

Equality Impact Assessment Initial Screening and Initial Draft Impact Assessment Legal Aid: Reforming Advocates Graduated Fees

This is the draft Equality Impact Assessment (EA) initial screening and Initial Draft Impact Assessment for Legal Aid: Reforming Advocates Graduated Fees designed to secure greater value for money so that legal aid spending can be focused on priority areas. The proposed measure would bring the rates paid to advocates for defence work more closely into line with the rates paid by the Crown Prosecution Service (CPS).

What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

The aim is to contribute towards the MoJ's £1 bn efficiency savings requirement and to protect civil legal aid expenditure. The expected outcome will be to secure greater value for money for the taxpayer by realising savings in expenditure on criminal legal aid. This will mean we can continue to help as many people as possible with their civil law problems during the current recession, particularly in key areas such as social welfare law.

What existing sources of information will you use to help you identify the likely equality on different groups of people?

We will draw on a workforce survey of barristers undertaken by the Legal Services Research Centre (LSRC) which includes diversity information. We will also draw on some information collected by Lord Carter during his review of legal aid procurement.

Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

The LSC does not hold data on payments to individual barristers that would enable us to assess fully the diversity impact of the proposal on different groups of people. While the Bar Council publishes data on the ethnic background and gender balance of the Bar that data cannot be linked directly to information about payments.

The LSRC has undertaken a workforce survey of barristers, which showed that 38.6% (1,752) of those barristers responding practised in crime, though 9% of barristers (450) did not respond to the question to indicate whether or they practised in crime. 92.7% of those who responded reported doing legal aid work. Overall, 36.8% of female barristers practised in crime, compared with 39.4% of male barristers and 42.1% of BME barristers practised in crime compared with 36.8% of white barristers. The survey also showed that 34.2% of barristers with a health problem or disability practises in crime, compared with 38.9% of barristers without a health problem or disability.

The survey does not break down income between legally aided work or prosecution work for those who practice in crime, though 91% of their income is from publicly funded work. 24.8% of those who practice in crime were members of the CPS External Advocate scheme and 6.9% were members of the Attorney General's Treasury Counsel Panel.

We welcome any evidence from respondents to the consultation concerning those areas where we have not been able to gather any data, or to supplement the data referred to in this EIA.

Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a positive impact on any of these different groups of people and/or promote equality of opportunity?

We have not identified any positive impacts at this stage.

Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

We are not aware of any evidence but invite views from respondents to the consultation.

Is there any evidence that proposed changes will have an adverse equality impact on any of these different groups of people?

In our initial consultation on the principles behind this measure (Legal Aid: Funding Reforms) some respondents argued that this proposal would have an adverse impact on BME and female practitioners. It was suggested that BME and female practitioners tend to be instructed more often in shorter cases than white male colleagues. It is important to note that although a reduction in AGFS is proposed, the architecture of the Carter scheme is being maintained. As a result of Lord Carter's review more money was put into shorter cases, in order to benefit the more junior members of the Bar. The proportionality is being maintained in our proposal, so junior members of the Bar will continue to be no worse off (and indeed better off, if Option 2 is implemented) than they were prior to the implementation of the Carter changes.

The anecdotal evidence of the Bar Council, and others, is that the more junior Bar is more diverse than the more senior Bar and QCs. The reasons why women and BME practitioners tend to do less remunerative work is not clear, though fees alone cannot be the sole reason. The Bar itself needs to address issues of diversity to ensure that women and BME practitioners have the opportunity to develop their careers in the same way as their white male counterparts and eventually undertake better paid cases, that they are suitably qualified to undertake.

The impact of the AGFS rates proposed by Lord Carter had been assessed against a basket of different Crown Court cases and showed that the changes to different elements within the revised graduated fee scheme would change the value of cases by between -3 to +20% (see table below). Most of the rebalancing had been directed towards the sorts of cases undertaken by the more junior, and typically more diverse, advocates, such as shorter cases. Therefore, the fee reduction proposed under Option 1 would see advocates of up to 10 years call no worse off than they had been prior to the Carter review. If Option 2 were implemented then advocates of up to 10 years call would be better off by 4-6% than they had been prior to 2007.

Impact of proposals on basket of Crown Court cases	
Level of experience (years of call)	Change in payment for typical basket of cases
15+ years (QC)	-3%

15+ years	+5%
10-15 years	+12%
5-10 years	+20%
1-5 years	+18%

Lord Carter's assessment was based on a sample of actual case and payment records for advocates of different levels of experience who appear to work full time in publicly funded criminal defence work. Using these advocates' caseload for 2005–06, estimated incomes, as shown in the table below, had been calculated using the revised graduated fee scheme. Overheads were assumed to be 35% based on a sample study in 2005 of 28 barristers across all years of call. The table showed that good quality and efficient advocates who were fully employed in publicly funded criminal defence work could expect appropriate remuneration for the work undertaken.

Potential earnings of sample full time advocates

Level of experience (years of call)	Typical age of advocate	Potential earnings (gross)	Potential earnings (net of overheads)
QC	40+	£196,000	£127,000
15+ years	40+	£125,000	£81,000
10-15 years	35-39	£129,000	£84,000
5-10 years	30-34	£100,000	£65,000
1-5 years	24-29	£76,000	£50,000

Is there any evidence that the proposed changes have no equality impacts?

We are not aware of any evidence but invite views from respondents to the consultation.