuneration policies implemented in October 2011 and February 2012 for completeness.
20. This IA considers the impact of each policy when implemented together as a package, as opposed to in isolation. The Annexes provide a more detailed breakdown of each individual policy. It is important to note that the quantitative costs and benefits associated with each policy may differ if calculated in a different order. However the cumulative total would remain the same.

Option 0: Do nothing

Description

21. If the 'do nothing' option was pursued then the legal aid system would continue to operate as now. A full explanation of how the legal aid scheme works may be found at www.legalservices.gov.uk.
22. The 'do nothing' option is also the base case.
23. Because the 'do nothing' option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).
24. The following outlines the baseline figures used in this IA:
 - The civil legal aid reforms have been modelled against a flat baseline of 2009/10 closed cases and costs. The baseline data includes both face to face advice and telephone advice.
 - The criminal legal aid reforms are based on the most mature samples of data available 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 made to account for reforms announced in the past but yet to be implemented. For litigators, both at the Magistrates' and the Crown Court, samples of 2010/11 data have been used, and extrapolated to represent a full year.
 - Savings have been estimated against net spend (gross spend less income).
 - No change in volumes or case mix from 2009/10 levels are assumed in the modelling of reforms.
 - All estimates are relative to the 2009/10 baseline. In so doing, an implicit assumption has been made that there will be no inflationary uprating of provider fees during the current Spending Review period. In addition, as was made clear in the consultation response, it has been assumed that the majority of fees paid under current contracts will be replicated under the new legal aid contracts which will be introduced when the LASPO Act 2012 is implemented.
 - All figures have been rounded appropriately. Savings estimates have been rounded to the nearest £½ million from £0m - £1m, nearest £1m from £1m - £10m, nearest £5m from £10m - £30m and nearest £10m for all figures in excess of £30m. Volume reduction estimates have been rounded to the nearest 10 from 0 – 1,000, nearest 100 from 1,000 – 100,000 and nearest 5,000 for volume reductions in excess of 100,000.

Option 1: Implement all legal aid policies

Description

25. All legal aid policies in this package are summarised above. This analysis assumes all of these policies will be implemented.

26. The monetised impacts of the set of policies in Option 1 are calculated on a cumulative basis, with detailed breakdowns of the individual policies outlined in the annexes.

Option 1: Costs

Net costs for legal aid clients

27. Client-related costs may take the following broad forms:

- (i) Clients would receive a reduction in resource transfers equivalent to the reduction in legal aid spending. In aggregate it is estimated that existing legal aid clients would annually no longer receive approximately £250m worth of legal services funded by the legal aid budget (£260m less in legal aid but £10m more from mediation). It is estimated that around £250m of this total would relate to services which are no longer received and around £10m would relate to increased financial contributions paid by clients. This reduction in resource transfers would apply to all clients affected by these policies. In relation to family cases the term clients would also capture children as well as their parents.

Table 1: Impact on Legal Aid Clients (by case & volume) 2009/10²

Reform	Cumulative change in Legal Aid resource transfers	Cumulative change in clients affected
Scope policies <ul style="list-style-type: none">Reduction in scope³Increase in mediation Net	<ul style="list-style-type: none">-£240m+£10m -£230m	<ul style="list-style-type: none">- Approx 585,000⁴+ Approx 10,000 - Approx 575,000
Eligibility policies: service reductions	- £5m	- Approx 4,000 ⁵
Eligibility policies: increased payments	- £5m	- Approx 10,000
Supplementary Legal Aid Scheme	- £7m	n/a
<i>Client Impact Total (net)</i>	<i>- £250m</i>	<i>- Approx 590,000</i>

- (ii) As a result of this reduction in resource transfers, clients who no longer receive legal aid may choose to address their disputes in different ways. They may seek alternative resolution

² All figures have been rounded to the rounding convention stated in the 'Baseline Assumptions' section of the Cumulative IA, therefore the totals may not sum to the individual components.

³ Savings include both Legal Help and Legal Representation and use the 2009/10 figures which include legal help telephone and face to face volume and spend (Legal Help and legal representation).

⁴ For the purposes of the IAs we assume all Legal Representation cases also received Legal Help therefore the impact of clients is assumed to relate to the volume of Legal Help clients impacted. Please see the Scope Annex for Legal Help and Legal Representation breakdowns.

⁵ For the purposes of the IAs we assume all Legal Representation cases also received Legal Help therefore the impact of clients is assumed to relate to the volume of legal help clients impacted. Please see the Scope Annex for Legal Help and Legal Representation breakdowns.

services, may represent themselves in court, may seek to resolve issues by themselves without reference to the courts, may pay for services which support self-resolution, or may decide not to tackle the issue at all.

- (iii) There is evidence that all these different approaches are sometimes undertaken currently by people facing disputes^{6 7}. Although the evidence is inconclusive, there is a risk that outcomes may be worse for some people who no longer receive legal aid as a result of these policies.
- (iv) This may have implications for the economic efficiency of dispute resolution. For example:
 - in some instances, case outcomes may remain the same and the same overall resource may be used to resolve the dispute (although this would no longer be provided by the legal aid fund, so the client may be worse off in this regard) with efficiency remaining the same;
 - in some instances, case outcomes may remain the same but cases which were previously resolved via the courts might in future be resolved using less resource via alternative means. This would improve efficiency; and
 - in some instances, efficiency would be lower where more overall resources are used to achieve the same outcome.
- (v) These policies aim to minimise any adverse impact on the economic efficiency of dispute resolution, for example by still providing legal aid to cases where alternative sources of funding or other resolution routes are less open.
- (vi) The overall implications will depend on the behavioural responses of clients who no longer receive legal aid and upon the nature and effectiveness of different ways of addressing disputes aside from using legally-aided service providers. The evidence on outcomes for individuals who benefit from legal aid compared with those who do not is limited. The CSJS⁸ (Civil and Social Justice Survey) shows that a variety of methods are currently used to resolve disputes with less than 1 in 10 being resolved through the court/tribunal system.
- (vii) We also reviewed the literature on outcomes for “litigants in person”⁹ (individuals in court and tribunal cases who are not legally represented) and found that, in general, being unrepresented is likely to impact on the outcome of the case. The extent to which this general finding applies to these particular reforms is less clear.
- (viii) A range of evidence shows that social, health and justice problems tend to “cluster”. For example, the LSRC’s CSJS indicated that at least one adverse issue (social, economic or health) also arose in approximately 50 per cent of civil justice disputes. These included physical or stress related illness, relationship breakdown and loss of employment or income. The survey also showed that individuals who were involved in crime had experienced one or more difficult to solve civil problems in the past three years.
- (ix) There is very limited evidence on the impact of providing early legally aided advice on the escalation of problems. Very few studies have systematically used robust methods to compare outcomes for those who do and do not receive early legal or other advice.
- (x) Any significant change in case outcomes may be associated with social and economic costs if this leads to wider economic and social issues arising (for example, relating to health, housing, employment or offending). There may then be associated costs to the Ministry of Justice, other government departments or public bodies or to society as a whole.
- (xi) The lack of a robust evidence base means that we are unable to draw conclusions as to whether wider economic and social costs are likely to result from the programme of reform or to estimate their size. The reforms to the legal aid system will reduce the income of those Not-for-

6 Pleasence, P., Balmer, N., Patel, A and Denvir, C. (2010), Civil Justice in England and Wales: Report of the 2006-9 English and Welsh Civil and Social Justice Survey, LSRC, London.

7 Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

8 Pleasence, P., Balmer, N., Patel, A and Denvir, C. (2010), Civil Justice in England and Wales: Report of the 2006-9 English and Welsh Civil and Social Justice Survey, LSRC, London.

9 Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

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. This support 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.

Costs for legal services providers

28. The total impact on legal service providers would relate to the reduction in case volumes and to the reduction in provider fees for cases which are still subject to legal aid. This will impact upon not-for-profit providers, solicitors, advocates and experts.
29. In particular, on the cost side it is estimated that around 590,000 people might be affected, of whom an estimated 575,000 might no longer receive legal aid (net of mediation-related legal aid) as a result of removing specified law categories from scope, around 10,000 might now pay contributions or be subject to higher contributions (including those that may be impacted by the telephone policy) and an additional around 4,000 may no longer be eligible for legal aid.
30. Relating to this, it is estimated that legal aid service providers would no longer provide approximately £230m worth of current legal aid services (sum of scope reforms and eligibility service reductions).
31. For those services which are still provided, it is estimated legal services providers would receive around £150m less income. This would stem from the civil and criminal fee reforms and from the telephone advice reforms. In addition, experts would receive approximately £10m less income.

Table 2: Impact on Legal Aid Providers (by case & volume) 2009/10¹⁰

Reform	Change in cumulative provider income	Change in client numbers
Scope reforms (net of mediation)	- £230m	- Approx 575,000
Civil & Family fee reforms	- £50m	n/a
Criminal fee reforms	- £100m	n/a
Eligibility policies: service reductions	- £5m	- Approx 4,000 ¹¹
Expert Fee Reforms	- £10m	n/a
Provision of telephone advice	- £1m to £2m	0
Provider Impact Total (rounded)	£400m	- Approx 580,000

32. Given the uncertainty surrounding the possible client response to these policies, the impact on providers is also subject to much uncertainty. The impacts on providers might take the following forms:

¹⁰ All figures have been rounded to the rounding convention stated in the 'Baseline Assumptions' section of the Cumulative IA, therefore the totals may not sum to the individual components.

¹¹ For the purposes of the IAs we assume all Legal Representation cases also received Legal Help therefore the impact of clients is assumed to relate to the volume of legal help clients impacted. Please see the Scope Annex for Legal Help and Legal Representation breakdowns.

- there might be a loss of business for some legal services providers which are contracted with the LSC to provide legally aided services;
 - there might be an increase in business for other service providers, including perhaps alternative resolution service providers or services which support self-resolution, which are funded by people who previously received legal aid.
33. The above figures do not include any spending on services by people who used to receive legal aid before which in the future may self finance for the same service.
34. The overall impact on providers would also depend upon individual providers' reliance on income from legally aided clients and 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 would be lessened. As identified above, we lack clear evidence on how current providers are likely to respond to the cuts in legal aid. However, the MoJ have commissioned research with the Legal Services Board (LSB) and the Law Society to better understand the impact on providers from the legal aid reforms.

Legal Aid Fund

35. The legal aid Community Legal Advice (CLA) telephone gateway triage service might experience an increase in call volumes from ineligible clients following the implementation of the scope policies. Initially the volume of calls might increase whilst previously legally aided clients take time to understand the implications of the reforms. However, in the long-run this initial increase in call volumes might tail off. The behavioural response of ineligible clients is uncertain therefore accurately estimating the impact is difficult. However, if all 585,000 current Legal Help cases that will not longer be eligible to claim Legal Help following the reforms were to ring the CLA triage service once, the cost to the legal aid fund has been estimated at around £4m.
36. The communications strategy for the legal aid reform programme is being developed in accordance with the Government's 'Digital First' Agenda, and as such, a key element will be to encourage people to make greater use of digital, online services, where possible and appropriate rather than using the CLA telephone gateway triage service. As part of this MoJ will be reviewing and improving the content and form of its online offering in order to ensure that people are directed to alternative sources of assistance where appropriate and necessary.

LSC administration costs

37. One-off LSC implementation costs are estimated to be around £5m. These relate primarily to amending IT systems and training. Final one-off costs will be dependent upon the chosen implementation options. Initial estimates suggest there are also likely to be around £0.5m of ongoing administration costs to the LSC.

HMCTS costs

38. The 'Scope Annex' suggests approximately 38,000 cases of Legal Representation and 585,000 Legal Help cases will be withdrawn from the scope of legal aid following the legal aid reforms. The volumes of cases that continue to progress to court compared to resolving their problems in other ways is uncertain. However, we estimate approximately 10,000 cases might make use of publicly funded family mediation which will divert some cases away from the courts and tribunals.
39. The Legal Aid Reforms are likely to have two key potential impacts on court/judicial resources and on HMCTS revenue.
- Court/Judicial resources: The volume of cases coming to court might remain the same or fall, however cases might be more complex and are more likely to involve active self represented parties (SRPs). These cases might take longer to resolve, with more hearings and require more Judicial time. A rise in active self represented parties is also likely to put additional pressure on court counter staff.
 - HMCTS revenue: At present court fees for legally aided clients are paid for from the legal aid fund. However, legal aid clients are on low income and are likely to qualify for a court fee

remission assuming some of these cases continue to take their issues to court. It is estimated this loss in court fee income might be in the region of £10m based on a number of assumptions.

40. It is difficult to accurately estimate the aggregate direction and the magnitude of these impacts due to limited available evidence on the behavioural response of the individuals impacted by the reforms. The maximum number of individuals that would continue to take their issue to court could be estimated but there is little evidence on the additional resources SRPs might consume.
41. The Ministry of Justice plan to take the following actions to help understand and mitigate the impacts on HMCTS:
- Improve our ability to monitor the volumes and case durations of SRPs. This information will be published in the Court Statistics Quarterly publication from June 2012. There are also plans to improve our evidence base on the characteristics, drivers and support needs of SRPs which will help us better understand the impacts on HMCTS cost base.
 - Offer publicly funded mediation which is likely to divert more people away from court and help dampen the impact on HMCTS.
 - Improve signposting to alternative sources of advice. In response to the Civil Justice Council's recommendations in their report on self-represented litigants¹² the MoJ have confirmed funding to a number of advice providers to help mitigate the potential impact of SRPs. This includes funding to the Royal Courts of Justice Citizens Advice Bureau for the development of an online diagnostic tool which gives support to SRPs and Advicenow for improving the suitability of their guidance for SRPs. This is likely to help more people get the right sort of advice and mitigate potential impacts on the courts and tribunals.
 - Work with the judiciary to improve guidelines for private law cases to ensure SRP are clear on the procedures they must follow and how they must conduct themselves in the courts and tribunals. This should help reduce the risk of SRPs taking up excessive amounts of courts and tribunals time.
42. The legal services market might also innovate in response to the additional needs of individuals for legal advice. This could include offering low cost advice services which may help prevent an increase in the volume of cases going to court, and providing advice and support services for particular stages or aspects of going to court.

NOMS costs

43. Offender management costs may rise if there were more criminal cases with guilty outcomes as a result of the criminal legal aid remuneration policies. This might arise if some cases were subject to early guilty pleas in future and if these cases beforehand were not found guilty as a result of the case proceeding further but then collapsing or securing a not guilty outcome at trial. The volume of cases affected is not known.

Distributional costs

44. Legal aid recipients are amongst the most disadvantaged in society, reflecting both the nature of the problems they face as well as the eligibility rules for legal aid.
45. Reliable administrative data is not captured on the income of legal aid recipients but estimates have been made applying data on family characteristics and income levels from the Family Resources Survey to the civil legal aid population according to the eligibility rules (e.g. passported benefits or eligible for free or contributory aid) and scaling the figures down to the legal aid claimant population. Whilst this analysis cannot provide a perfectly accurate picture of recipients, the results are indicative of their likely income distribution.
46. This analysis shows that the vast majority (95%) of civil & family legal aid recipients in 2009-10 were in the bottom two income quintiles, with just over 80% in the bottom quintile and almost 15% in the

¹² <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/self-represented-litigants>

second bottom quintile for Legal Help. Around 1% are in the top two quintiles (including just 0.1% in the top quintile). This distribution for those in the bottom two quintiles is very similar for Legal Representation.

47. The policies outlined in this IA would reduce the number of 2009/10 Legal Representation closed cases by 38% and Legal Help cases by 65%. Of the Legal Representation cases removed, it is estimated that nearly 80% relate to individuals within the bottom income quintile.

Wider economic costs

48. The section on client related costs incorporates consideration of wider social and economic costs, both tangible and intangible.

Option 1: Benefits

Legal aid fund

49. Savings to the legal aid fund equate to the reduced amounts of legal aid set out in the costs section and relate to the costs to clients and the costs to legal services producers. In some cases the same costs apply to the provider and client. Therefore, the saving to the legal aid fund has been adjusted to ensure savings are not counted twice. The total sum is estimated to be approximately £410m. A breakdown of costs and benefits by policy are outlined in the Annexes. The breakdown provides cumulative long term steady state figures.

Benefits for legal services providers

50. Providers may secure increased funding from other sources, in particular from people who previously received legal aid. Given the uncertainty surrounding the possible client response to these policies, the impact on providers is subject to much uncertainty. There might be an increase in business for alternative resolution service providers or services which support self-resolution. There may be an increase in business for mediation service providers from legal aid funded mediation which has been estimated to be around £10m.
51. Overall it is likely that in aggregate, the total value of the increase in business for all types of provider (relating to the increase in client-funded business) will be lower than the total value of the reduction in business for providers (relating to the reduction in legal aid business).

HMCTS savings

52. As explained in the HMCTS Costs section, there will be an increase in the volumes of individuals with legal problems not receiving legal aid. The impact on the volumes and durations of the cases going to court is uncertain. There is a risk that court and tribunal costs might increase in response to the reforms. Equally, courts and tribunals costs might decrease as a result of the reforms for the following reasons:
- More people might decide not to take their legal problem forward or might resolve their issues without the use of the courts.
 - The offer of publicly funded mediation might divert more people away from the courts.
 - New innovations by the legal services market, for example low cost advice services or services targeted at particular stages or aspects of going to court, may help minimise an increase in the volume of cases going to court or in the costs to HMCTS associated with SRPs
53. The aggregate direction and magnitude of the drivers outlined above is difficult to estimate due to a lack of thorough available evidence on the behavioural response of the clients that would have previously received legal aid. The response of the legal services market is also difficult to anticipate.
54. The Ministry of Justice are taking actions to help mitigate the impacts on HMCTS (outlined in the 'HMCTS Costs' section).

55. As explained in the 'HMCTS Costs' section the Ministry of Justice will improve the monitoring of volumes and case durations of SRPs and this information will be published in the Court Statistics Quarterly publication from June 2012.

Offender management benefits

56. Offender management costs may fall from the legal aid criminal remuneration reforms. Cases which were previously found guilty might in future plead guilty earlier in the process. The subsequent offender management cost reductions would stem from the positive implications for sentencing.

Wider economic benefits

57. 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.

58. The reduced subsidisation of particular goods and services may be associated with increased economic efficiency. For example subsidisation of a service in general may lead people to consume this service when better and cheaper alternatives might be available. The policies in this IA would involve reducing the provision of subsidised services.

Risks and uncertainties

59. The following general key risks and uncertainties apply. For specific risks and uncertainties attached to each individual policy please see each relevant Annex.

- There is limited information on the legal service market in England and Wales. Our assessment of the available evidence¹³ 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 civil and family legal aid work, a decrease of around 23% between 2006/07 and 2009/10. 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.
- 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 the remuneration changes. 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 period¹⁴. 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 a confirmed increase in solicitors' firms registered to provide legal aid services, despite cuts in legal aid fees paid to suppliers in Scotland¹⁵. However we cannot assume that the market in England and Wales will behave in the same way.
- 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

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

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

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

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 price competition is designed to ensure that legal aid services are procured at a rate the market is able to sustain

- See Annexes for Risks and Uncertainties associated with individual policy areas. In light of these risks a downward optimism bias could be applied to the total savings figures. If the risks materialised then the total steady-state savings might fall to approximately £380m.

3. Enforcement and Implementation

60. Please see individual annexes for details of implementation dates.

4. Specific Impact Tests

Equality Impact Assessment

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

Competition Assessment

62. The proposed legal aid reforms may directly affect the number, and possibly the range, of civil and family legal aid providers. The net impact of the policies is likely to reduce demand for legal aid services and therefore is likely to reduce demand for legal aid providers. This may negatively impact upon competition if the proposed reforms cause some providers to go out of business.

63. The impact on the incentive to compete vigorously is dependent upon provider reaction to the reforms. Competition for legal aid contracts could be positively impacted if the same numbers of providers are competing for fewer legal aid clients. On the other hand the level of competition may remain the same or decrease slightly if the number of legal aid providers fell in line with, or more than, the reduction in legal aid clients.

Small Firms Impact Test

64. Small firms will be affected by the legal aid reforms. The reforms are likely to reduce the number of cases entitled to receive legal aid and negatively affect a large proportion of legal aid service providers. 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 policies on small legal aid providers is compared to the legal aid service provider population only, then small firms are unlikely to be disproportionately affected.

65. Overall, due to the dominance of small legal services providers in the legal aid market, the majority of providers impacted by this policy are likely to be small providers.

Carbon Assessment

66. 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

67. We do not anticipate any significant impact on the environment as a consequence of the policies.

Health Impact Assessment

68. Clients who no longer receive legal aid might potentially experience a negative impact on their health. This may stem from the outcomes of disputes being different and this having an adverse impact on health due to the subject matter of the dispute, e.g. housing, employment or education. More broadly there may be health implications for clients from the financial implications of these policies, and also from the other implications e.g. of people representing themselves in court.

Human Rights

69. The policies in this IA have been subjected to a Human Rights screening to ensure it is compliant with the Human Rights Act.

Justice Impact Test

70. The overall impact on the Justice System is outlined in the evidence base of this IA.

Rural Proofing

71. Approximately 10% of legal aid clients with location data are from rural areas and 90% are from urban areas. It is not possible to determine precisely which cases might not be funded in future as we do not have all the appropriate data. As such, it is not possible to determine whether the cases assumed to no longer be funded would impact on clients in either rural or urban areas. However, there is a risk that the policies will negatively impact upon clients living in rural areas if some providers cease trading as a result of the reforms.

72. Approximately 6% of civil providers with location data are based in rural areas, and 94% of civil legal aid providers are based in urban areas. It is not possible to determine precisely which cases might not be funded in future as we do not have all the appropriate data and therefore cannot identify precisely which providers would be affected. As such, it is not possible to determine whether the cases assumed to no longer be funded would impact on providers in either rural or urban areas. However, there is a risk that the policies will negatively impact upon providers in rural areas if some providers cease trading as a result of the reforms.

Sustainable Development

73. The proposed scope reforms set out in this IA are consistent with the principles of sustainable development. In particular, the policies lead to a sustainable economy and a just society. The reforms are designed to reduce the legal aid bill in line with the need to control public finances.

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 Legal Aid consultation response and Legal Aid Sentencing and Punishment of Offenders Act 2012.
Review objective: To ascertain whether the suite of policies have had the expected impact on the affected groups outlined in this Impact Assessment.
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 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. The Legal Services Research Centre is examining alternative modes of access to legal advice, comparing face-to-face and telephone based services. We will keep research needs in this area under review.
Baseline: All policies will be assessed against a 2009/10 baseline for LSC expenditure and volumes data which all costs and savings figures in this IA are based upon.
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