

<b>Title: Transforming Legal Aid: Reduction in criminal legal aid fees</b> <b>IA No:</b> MoJ004/2015 Lead department or agency: <b>Ministry of Justice</b> Other departments or agencies: <b>Legal Aid Agency</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 9/6/2015			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary Legislation			
	<b>Contact for enquiries:</b> James Macmillan (james.macmillan2@justice.gsi.gov.uk)			
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Not applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
N/A	N/A	N/A	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
We currently spend around £1bn per year on criminal legal aid services delivered by over 1,500 providers in England and Wales. Against a backdrop of continuing financial pressure on public finances, any legal aid scheme needs to be properly targeted at the cases and people where funding is most needed and in turn deliver a credible and efficient system. Ministers have committed to continue to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system continues to command the confidence of the public.

**What are the policy objectives and the intended effects?**  
The Government's policy objectives are to deliver quality assured criminal legal aid services at a lower cost to the taxpayer, but achieving this in a way that ensures effectiveness and sustainability of service. We believe this can be achieved through market consolidation, thereby achieving economies of scale. It is the Government's view that this consolidation is best achieved through a combination of the second phase of the fee reduction, and the subsequent procurement process described in summary below and in detail in the Response to the *Transforming Legal Aid: Next Steps* Consultation.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Retain current remuneration rates.

Option 1: Implement the second fee reduction across criminal litigation services.

Option 1 is the preferred option as it will more closely meet our policy objectives.

**Will the policy be reviewed?** Yes. A review will be undertaken by an individual independent of Government to assess the impact of the litigators' fee reduction and the dual contracting model on the access to justice and the quality of litigation and advocacy provision. This review will commence in July 2016.

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> N/A	<b>&lt; 20</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> NA		<b>Non-traded:</b> NA

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister: \_\_\_\_\_ Shailesh Vara \_\_\_\_\_ Date: \_\_\_\_\_ 09/06/15 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

Description: Implement an 8.75% fee reduction across criminal litigation services

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014/15	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	N/A		
High	N/A	N/A	N/A	
Best Estimate	N/A	£55m	N/A	

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

Legal aid providers: Legal aid providers are expected to experience a decrease in fee revenue of £55m per annum in steady state. This, however, is set against the opportunities we are creating in terms of economies of scale and other efficiencies. The fee reduction would only apply to new cases starting after the commencement of the fee reduction and would therefore take a period of time to take effect and for providers to feel the full impact on revenue.

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

The Legal Aid Agency will incur a one-off cost to make the administration changes associated with the fee cut. This cost is negligible.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	N/A		
High	N/A	N/A	N/A	
Best Estimate	N/A	£55m	N/A	

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

There will be a financial saving to the Legal Aid Agency. This is equal to the reduced income payable to providers and is estimated to reduce criminal legal aid expenditure by approximately £55m per annum in steady state.

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

A reduction in Government spending associated with the reduction in criminal legal aid expenditure would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Key assumptions/sensitivities/risks	<b>Discount rate (%)</b>	3.5%
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Our savings estimates are based on 2014 Legal Aid Agency administration data, and our estimates of steady state savings assume that future legal aid workload is consistent with this data.

We do not anticipate there would be any major impact on future clients eligible for criminal legal aid services. Any impact on clients would be felt through a lack of legal aid coverage should providers be unable to sustain a second fee reduction. We believe that any potential problems with sustainability are mitigated by the changes to legal aid procurement and the harmonisation of fee structures, which seek to improve efficiency and simplify administration in the criminal legal aid provider market.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
Costs: n/a	Benefits: n/a	Net: n/a	No	Zero net cost

# Evidence Base

## Introduction

### Background

1. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services both for providers and individuals. Expenditure accrued to the Legal Aid Fund was £1.9bn for 2013/14<sup>1</sup> and, as part of this, £970m was spent on criminal legal aid services, delivered by over 1,500 providers and over 4,000 advocates. The Legal Aid Agency (“LAA”) is responsible for administering the legal aid scheme in England and Wales.
2. Over the last five years the criminal legal aid market has already faced declining fees and volumes of business that has put incumbent providers of criminal legal aid under increasing pressure. However, against a backdrop of continuing financial pressure on public finances, any legal aid scheme needs to be properly targeted at the cases and people where funding is most needed and in turn deliver a credible and efficient system. Ministers have committed to continue to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system continues to command the confidence of the public.
3. In February 2014, the Ministry of Justice published the Impact Assessment which accompanied the Government Response to the *Transforming Legal Aid – Next Steps* Consultation<sup>2</sup>. This proposed a fee reduction of 17.5% across all litigation services<sup>3</sup> (with the exception of Very High Cost Cases (VHCCs)), as well as details on the competitive tender for Duty Provider work and on the harmonisation of the fee structure by the introduction of a fixed fee scheme for litigation services. However, rather than making a one step reduction of 17.5%, we proposed to make two successive reductions<sup>4</sup>. The initial 8.75% fee reduction was introduced in March 2014. This Impact Assessment covers the second fee reduction, which will be introduced on 1 July 2015.
4. This phased approach has enabled us to begin realising necessary savings and for providers to adapt to a more gradual reduction in fees over the course of the extended period before commencement of the new Duty Provider contracts in January 2016. It encourages providers to explore the opportunities for market consolidation, while the contracting model provides as much flexibility as possible in the different business structures the LAA would accept. We believe that this phased implementation of the ultimate fee reduction strikes the appropriate balance of delivering initial savings and has mitigated the risk of a single, substantial drop in prices while incentivising change.

### Policy Objectives

5. Legal aid is a fundamental part of our criminal justice system (CJS) but resources are not limitless. As part of wider governmental fiscal tightening we will procure criminal legal aid services at a lower cost to the taxpayer and in a way that ensures delivery of a quality assured, sustainable service.
6. Furthermore, criminal legal aid providers currently operate in an extremely fragmented market (in some areas more than others) at a time where there are additional pressures created by declining case volumes. This presents additional challenges in coping with reductions in fees.

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<sup>1</sup> 2013/14 prices, source: Legal Aid Agency Annual Report and Accounts, 2013-14, LAA, 24<sup>th</sup> June 2014

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/323366/laa-annual-report-accounts-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323366/laa-annual-report-accounts-2013-14.pdf))

<sup>2</sup> Transforming Legal Aid – Next Steps: Government Response, Procurement of Criminal Legal Aid Services, Ministry of Justice, 27<sup>th</sup> February 2014 (<https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/results/procurement-criminal-legal-aid-services-response-ia.pdf>)

<sup>3</sup> References to 'litigation services' throughout this document means all services currently in scope of the 2010 Standard Crime Contract.

<sup>4</sup> The two fee reductions together result in a 17.5% fee reduction on the pre-March 2014 remuneration levels.

7. We therefore agree with the Law Society and a number of respondents to the *Transforming Legal Aid: Delivering a more credible and efficient system* Consultation<sup>5</sup> that the market needs to consolidate. We believe consolidation is necessary in order for the market to remain sustainable at lower fee levels. It is the Government's view that consolidation will be achieved through a combination of the fee reduction and the subsequent procurement process.
8. The Government's policy objectives are to deliver quality assured criminal legal aid services at a lower cost to the taxpayer, but achieving this in a way that ensures effectiveness and sustainability of service. We believe this can be achieved through market consolidation, thereby achieving economies of scale, as providers would be in receipt of larger and more certain returns. It is the Government's view that this is best achieved through a combination of the second phase of the fee reduction, and the subsequent Duty Provider procurement process along with the harmonisation of fee structures for services delivered under the new contracts.

### **Main affected groups**

9. We do not consider that this proposal will have a direct financial impact on clients as it affects the provider's remuneration, not the grant of legal aid to the client. Clients could be affected, however, if the changes have an impact on the sustainability of the legal aid market resulting in an adverse effect on service provision, though we believe this is unlikely.
10. Potential impacts on clients are likely to depend upon the provider response to the changes and as such remain unquantifiable. There may however be changes which affect the user experience, for example if the identity of a preferred provider changes. But we do not consider that this would amount to a disadvantage.
11. We therefore focus on the impact on the following key groups:
  - Criminal legal aid service providers - organisations contracted with the LAA to deliver criminal legal aid services
  - LAA.

### **Costs and benefits**

12. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales, with the aim of understanding the overall impact on society from implementing these proposed reforms. The costs and benefits of each reform are compared to the base case option. IAs place 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 some aspects that cannot always be monetised.

### **Methodology and Assumptions**

13. The following assumptions have been made in the estimation of the costs and benefits:
  - I. Providers will deliver the same level and quality of service as at present.
  - II. All costs and savings figures have been rounded to the nearest £1m for estimates below £10m and to the nearest £5m for estimates above £10m. Costs and savings below £0.5m have been labelled as "negligible".
  - III. All estimates are made using 2014 LAA administrative data. Estimates of steady state savings assume that future legal aid spend is consistent with this data.

### **Option 0 (Base Case): Retain current remuneration rates.**

14. This option is the base case in which remuneration rates remain the same as they are currently. As this option is compared against itself, its costs and benefits are zero, as is its Net Present Value (NPV).

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<sup>5</sup> <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>

## **Option 1: Implement the second fee reduction across criminal litigation services.**

### **Costs of Option 1**

15. Legal aid providers will see lower revenue due to this policy change. We estimate that a further reduction in the fees paid for criminal litigation would result in an estimated £55m per annum reduction in fees paid to legal aid service providers in the steady state.
16. The fee reduction would only apply to new cases starting after the commencement of the change and would therefore take a period of time to take effect, and for providers to feel the full impact on revenue.
17. The Legal Aid Agency will incur a one-off cost to make the administration changes associated with the fee cut. This cost is negligible.

### **Benefits of Option 1**

18. There will be a financial saving to the Legal Aid Agency. This is equal to the reduced income payable to providers and is estimated to reduce criminal legal aid expenditure by approximately £55m per annum in steady state.
19. A reduction in Government spending associated with the reduction in criminal legal aid expenditure would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

### **Net Economic Impact of Option 1**

20. As the financial saving to the Legal Aid Agency is equal to the reduced revenue to providers, the net economic impact is negligible.

### **Risks and Sensitivity**

21. Our savings estimates are based on 2014 Legal Aid Agency administration data, and our estimates assume that future legal aid workload is consistent with this data. An increase in legally aided cases, or an increase in the average cost of cases, could result in higher savings to the Legal Aid Agency than estimated. A decrease in legally aided cases, or a decrease in the average cost of cases, could result in lower savings to the Legal Aid Agency than estimated.
22. We do not anticipate that there would be any major impact on future clients eligible for criminal legal aid services. Any impact on clients would be felt through a lack of legal aid coverage should providers be unable to sustain a second fee reduction. We believe that any potential problems with sustainability are mitigated by the changes to legal aid procurement and the harmonisation of fee structures, which seek to improve efficiency and simplify administration in the criminal legal aid provider market.