

Summary: Intervention & Options

Department /Agency: Ministry of Justice	Title: Impact Assessment of reform of Central Funds payments to acquitted defendants in criminal cases	
Stage: Response to Consultation	Version: 1.0	Date: 8 June 2009
Related Publications: Central Funds response to consultation (8 June 2009), Crown Court means testing response to consultation and impact assessment (8 June 2009).		

Available to view or download at:

<http://www.justice.gov.uk/publications/consultations.htm>

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

Means testing in the magistrates' court has led to an increase in claims for costs from acquitted defendants who have paid for their defence privately at rates higher than legal aid rates. Our proposals for Crown Court means testing could add further pressure if individuals choose to pay privately rather than apply for legal aid. Annual expenditure also currently exceeds the Central Funds budget by over £15 million, whilst the current system exposes us to large fees in one-off high cost cases against companies that do not qualify for legal aid.

What are the policy objectives and the intended effects?

To control rising costs and live within the fixed Central Funds budget. The Government is committed to the principle that those found innocent of charges requiring legal advice should be reasonably compensated for any costs they have incurred in their defence, and that individuals who cannot afford to pay for their own defence should be entitled to legal aid. However, we wish to use taxpayers' money responsibly and avoid subsidising significantly higher private defence rates, particularly for those who have access to legal aid rates or insurance schemes, through Central Funds.

What policy options have been considered? Please justify any preferred option.

Three policy options were considered: Option 1 – no change; Option 2 – restrict access to Central Funds to only those acquitted defendants that have undergone the proposed Crown Court means test, and to those that have passed the Interests of Justice test in the magistrates' court (with no change to the current arrangements for companies); Option 3 – cap all Central Funds payments to the relevant legal aid rates. We were open-minded on all options, which were not mutually exclusive. We welcomed evidence from providers and the market.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed within two years of implementation.

Summary: Analysis & Evidence

Policy Option: 1	Description: No change to the current system
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' There will be no change to the current level of costs borne by the Central Funds budget for payments to acquitted defendants (£41 million in 2007/08) and the Ministry of Justice will also bear the risk associated with higher claims following the proposed introduction of Crown Court means testing.
	One-off (Transition) Yrs	
	£ 0 1	
	Average Annual Cost (excluding one-off)	
	£ 0	Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups' None identified.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs	
	£ 0 1	
	Average Annual Benefit (excluding one-off)	
	£ 0	Total Benefit (PV) £ 0
Other key non-monetised benefits by 'main affected groups' None identified.		

Key Assumptions/Sensitivities/Risks It is assumed that means testing is introduced in the Crown Court as planned in January 2010.

Price Base Year 2007	Time Period Years 3	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	October 2009			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£ 0	Decrease	£ 0	Net £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2	Description: Restrict access to Central Funds to certain classes of acquitted defendants
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' No costs to Ministry of Justice.	
	One-off (Transition) Yrs		
	£ 0		1
	Average Annual Cost (excluding one-off)		
	£ 0	Total Cost (PV) £ 0	
Other key non-monetised costs by 'main affected groups' None identified.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Savings to Ministry of Justice Central Funds budget – £5 million per annum associated with magistrates' court cases. We are unable to estimate the savings to Central Funds associated with Crown Court cases should means testing be implemented.	
	One-off Yrs		
	£ 0		1
	Average Annual Benefit (excluding one-off)		
	£ 5 million+	Total Benefit (PV) £ 5 million+	
Other key non-monetised benefits by 'main affected groups' None identified.			

Key Assumptions/Sensitivities/Risks It is assumed that means testing is introduced in the Crown Court as planned in January 2010. The information and costs contained in this IA are the best currently available.

Price Base Year 2008	Time Period Years 3	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England and Wales	
On what date will the policy be implemented?		October 2009	
Which organisation(s) will enforce the policy?		N/A	
What is the total annual cost of enforcement for these organisations?		£ 0	
Does enforcement comply with Hampton principles?		Yes/No	
Will implementation go beyond minimum EU requirements?		Yes/No	
What is the value of the proposed offsetting measure per year?		£ 0	
What is the value of changes in greenhouse gas emissions?		£ 0	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£ 0	Decrease	£ 0	Net £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 3	Description: Cap Central Funds payments in all cases for acquitted defendants to the relevant legal aid rates
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' No costs to Ministry of Justice.
	One-off (Transition) Yrs	
	£ 0 1	
	Average Annual Cost (excluding one-off)	
£ 0	Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups' There may be some downward pressure on private rates for criminal defence work if individuals negotiate rates that are closer to those available under legal aid but we are unable to quantify the impact on solicitors, advocates or firms.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Savings to Ministry of Justice Central Funds budget – £15 million per annum for magistrates' court cases and £7-10 million per annum for Crown Court cases. High costs cases - No annual cost available, but was £8 million in 2007/08.
	One-off Yrs	
	£ 0 1	
	Average Annual Benefit (excluding one-off)	
£ 22-25 million	Total Benefit (PV)	£ 22-25 million
Other key non-monetised benefits by 'main affected groups' None identified.		

Key Assumptions/Sensitivities/Risks It is assumed that means testing is introduced in the Crown Court as planned in January 2010. The information and costs contained in this IA are the best currently available.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	October 2009			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes/No			
Will implementation go beyond minimum EU requirements?	Yes/No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase	£ 0	Decrease	£ 0	Net	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Introduction and rationale

1. This impact assessment is concerned with proposals to reform the way in which costs from Central Funds are awarded for the defence of privately funded defendants who are acquitted in criminal cases in England and Wales. The Central Funds budget, held by the Ministry of Justice, was held at £45 million per annum for the last few years, although the cash out-turn in each year since 2003/04 has stood at around £62 million. The current system also exposes the Government to meeting privately funded defence costs in a small number of very high cost cases in which the bill can run into several millions of pounds. It is anticipated that our proposals to introduce means testing in the Crown Court would place further pressure on this budget. Since the original impact assessment, an increase to the Central Funds budget has been agreed for this year, but at £60 million, it will still leave a shortfall, as the predicted costs are £70 million, excluding one large company prosecution, which is expected to cost in the region of £40 million.
2. The Government considers that reform is necessary in order to control rising costs and bring Central Funds costs within the available budget. The Prosecution of Offences Act 1985 gives the Government the power to compensate defendants who are acquitted of offences brought by the state for reasonable costs they have incurred in their defence. We remain committed to this. However, we believe that this should be subject to certain limitations, which are explained below. We are also committed to the principle that individuals who cannot afford to pay for their own defence should receive support from the state in the form of legal aid. However, the current system has not kept pace with legal aid reform. There are some anomalous areas where arguably the “reasonableness” definition is not being met. In certain circumstances, privately funded acquitted defendants are effectively being treated more generously than those whose defence costs are met by legal aid.
3. Two options were developed that were intended to address these points and they are explained in more detail below. Option 1 – no change to the current system – has been included for comparative purposes. Option 2 would restrict access to Central Funds to only those acquitted defendants that have undergone the proposed Crown Court means test, and to those that have passed the Interests of Justice test in the magistrates' court (with no change to the current arrangements for companies). Option 3 would introduce a cap, thereby bringing Central Funds payments into line with those available under legal aid. The Government was open-minded on all options, which were not considered to be mutually exclusive, i.e. both options 2 and 3 could have been implemented following consultation. We were particularly minded to restrict access to full private costs from Central Funds to individual defendants who choose not to apply for legal aid in the Crown Court. This will mitigate the impact of the proposed introduction of means testing in the Crown Court, by ensuring that individuals who choose not to accept legal aid when it is available, albeit that they may have to make a contribution, and instruct lawyers privately, will not be able to recover their full private costs from Central Funds, but instead will only be entitled to the equivalent of legal aid rates.
4. The information in this impact assessment is the best currently available. This document has been revised in the light of responses to the consultation, and further information that has been forthcoming in the meantime. We committed to conducting additional research on the options outlined during consultation, and this has resulted in some minor changes to the figures in the original impact assessment included in the consultation paper.

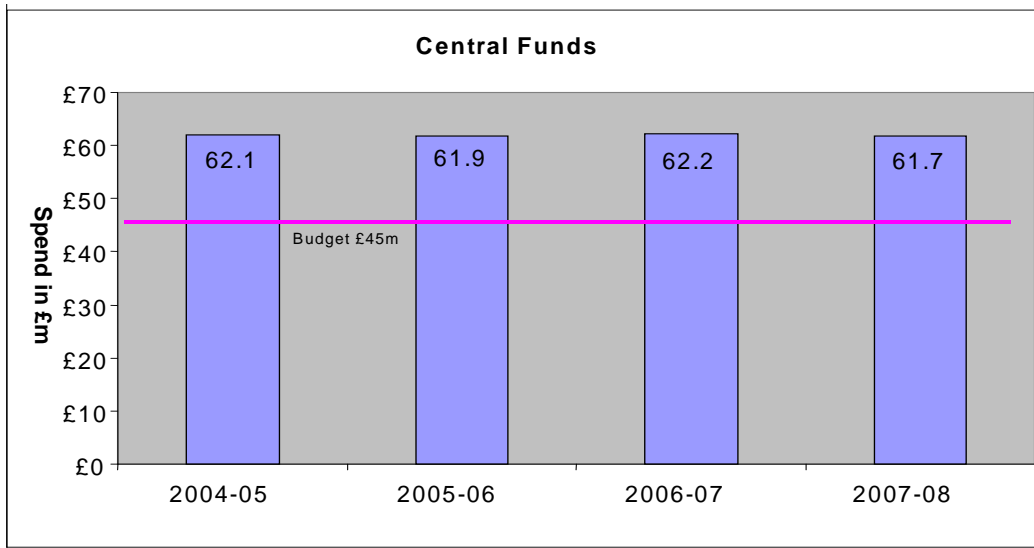
Background

5. Under the Prosecution of Offences Act 1985, and the Costs in Criminal Cases (General) Regulations 1986, acquitted defendants in both the magistrates' and Crown Courts, and successful appellants in the Crown Court and Court of Appeal, are entitled to have their 'reasonable' legal costs and expenses paid for from Ministry of Justice Central Funds (a "defendant's costs order"), unless the court decides that an order should not be made because the defendant's own conduct has brought suspicion on himself and has misled the prosecution into thinking that the case against him is stronger than it is. Such orders apply only to those defendants that have paid for their defence privately and not to those whose defence costs have been met under the legal aid scheme. (Legally aided defendants can recover out of pocket expenses, such as travelling to court.) The Lord Chancellor has the power to set the scale or rate of payment from Central Funds under the Act and its associated Regulations (*Costs In Criminal Cases (General) Regulations 1986*) although this power has never been used. As a result, the rates available from Central Funds for those defendants that have paid privately are higher than those accessible under legal aid.
6. There are two ways of ascertaining the amount of legal expenses to be paid. One method is for the court to specify the amount to be paid when making a costs order at the time of a hearing. If the defendant agrees to that figure, it will be paid from Central Funds. The alternative and more common approach is for the costs to be determined by an officer of Her Majesty's Court Service (HMCS) in accordance with the terms of the General Regulations, based on bills submitted by the defence team. The assessment of 'reasonable' legal expenses is a discretionary process and is normally based on the amount of time spent on a case multiplied by an hourly rate, which is based on the rates charged by lawyers in privately funded cases; these rates are reviewed annually by the Supreme Court Costs Office.
7. In general, hourly rates for privately paying clients are significantly higher than those paid to solicitors and barristers under legal aid. For example, the Supreme Court Costs Office guideline hourly rate for a privately funded senior solicitor based in London – although outside the City/West End areas – ranges from £210 to £246 per hour. These rates cover a broad range of criminal work from the routine to the problematic and may be increased if a case is substantial or complex. For advocates, rates are set on a case by case basis and paid under disbursement. While the rates quoted above provide an indication, we do not have any detailed information on private criminal defence rates since these are a matter for private negotiation between the solicitor and/or barrister and their client.
8. The equivalent legal aid hourly rates are, on the other hand, much lower. Until the introduction of the litigator graduated fee scheme (LGFS) in January 2008, a London-based senior solicitor acting in a relatively straightforward Crown Court case was paid the standard legal aid rate of £55.75 per hour; if the case was unusually complex, this could have been increased to a maximum of £111.50. The LGFS fees were modelled on these hourly rates. A senior solicitor acting in the most serious and complex very high cost case is paid £152.50 per hour.

Current position

9. Until this year, the budget for Central Funds was £45 million per annum, but actual cash out-turn over the past four years has been in the region of £62 million per annum as shown in the figure below. The current forecast for expenditure in 2008/09 is now £110 million, of which £40 million is attributable to one company prosecution. An increase to the Central Funds budget has been agreed, but only to £60 million, which will still leave a shortfall, even if this individual case were disregarded.

Figure: Central Funds out-turn 2004/05 to 2007/08



10. This includes expenditure on expert witnesses, interpreters, medical reports and other costs that are outside the scope of the current proposals. In 2007/08, it is estimated that expenditure of £62 million was divided amongst:
 - High cost acquitted defence costs (Crown Court) - £8 million
 - Acquitted defence costs (Crown Court) – £14 million
 - Acquitted defence costs (magistrates' court) – £19 million
 - Interpreters - £12 million
 - Defence witnesses – £3 million
 - Medical reports - £2 million
 - Other costs - £4 million
11. The reintroduction of means testing in the magistrates' court has increased claims on the Central Funds budget. The means test is exclusionary and operates on a simple 'in or out' basis and is quite different from our proposals for Crown Court means testing which, for most defendants, would involve a contribution towards the costs of their defence. Under the magistrates' court means test, if an applicant's income, adjusted to take family circumstances into account, is more than £22,325 (at current levels), they will fail the means test. If it falls below £12,475 (at current levels) they will pass. If it falls between the upper and lower limit, a more detailed means assessment is undertaken, which considers the applicant's disposable income after deducting tax, maintenance and other annual costs from their gross annual income. After all of these costs are accounted for, only if the defendant's annual disposable income exceeds £3,398, is the defendant held to be capable of paying for privately funded defence costs. These are estimated at an average of £1,500, based on a sample of bills received by Her Majesty's Court Service. A Hardship Review may be carried out if the applicant can show they are genuinely unable to fund their own representation.
12. Acquitted defendants in the magistrates' court who would previously have been able to claim legal aid are now entitled to reclaim any reasonable costs they have incurred in their defence from Central Funds and current estimates suggest the annual cost has been £14 million. Our proposals to introduce means testing in the Crown Court could have a similar effect. Although individual defendants facing trial on indictment would continue to qualify for legal aid in the Crown Court

13. The current system of Central Funds payments also exposes us to significant fees in one-off high cost criminal cases against companies that are not eligible for legal aid. Although criminal prosecutions against defendant companies are rare in the Crown Court, amounting to 0.12% of the total in 2005 (105 prosecutions from a total of 85,165 cases), if these firms are acquitted, the payments from Central Funds can run into millions of pounds. For example, in one recent high profile case, had payment been restricted to legal aid rates, the cost would have been approximately £10 million rather than the actual cost of £21 million. Since the original impact assessment, we have been provided with the estimated costs of another recent case, which are expected to be in the region of £40 million.

Assessment of the options

Option 1 – No change to the current system

14. Under this option, we would have continued with the current system for the payment of costs to acquitted defendants, and successful appellants in the Crown Court, as outlined in the background section above. It is expected that expenditure in these cases would continue at its current level of approximately £41 million per annum (based on 2007/08 out-turn), subject to any annual fluctuations associated with payments in one-off very high cost cases. In addition, we anticipate that our proposals for Crown Court means testing may well increase costs above their historic level, although we cannot quantify this at present. There would be no impact on acquitted defendants, successful appellants, practitioners or any other groups and no impact on competition or on small firms.
15. This option was included for comparative purposes, but was not considered attractive since it would not address the issues identified in the rationale section above.

Option 2 – Restrict access to Central Funds to certain classes of acquitted defendants and successful appellants

Defendants in the Crown Court

16. Under this option, an individual who chose not to undergo the proposed Crown Court means testing process and chose to arrange their own representation privately would not have qualified for reimbursement from Central Funds if they were subsequently acquitted. Our research shows the mean average cost of a privately funded case in the Crown Court to be approximately £19,500, based on a sample of bills received by Her Majesty's Court Service. We are unable to quantify the savings associated with this proposal since it would depend on the decisions made by individual defendants based on their own personal circumstances. A defendant who did undergo the means testing process and made a contribution to the costs of his/her defence would normally have his/her contributions refunded in full if he/she was subsequently acquitted, unless the court decided that he/she should pay because his/her own conduct had brought suspicion on him/herself and had misled the prosecution into thinking that the case against him/her was stronger than it was. This is the same test applied by a court when deciding whether to make a defendant's costs order. This group would therefore have been unaffected by this proposal. Defendants who appeal to the Crown Court against a magistrates' court conviction and/or sentence would remain subject

to the Interests of Justice test, as some of these appeals would not warrant the grant of legal aid. The Interests of Justice test (also known as the 'Widgery Criteria') is an assessment of the merits of an individual case for the purpose of determining whether legal aid (a representation order) should be granted. The test considers factors such as whether it is likely that the individual will lose their liberty if convicted, whether a substantial question of law may be involved, and their ability to understand the court proceedings. Under this option, appellants who failed the Interests of Justice test would not have qualified for reimbursement of legal costs from Central Funds. All cases tried on indictment in the Crown Court would automatically pass the Interests of Justice test and so this restriction would not apply to these cases. We were initially of the view that in these circumstances it was not reasonable to expect Central Funds to reimburse a defendant's legal costs, but have decided not to implement this proposal, in light of the responses to consultation and further consideration of whether it is fair to disallow costs completely in these circumstances. Although we still believe that a defendant who chooses not to take up legal aid where it is available should not be able to recover his full legal costs, we recognise that a defendant is entitled to instruct lawyers privately, and if acquitted, should not have to pay the full costs. However, we propose to limit such costs to legal aid rates. This is dealt with below.

Defendants in the magistrates' court

17. Under this option, where an individual has failed the means test but passed the Interests of Justice test, they would still have been able to claim their defence costs from Central Funds if acquitted. However, if an individual were to have failed the Interests of Justice test, but still obtained the services of a solicitor, they would no longer have been able to reclaim this expense if acquitted. We believe that this option would have offered savings of approximately £5 million to Central Funds.
18. It would only have affected defendants who decided to instruct lawyers when the case has been deemed not to require legal representation. We were initially of the view that in these circumstances it was not reasonable to expect Central Funds to reimburse a defendant's legal costs, but have decided not to implement this proposal, in light of the responses to consultation and further consideration of whether it is fair to disallow costs completely in these circumstances. This option would also have involved additional administrative costs which could have reduced the savings substantially, in that defendants would have been required to take a form of "interests of justice test", even if they would not have otherwise submitted an application because it was clear they would have failed the means test. Although we still believe that a defendant who did not qualify for legal aid under the interests of justice test should not be able to recover his full legal costs, we recognise that there may be good reasons for a defendant to instruct lawyers in these cases, and if acquitted, should not have to pay the full costs. However, we propose to limit such costs to legal aid rates. This is dealt with below.

Option 3 – Cap Central Funds payments in all cases for acquitted defendants and successful appellants to the relevant legal aid rates

19. Under this option, all payments made to acquitted defendants in both magistrates' court and Crown Court cases, and successful appellants in the Crown Court, would be paid on the basis of the relevant legal aid rates. In the Crown Court, all cases would be remunerated under the relevant legal aid fee scheme rather than on the basis of private rates negotiated between the client and their solicitor and/or barrister. It is estimated that, excluding very high cost cases, which are managed under a separate fee scheme, this would result in savings of up to £25 million per annum to the Central Funds budget (£15 million from the magistrates' court and £7-10 million from the Crown Court).
20. Since individual defendants in the Crown Court are entitled to legal aid, a large proportion of claims from Central Funds in very high cost cases relate to companies. It is difficult to annualise the impact of individual high cost cases, since these are few in number and costs vary significantly so they can have a significant impact on Central Funds expenditure in any one year. However, we

estimate that, if payments in a recent case had been restricted to legal aid rates, the overall cost would have been £10 million rather than the actual cost to Central Funds of £21 million.

Impact on acquitted defendants and successful appellants

21. Under this option, individual defendants and defendant companies would be liable for any difference between the refund of costs at legal aid rates and their actual expenditure on their case at the private rate they had negotiated with their solicitor and/or barrister. We estimate that in the magistrates' court this could average in the region of £1,000, being the difference between the estimated average privately funded case (£1,500) and the average legally aided case (£500). In the Crown Court, we estimate that this could average in the region of £16,700, being the difference between the estimated average privately funded case (£19,500) and the average legally aided case (£2,800). In very high cost cases, this sum could be much higher. As illustrated by the example above, the difference could be as much as £11 million. While companies do not have access to legal aid and so have no choice but to pay privately for their defence, the impact may be mitigated if they have taken out insurance to protect them against such an action.
22. The impact on individual defendants may also be mitigated if implementation of the proposal resulted in downward pressure on private rates. Competition between providers for private clients and individual negotiations over rates could see private rates moving more closely into line with those available under legal aid, but we are unable to quantify the effect. This would result in a reduction in income for solicitors, barristers and firms. We cannot quantify the impact since we have no reliable data on private rates, although from research conducted in the magistrates' court, based on a sample of bills paid from Central Funds we understand that they are in the region of three times more expensive than legal aid rates.
23. This option has the potential to save the Central Funds budget £22-25 million.

Impact on offenders

24. We do not believe the proposals will have any negative impact on offenders and their rehabilitation, because these proposals will only affect acquitted defendants and successful appellants.

Impact on solicitors and barristers

25. Option 2 could have impacted solicitors' firms and barristers if defendants who fail the Interests of Justice test chose not to employ a solicitor if they knew that they would not be able to recover such costs if they were acquitted. The impact is not quantifiable because it would depend on decisions made by individuals on a case by case basis, however, given that defendants currently make this decision in the full knowledge that they may be convicted we do not anticipate that this would have been significant.
26. Option 3 could impact solicitors' firms and barristers if defendants are able to negotiate lower private fees on the basis that, if acquitted, they will only recover legal aid rates, rather than private rates. However, we are not of the view that the impact will be great, partly due to the relatively small number of companies that are prosecuted for criminal offences. Part of the purpose of this consultation was to get evidence from the market and providers about the approach to payment in private client cases which are subsequently refunded out of Central Funds. We have received a number of responses from solicitors who state that privately paying clients are able to insist on a better service than legally aided clients. We see no reason why solicitors should not be in a position to offer a level of service that ensures a defendant's position is not jeopardised, and if a firm wishes to offer a "premium service", for example involving a partner of the firm, rather than a competent fee-earner, they can do this, but would have to make clear to a client that they would have to pay for this whether they are successful or not.

27. Again, given that defendants currently employ defence teams privately with no guarantee of success we do not believe that this would be significant. However, our proposals would give greater certainty to defendants and providers on their financial entitlement if acquitted.

Competition assessment

28. The Department applied the Competition Filter test, which showed that the proposals are likely to have little or no effect on competition for solicitors' firms. No one firm has more than 10% of the market, and existing firms will not be at an advantage over new or potential firms. The proposals will not affect set up costs. The scheme will not restrict the ability of firms to offer a range of services.

Impact on small firms

29. We are not of the view that there will be a significant impact on small firms, due to the small number of prosecutions involving companies. As stated above, criminal prosecutions against companies in the Crown Court amounted to 0.12% of the total in 2005 (105 prosecutions from a total of 85,165 cases). We have conducted research on the types of companies involved during the period of consultation, which has informed this final impact assessment and policy decision. Our research shows that the companies prosecuted in the Crown Court in the last financial year were split half and half between small to medium-sized firms and large firms. This is based on data held on the companies at Companies House. We do not consider that this proposal would have a disproportionate effect on small firms. Additionally, the vast majority of company prosecutions result in a conviction, with no resultant reimbursement of legal costs. We have also considered whether it is reasonable to obtain legal expenses insurance, which is available to protect against such costs. We recognise that insurance companies may increase premiums to cover shortfalls if full costs will not be recoverable, but given the relatively small costs involved in criminal proceedings involving health and safety, compared with civil proceedings for damages arising from an accident, we consider that any increase should not be substantial.

Impact on HMCS

30. The National Taxing Team of HMCS has recently taken over responsibility from justices' clerks for determining claims from Central Funds. We will continue to look at administrative savings that may result from these proposals.

Impact on legal aid

31. Central Funds are presently in a separate budget from legal aid, but in the areas under discussion the two are closely related. Crown Court means testing has the potential to impact on Central Funds expenditure, which in turn, given the higher rates paid privately, would affect the levels of saving from Crown Court means testing. While there is potential to encourage more people to apply for legal aid than do so currently, we believe any impact is mitigated by securing Crown Court means testing savings.
32. The proposed scheme has also been designed to ensure there will be little or no additional acts of assistance and consequential costs for civil legal aid. We do not believe that our proposals will increase the current incidence of debt, loss of housing or divorce.

Equality impact assessment

The Award of Costs from Central Funds in Criminal Cases

33. This is the equality impact assessment for reform of Central Funds payments to acquitted defendants in criminal cases in magistrates' courts, the Crown Court, Court of Appeal and House of Lords, including successful appellants in the Crown Court.

Statutory duties

34. Public authorities in Britain have a legal duty to promote race equality. This means that they must have due regard to how they will eliminate unlawful racial discrimination, promote equal opportunities and promote good relations between people from different groups. The Ministry of Justice (MoJ) is also under a specific duty to conduct race equality impact assessments of its policies in relation to the public duty to promote race equality and within this, to identify whether there is a differential and adverse impact on particular racial groups.
35. The Disability Equality Duty came into force on 4 December 2006. The MoJ has published a Disability Equality Scheme, which is available at our website at: <http://www.justice.gov.uk/publications/equality-schemes-2008.htm>.
36. This sets out the actions that the MoJ will be taking to promote disability equality. When carrying out our functions, the MoJ must have due regard to the duties placed upon us by the Disability Discrimination Act 2005. From 4 December 2006, the MoJ is also under a specific duty to conduct disability equality impact assessments of its policies in relation to the public duty to promote disability equality and within this, to identify whether there is a differential and adverse impact on disabled people and other people.
37. The Equality Act of 2006 places a statutory duty on all public authorities when carrying out their functions to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between men and women. The MoJ also has a specific duty to conduct gender equality impact assessments of its policies in relation to the public duty to promote gender equality and within this, to identify whether there is a differential and adverse impact on people of different genders.

What is the aim, objective or purpose of the policy, legislation or service and who will benefit from it?

38. The proposed scheme aims to deliver:
- more effective use of public resources through the capping of Central Funds payments to acquitted defendants in the magistrates' court and Crown Court and successful appellants in the Crown Court and Court of Appeal at legal aid rates.

What are the intended outcomes?

39. Successful outcomes will include a saving to Central Funds payments, which has no detrimental impact on court performance or the wider Criminal Justice System (CJS).

Do you share responsibility for this legislation, policy or service with another Government Department or organisation (eg criminal justice partners). If so, who defines it and implements it.

40. MoJ (Criminal Legal Aid Strategy Division) own the policy, and are responsible for administering the scheme.

Who are the key stakeholders in relation to the legislation, policy or service? What outcomes do they want? Does the list of stakeholders include representatives from all relevant/interested groups of people? If not, why not?

41. Key stakeholders include the legal profession, the judiciary, defendants and those working in the wider CJS, including equality bodies and those who act on behalf of defendants, such as the Citizens Advice Bureaux. Stakeholders will want to ensure that the scheme is fair to defendants, fair to those operating the scheme, and to the taxpayer.

What data will we use?

42. We use data from the Ministry of Justice's forecasting, finance and analysis branch, who collect information about Central Funds payments.
43. Information is recorded on CREST – the Crown Court IT system – about the age, gender and ethnicity of Crown Court defendants. While there has been an improvement in the recording of ethnicity, the data collected is not complete: in around 30% of trials disposed of in 2007-8, ethnicity is 'not stated'. No information is collected about disability, sexual orientation, religious belief, or caring responsibilities.
44. We invited input from consultees on the potential impact of the proposed scheme on the group(s) they represent. None were identified.

Assessment of impact on defendants

Age

45. There is no evidence that the policy will have any adverse impact based on age.

Gender

46. There is no evidence that the policy will have any adverse impact based on gender.

Ethnicity

47. There is no evidence that the policy will have any adverse impact based on ethnicity.

Disability

48. There is no evidence that the policy will have any adverse impact based on disability.

Religious belief

49. There is no evidence that the policy will have any adverse impact based on religious belief.

Sexual orientation

50. There is no evidence that the policy will have any adverse impact based on sexual orientation.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes